



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00BA/OCE/2021/0127**

**HMCTS code  
(paper, video,  
audio)** : **CVP Video**

**Property** : **Shere Lodge, 48 Harewood Road,  
London NW19 2HD**

**Applicant** : **Shere Lodge (Colliers Wood) Freehold  
Company Limited**

**Representative** : **Mr Zachary Bredemear of Counsel  
instructed by ZGRP Limited**

**Respondent** : **Marlen Lore Eva Greenhalgh (as  
Executor and Trustee of Henry David  
Greenhalgh)**

**Representative** : **Mr Daniel Bromilow of Counsel  
instructed by Kloosmans Solicitors**

**Type of application** : **A collective enfranchisement claim  
made under the Leasehold Reform,  
Housing and Urban Development Act  
1993**

**Tribunal members** : **Judge Naomi Hawkes  
Mr Charles Norman FRICS**

**Date of hearing** : **8 March 2022**

**Date of decision** : **4 April 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP VIDEO HEARING REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was

referred to are in a bundle of 218 pages and in the Respondent's expert report and list of comparable properties (which were provided separately), the contents of which we have noted. The order made is described below.

### **The Tribunal's decision**

The Tribunal determines that the price payable on the collective enfranchisement of Shere Lodge, 48 Harewood Road, London NW19 2HD is £76,232.

### **Background**

1. This application concerns a collective enfranchisement claim made under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").
2. The claim is made in respect of a property known as Shere Lodge, 48 Harewood Road, London NW19 2HD ("Shere Lodge"). The Applicant is the nominee purchaser and the Respondent holds the reversionary interest in Shere Lodge.
3. Shere Lodge is a three storey, purpose-built 1970s block containing nine flats which is situated close to the Colliers Wood underground station. There are garden areas, a car parking area with allocated parking spaces, and two garages. The freehold of one of the garages is demised to Flat 3 Shere Lodge and the other is separately owned and not within the property which the Applicant seeks to acquire.
4. Shere Lodge is situated in a residential area which comprises Edwardian and Victorian housing, together with a few more modern blocks.
5. The claim was initiated by an initial notice given by the Applicant pursuant to section 13 of the 1993 Act on 27 October 2020, which is the agreed valuation date. A counter-notice was served on 5 January 2021.
6. The price payable for the freehold on an acquisition pursuant to a notice served under section 13 of the 1993 Act is governed by Schedule 6 to the 1993 Act, applied by section 32.
7. The only issue in dispute is whether the price payable for the freehold should include a sum to reflect development value. The parties have confirmed that there is no dispute as to the law and that the sole areas of dispute concern the expert valuation evidence.
8. The parties' respective valuers have agreed that, apart from any value attributable to any right to construct new flats at Shere Lodge, the

purchase price payable by the Applicant for the freehold interest is £76,232.

### **The hearing**

9. The hearing of this application took place by CVP video on 8 March 2022. The Applicant was represented at the hearing by Mr Bredemear of Counsel, instructed by ZGRP Limited, and the Respondent was represented by Mr Bromilow of Counsel, instructed by Kloosmans Solicitors.
10. The Tribunal heard oral expert evidence on behalf of the Applicant from Mr White BSc MRICS, and oral expert evidence on behalf of the Respondent from Mr Deacon BSc FRICS. Both experts had submitted written reports. The hearing was also attended by Mr Curtis, the Applicant's solicitor, and by Mr Kloosman, the Respondent's solicitor.
11. On 7 March 2022, an application on the part of the Respondent to adjourn the hearing was refused by a Procedural Judge. The documents relied upon by the parties were then served shortly before the hearing.
12. Insofar as is necessary, the Tribunal extends time under the Directions which have been given in this matter pursuant to rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to enable the parties to rely upon the documents which were referred to at the hearing. These documents are relevant to the issues in dispute and no objection was taken by either party to the late service of the other party's documents.
13. During the course of the hearing, the Tribunal was referred to plans and colour photographs of Shere Lodge and no inspection was requested. In all the circumstances, the Tribunal is satisfied that it is not necessary to carry out an inspection.

### **The Tribunal's determination**

14. Mr White gave oral evidence confirming the opinion which is set out in his expert report dated 3 March 2022. At paragraphs 6 and 7 of his report, he states:

*"6. ... In my opinion, this is not a property which is suitable for development. The principal reason is that the property has a shallow pitched roof formed of a timber truss and therefore in order to add an additional storey it would be necessary to remove the trussed roof which supports the ceilings for the three flats on the second floor. I do not consider that it would be reasonable to carry out works which are so disruptive to the occupation of the upper flats and there is little doubt that the occupiers of these flats would object strongly to any such*

*scheme. Whilst the structure may technically be adequate to support an additional storey it would be necessary to acquire the interests of the lessees of the top floor flats or, at least, to pay compensation to those lessees for the disturbance caused. In my view this would render any proposed scheme unviable.*

*The other principal reason for this property being unsuitable for development is that it is located in an area where all properties in the immediate surrounding area are of two or three storeys in height but none are any higher than this. Initial discussions with the planning department at Merton Borough Council suggest that the impact upon the street scene of an upward extension is such that it would be unlikely to receive prior approval regardless of whether or not the property qualifies for extension under permitted development rules.*

*I am therefore of the opinion that a prospective purchaser of the freehold interest acquiring the freehold with a view to extending the property would find the engineering and planning risks so great as to preclude any bid for this property. A prudent buyer would undoubtedly assess the level of profit after allowing for planning and engineering risks to be insufficient. It is perhaps not surprising that at the date of valuation there had been no indication from the current freeholder of any intention to develop the property despite owning it for many years. There are no plans or drawings in existence outlining any prospective scheme and there is no record of any planning application for a scheme of any kind at this property.*

*In response to the freeholder's late attempt to attribute an additional sum to the agreed premium in respect of loss of development value, I have obtained a report from a local architect, Andrew Catto AADip ACArch, President of the Association of Consultant Architects. This describes the issues surrounding any prospective scheme at this building.*

...

*I am, of course, aware that previous cases have been heard by the First-tier Tribunal and Upper Tribunal where residual valuations have produced a positive figure for the price payable in respect of development hope value. One example of this is *Francia Properties Limited v St James House Freehold Limited* 2018 UKUT 79 LC. In that case, a discount of 65% was applied to the residual amount to reflect planning and engineering risks. This despite the fact that the local Planning Officer had indicated, before the valuation date, that some form of development might be acceptable and a planning application had been lodged. Furthermore, there were taller buildings in the immediate vicinity and the existing building had a flat roof. In the case of *Shere Lodge* there had been no planning applications or discussions surrounding a potential development. There are no taller buildings in*

*the immediate vicinity and the property has a pitched, trussed roof. The degree of planning and engineering risk facing a potential purchaser would therefore, logically, be far greater than in the Francia Properties case.*

*Summary & Conclusions:*

*7. For the reasons given at 6 above, I am of the opinion that it is not appropriate to attribute an additional sum in respect of loss of potential development value. The current structure may or may not be suitable for one or more additional floors. The likelihood of achieving sufficient profit to merit undertaking a scheme is too remote to attract a third-party purchaser of the freehold. The absence of planning consent and the likelihood of obtaining planning consent or prior approval is sufficiently remote that no prospective purchaser would consider paying an additional sum in the hope of carrying out a development at this property.”*

15. Mr Deacon relies upon a structural engineer’s report from Mr Daniel Claydon of Barker Associates and upon a planning report from Mr Kevin Chitty. He states under the heading “Valuation” at pages 7-8 of an expert report which appears to be undated:

*“The valuation is based on the Feasibility Report and comparables of Rightmove new build properties for sale, these are appended. The last sale at 8 Shere Lodge, a one bedroom flat, completed on 15th March 2021 at £322,500.*

*New build units will obtain a premium and new build flats will be subject to a new build premium with newly constructed building envelope and fittings, especially in an established developed area, close to transport links including Collier Wood underground station. Those flats constructed above the existing flats will have the benefits of views of the surrounding area.*

*No allowance for a lift has been made in respect of a lift installation. The presence of lifts in the attached Rightmove comparables is not mentioned for any of the blocks which range up to 5 stories in height.*

*COMPARABLES:*

*1. Flat 8, Shere Lodge, 48, Harewood Road, London, London SW19 2HD*

*Second floor flat – Leasehold – 15th March 2021 at £322,500*

*2. New flats – There are 29 flats for sale/under offer within ½ mile of the subject property in the price range starting at £400,000 for a one*

*bedroom flat to £500,000 for a two bedroom flat. Please find attached the twenty pages of comparables obtained from Rightmove.*

*3. The values placed on the 1 bedroom and 2 bedroom flats fall within the range of the flats for sale.”*

16. Mr Deacon then sets out residual valuations and explains the various figures and discounts which he has applied. In oral giving evidence Mr Deacon confirmed, on being pressed to specify a figure, that in his opinion the development value of Shere Lodge is £421,161.
17. The Tribunal has considered the expert reports and exhibits in full and notes that, as stated by Mr Bromilow, the difference between the two valuers is primarily due to the different values they have attributed to the flats in the proposed completed development and to their assessment of the level of compensation which will have to be paid to the owners/occupiers of the three upper flats at Shere Lodge to persuade them agree to vacate their flats whilst the proposed development work is carried out.
18. In his report, Mr Deacon has considered the possibility of adding both a third and a fourth floor and the possibility of only adding a third floor to Shere Lodge. However, in giving oral evidence, he stated that it is most likely that a hypothetical purchaser would only take into account the potential to add a third floor to Shere Lodge.
19. In Mr Deacon’s opinion, this proposed additional floor would comprise two one-bedroom flats valued at £365,000 per flat and one two-bedroom flat valued at £500,000. Mr Deacon considers that there is also potential to carry out a side development above the car parking area containing two two-bedroom flats which he values at £550,000 per flat. Mr White values the proposed one-bedroom flats at £325,000 per flat and the proposed two-bedroom flat at £425,000.
20. As regards the level of compensation which would be likely to be payable to the owners/occupiers of the three upper flats at Shere Lodge to persuade them agree to vacate their flats whilst the proposed development work is carried out, Mr White puts forward a figure of £50,000 per flat and Mr Deacon puts forward a figure of £10,000 per flat.
21. It is common ground that three flats on the upper floor of Shere Lodge would need to be vacated in order for the proposed development work to take place and that the owners/occupiers of these flats cannot be required to leave in the absence of an agreement. Mr White is of the opinion that the proposed development works would be likely to take in the region of 12 months to complete and that the flats would need to be vacant for the entirety of this period. Mr Deacon is of the view that a

crash deck could be installed above each flat and that the flats would only need to be vacated for 14 days to enable this to happen following which the development work could proceed above occupied flats.

22. The Tribunal prefers the expert opinion of Mr White to that of Mr Deacon for the following reasons:

(i) Mr Deacon's oral evidence concerning whether or not he was attributing value to a potential fourth floor lacked clarity with incorrect figures initially given orally, whereas Mr White was clear and consistent in his conclusions.

(ii) In assessing the likely value of the new flats in the proposed development, Mr White provided evidence of sale prices and made clear and reasoned adjustments in a table at appendix 8 to his report. He did not rely upon new build comparables but he made an upwards adjustment to reflect the fact that the new flats would be in a new structure situated above a 1970s block. Save in respect of Flat 8 Shere Lodge, Mr Deacon relied upon asking prices rather than sales evidence and, in respect of properties which were under offer, he made no investigations to ascertain the proposed purchased price. None of Mr Deacon's new build comparables included one-bedroom flats and he did not provide any analysis of his comparables showing the nature of any adjustments made for time and for favourable and unfavourable features relative to the proposed new flats.

(iii) Mr Deacon's evidence concerning the allowance a hypothetical purchaser would be like to make for the cost of securing vacant possession of the three upper flats on a temporary basis was based upon the erroneous assumption that, under the flat leases, there is a right to undertake the proposed development works unless the lessees can mount a cogent case against the proposed development. Further, in our view Mr Deacon's evidence that the second-floor flats would only need to be vacant for a period of 14 days and that the hypothetical purchaser would allow £10,000 per flat is unrealistic. Even if it is possible to put down a crash deck, the level of compensation would still have to reflect the fact that owners and/or occupiers of the upper flats would then live directly below a building site for a period of approximately 12 months whilst the development

work was carried out (or might well insist upon being relocated for 12 months in order to avoid this). The compensation would have to cover the fact that, following the completion of the proposed development work, the second-floor flats would have other flats above them with the risk of noise and leaks from above. The hypothetical purchaser would also have to take account of the risk that one or more of the relevant people might be firmly opposed and block the proposed development.

(iv) We accept the evidence of Mr White that he spoke by telephone to the duty planning officer who stated that he thought it unlikely that planning consent would be obtained for the proposed development, although he was not prepared to rule it out. Having considered the nature of surrounding area, which predominantly comprises two storey period properties, and applying our general knowledge and experience as an expert tribunal, we consider it likely that there would be resistance to the proposed development (which would result in Shere Lodge becoming taller than any other building in the vicinity).

(v) We also note that Mr Deacon's residual valuation for a proposed development with two additional storeys results in a figure only approximately £5,000 higher than his residual valuation for a proposed development consisting of one additional storey and that Mr Deacon has not produced any evidence of sales of or offers for airspace in the vicinity of Shere Lodge.

23. Where the evidence of Mr Deacon differs from that of Mr White, we prefer the evidence of Mr White. Mr White explained that he did not consider the possibility of a side development above the parking area because he was not aware that this was being contended for by the Respondent when he prepared his report. However, having accepted Mr White's evidence concerning the likely value which would be attributed to proposed new flats at Shere Lodge, we are satisfied that a hypothetical purchaser would be unlikely to consider the proposed side development to be viable.
24. On the basis of the evidence of Mr White, the Tribunal finds on the balance of probabilities that a hypothetical purchaser would not pay any additional sum in the hope of carrying out a development at Shere Lodge. Accordingly, the Tribunal determines that the price payable on the collective enfranchisement of Shere Lodge is £76,232.



**Name:** Judge N Hawkes

**Date:** 4 April 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, Cambrai Court and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).