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

Case Reference : CHI/00HN/OCE/2013/0018

Property : East Cliff Grange, 35 Knyveton Road,  
Bournemouth, Dorset BH1 3QJ

Applicant : East Cliff Grange Freehold Ltd (the Landlord)

Representative : Coles Miller LLP

First Respondent : Freehold Properties Ltd (the Tenant)

Representative : Maxwell Winward LLP

Second Respondents : Anthony Frederick Newman and Doreen Ida  
Newman

Representative : Horsey Lightly Fynn

Type of Application: Application for determination of the terms of  
acquisition remaining in dispute pursuant to  
Section 24(1) Leasehold Reform, Housing & Urban  
Development Act 1993

Tribunal Members : Judge P.J. Barber Chairman  
Mr A J Mellery-Pratt FRICS Valuer Member  
Mr P Turner-Powell FRICS Valuer Member

Date and venue of Hearing : 22nd August Court No. 8 Bournemouth  
2013 County Court, Deansleigh Road,  
Bournemouth, Dorset BH7 7DS

Date of Decision: 28<sup>th</sup> August 2013

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**DECISION**

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## **Decision**

1. The price payable by the Applicant to the Second Respondents for conveyance of the Double Garage by the Second Respondents to the Applicant is £28,000.

## **Reasons**

### **Introduction**

2. This was an application made under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") for determination of terms in dispute relating to the enfranchisement of the Property.
3. By Initial Notice dated 30th of July 2012 given by the Applicant (the Tenant), the Tenant proposed to acquire under the 1993 Act, inter alia, the freehold interest in the Property.
4. By Counter-Notice dated 11<sup>th</sup> October 2012 the Respondent admitted that the Tenant was entitled to exercise the right to collective enfranchisement, save that certain of the proposals in the Initial Notice regarding terms, including the price payable, were not agreed.
5. By Notice dated 23<sup>rd</sup> October 2012, the Second Respondents gave notice to the Applicant in relation to part of the Property, being a double garage ("the Double Garage") situated towards the rear of the building on the Property and of which the Second Respondents are the freeholders with title registered at H M Land Registry under Title Number DT231943, that the Second Respondents intended to deal directly with the Applicant and be separately represented in any legal proceedings relating to the proposed acquisition by the Applicant of the Double Garage.
6. The Tribunal issued directions in this matter on 4<sup>th</sup> April 2013 requiring, inter alia, a joint valuation report to be filed identifying the valuation issues remaining in contention, and any remaining disputed terms in regard to the conveyance.
7. By the date of the hearing all the terms of acquisition had been agreed between the Applicant and the First Respondent; the only term not agreed as between the Applicant and the Second Respondents was the price payable for the Double Garage. It was agreed that the relevant date for valuation purposes was 30<sup>th</sup> July 2012, being the date of the Initial Notice and also that the basis of valuation is as provided for in Part II of Schedule 6 to the 1993 Act.

## Inspection

8. The inspection was attended by Mr Howard and Mr Ellis of Coles Miller LLP and the applicant's valuer Mr Higley; the Second Respondents' valuer Mr Bevans was also in attendance. The Tribunal noted that the Double Garage was approached from a slightly downward sloping tarmac drive; the Double Garage is constructed of block walls under concrete slab roof sections, with a cement screed floor; access is via two separate metal up and over doors. It was noted that there is no power or water connected and no evident parking restrictions exist outside the Property on Knyeton Road. Immediately after the inspection and en route to the hearing venue, the Tribunal members made a brief passing external visual inspection of properties at The Albany and Bath Hill Court.

## Hearing

9. The hearing was attended by Mr Howard, Mr Ellis and Mr Higley for the Applicant; Mr Bevans attended both as representative and to give expert valuation evidence for the Second Respondents. The Tribunal considered, inter alia, the expert valuation reports, respectively of Mr Higley for the Applicant dated 21<sup>st</sup> June 2013, and of Mr Bevans for the Second Respondents dated 26<sup>th</sup> June 2013; the Tribunal had also received skeleton arguments from Coles Miller LLP and Horsey Lightly Fynn. Certain additional land registry entries and plans were also handed to the Tribunal at the hearing on behalf of each of the Applicant and the Second Respondents.

## Legal issues

10. Paragraph 3(1) to Part II of Schedule 6 of the 1993 Act provides as follows :-

*“3(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions:-*

*(a) on the assumption that the vender is selling for an estate in fee simple-*

*(i) Subject to any leases to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but*

*(ii) Subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;*

*(b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a purchaser other than a participating tenant);*

*(c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and*

*(d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchaser of the freeholder`s interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7.”*

11. Mr Howard called Mr Higley to give evidence; Mr Higley accepted that there was little comparable evidence available for the sale of freehold garages in the Bournemouth area; however he referred to the decision of the Leasehold Valuation Tribunal in the case of *South -v- Erinbank Freehold Ltd CHI/00HN/OLR/2012/0245* issued in April 2013 in regard to Flat 38 & Garage 8 Erinbank Mansions, 16 Manor Road, Bournemouth (“the Erinbank Garage”) and in which a value of £25,000.00 was determined in respect of the garage. Mr Higley confirmed that the Erinbank Garage included space for 3 cars plus a small workshop area, but with a splayed interior and having only a single width garage access door; the floor area of the Erinbank Garage was 624 square feet, whilst the area of the Double Garage is 314 square feet. Mr Higley also referred to land registry entries for a garage at James Road, Branksome registered under Title Number DT140202 and for which a price stated to have been paid on 18<sup>th</sup> March 2011 was £17,500.00; it included extra land in addition to a double garage. Mr Higley referred to two garages at Benbow Crescent Poole, mentioned in Mr Bevans` report at a price of £52,000.00 but said that as a result of enquiries he understood that such garages are as yet still unsold and also that they were located on a Council built estate. Mr Higley referred also to a garage at Bath Hill Court mentioned in Mr Bevans` report, for which a sale at £42,500.00 was understood to be pending. Mr Higley stated that Bath Hill Court was different altogether to the Double Garage since Bath Hill Court was a much more desirable location, without the benefit of any adjoining unrestricted on-street parking. Mr Higley said that a reduction at the very least of 20% should apply in relation to any comparison between the Double Garage and Bath Hill Court. In regard to the table in Mr Bevans` report, relating to 8 separate garages at The Albany in Bournemouth, Mr Higley said that both The Albany and Bath Hill Court were appreciably better locations than was the Double Garage. Mr Higley also referred to the need to adjust any comparables not only for location, but also for actual size.
  
12. Mr Bevans referred to the land registry plans which he had handed in for the comparables at The Albany and which he understood to be single garages. Mr Bevans also submitted that it would be relatively easy to split the Double Garage into two single garages, simply by installing a dividing internal wall; the value of two separate single garages may well be higher than one double garage. Mr Bevans stated that he was unsure if contracts in relation to sale of the comparable garage mentioned in his report at Bath Hill Court at £42,500.00 had been exchanged but he understood that completion is scheduled for early September 2013. Mr Bevans accepted that the evidence in his report in relation to the garage at Benbow Crescent at £52,000.00 was not particularly good. In response to examination by Mr Howard, it transpired that certain of the data in the table for The Albany garages, was in fact incorrect.

## Consideration

13. The Tribunal took into account all the case papers and documents to which it was specifically referred. It was noted that the most recent sale of a single garage at The Albany in 2010 was at a price of £16,500.00; the Tribunal considers it more reasonable to make comparison with the more recently concluded transaction. However adjustment should be made in comparing The Albany, since the Double Garage is in a less desirable location. In regard to the sale at James Road of a double garage for £17,500.00 in March 2011, a larger area of land was involved and there was some indication in the register entries of possible development restrictions arising from rights of light or air, and also restrictive covenants. The Tribunal considered whether leaseholders at East Cliff Grange might pay a premium to acquire a double garage "on site" but felt that not too much weight should be attached to this possibility since the flats at East Cliff Grange are understood mainly to be one bedroom. Given the availability of parking spaces both on site and on street at East Cliff Grange and the modest flat sizes, the possibility of a significant premium being offered by one of the East Cliff Grange leaseholders to acquire the Double Garage seemed to the Tribunal, using its` experience and knowledge, to be not great.
14. The Tribunal considers that both the comparables at Bath Hill Court and The Albany involve more desirable locations where there is no, or limited on street parking availability. The Tribunal noted that whilst the Erinbank Garage could accommodate up to three cars, access was limited only via a single width door; by contrast the Double Garage would be easily capable of sub-division and sale as two separate single garages for prices collectively greater than sale just as a double garage. The Tribunal considers it reasonable to make comparison with the sale of the single garage at 2 The Albany, for which £16,500.00 was paid in July 2010; a reduction of £1,500.00 should be made to reflect the fact that East Cliff Grange is a less desirable location; the resultant sum of £15,000.00 should then be multiplied by two to reflect the ready potential for conversion and sale of the Double Garage as two single garages, thus achieving a figure of £30,000.00, but less £2,000.00 to reflect the cost of sub-division. The Tribunal noted the figure of £2,000.00 for separation having been mentioned in Mr Bevens` report and which was not contradicted during the course of the hearing. Consequently the Tribunal considers the price payable for the Double Garage to be £28,000.00.
15. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

### Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.