



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

Case reference : LON/00AG/OCE/2016/0179

Property : 26 Highgate West Hill, London N6
6NP

Applicant : 26 Highgate West Hill Limited

Respondents : Mr Esfandiar Ahmadi
Ms Aleksandra Almakiewicz

Type of application : Application for permission to
appeal

Tribunal members : Judge John Hewitt
Mrs Evelyn Flint DMS FRICS IRRV

**Date of decision to
refuse permission to
appeal** : 7 February 2017

DECISION

DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondents' request for permission to appeal received by the tribunal on 20 December 2016 and determines that:
 - 1.1 it will not review its decision; and
 - 1.2 permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondents may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASONS FOR THE DECISION

3. The substantive decision was sent to the parties respective representatives on 22 November 2016. The application for permission to appeal was received on 20 December 2016 and thus was received within the time period provided for in rule 52.
4. The application runs to just over 40 sheets of A4. Many points are made, some repeated on several occasions. It appears that in essence there are three principle concerns raised by the respondents. The first is that they are unhappy with the valuation for the freehold, they are unhappy with our decision on the terms of the lease to be granted and they feel that they did not get a fair hearing.
5. The application is without merit and there is no other reason why an appeal should be heard.
6. We do not propose to comment in detail on each of the points raised in the application for permission to appeal. Our substantive decision was arrived at on the basis of the evidence presented to us and the submissions of respective counsel made to us at the hearing. In their application for permission to appeal the respondents do not raise any points of law but seek to go over old ground and/or seek to make further submissions on valuation matters which they wished their valuer Mr Lieberman might have given evidence on but which he did not give evidence on.
7. In these circumstances, and in case it may assist the parties and/or the Upper Tribunal we confine ourselves to the observations set out below.

General observations

8. At all material times the respondents were represented by experienced solicitors, initially RIAA Barker Gillette and then by RadcliffesLeBrasseur who are still on record as acting for them. Our substantive decision was sent to them on 22 November 2016 and it was not an administrative error that the tribunal did not send a copy of the decision direct to the respondents.
9. Both parties were given good notice of the hearing date of the application. For some reason, which we were not told, Mr Jared Norman of counsel (Called 2001) was not instructed until a few days prior to the hearing.
10. The hearing got underway at 10:30. Mr Norman explained his position and requested time to take further instructions and to have discussions with the counsel for the applicants to see if some issues could be narrowed. The tribunal was not unsympathetic and adjourned accordingly. Progress reports were made during the course of the morning and at 12:37 following a discussion with both counsel we informed them that we proposed to adjourn to 14:00 with a view to starting the hearing then. The hearing resumed at 14:10. Contrary to what is now asserted no application for further time or any further adjournment was made to us and no application was made for permission to file a further valuer report.
11. During the course of the morning the members of the tribunal took opportunity to re-read the two rival expert witness reports so that when they came to give oral evidence it was not necessary for them to read out their reports in full, and after clarifying any points that needed to be cleared up they were offered for cross-examination.
12. It may well have been that in the run up to the hearing the parties had not strictly adhered to the time table as set out in the directions. That is not unusual in enfranchisement cases. In general, neither counsel made any complaint about that at the hearing. No applications for time or for sanctions to be imposed were made. Both counsel were content to proceed with the substantive hearing. There was an issue concerning a statement of agreed facts being dated 7 September 2016 which ought to have been filed by 28 July 2016 but we granted an extension of time for the reasons explained in paragraph 10 of our substantive decision.
13. Ms Gibbons opened the case for the applicant and called Mr Lester, an expert valuer witness who was cross-examined by Mr Norman at some length.
14. Mr Norman then called Mr Lieberman, an expert valuer witness. He commenced his evidence at 15:30 and concluded his evidence at 15:50. He was not re-examined by Mr Norman, although Mr Norman was given the opportunity to re-examine him.
15. Mr Lieberman, not 'Mr John Roe and the team behind him', was called to give expert valuation evidence. Clearly his evidence was not what the

respondents might have wished it to be, but they have to stand by it. If they had wanted to call Mr Roe because he had more experience they could have done so, but they did not. They chose to rely upon Mr Lieberman. It is not now open to them to seek to adduce further and different expert evidence after the conclusion of the hearing or to seek to re-open or to re-argue valuation matters which were explored fully at the hearing.

16. In any event, it appears clear from many of the arguments put forward in the application for permission to appeal that the respondents do not fully understand the basis of valuation to be adopted as set out in Schedule 6 to the Act.
17. The respondents also complain that Mr Lieberman signed the statement of agreed matters dated 7 September 2016. They say he did so without their approval or agreement. The signing of such documents is a professional matter for the experts alone and is not subject to the approval of the party instructing them. Further, Mr Lieberman made his absolutely clear in his oral evidence that he wished to stand by the statement. It is not open to the respondents to object to it. In any event the document was not critical or material to the valuation decisions we had to arrive at.
18. The respondents also complain that the tribunal consisted of only two members and they assert that Mrs Flint was a member of the public. Despite citing Mrs Flint's qualifications, they allege there was no valuer present. To be clear Mrs Flint is a Chartered Surveyor and was appointed a valuer member in 1995 and was appointed a valuer chair in 2010 and thus is a very experienced valuer member of the tribunal.
19. Reference by the respondents to rule 13 is not understood, Rule 13 deals solely with orders for costs and fees. The rule has nothing to do with procedural matters during the course of proceedings. It is the case that where a party has acted unreasonably in bringing, defending or conducting proceedings there might be adverse costs consequences. But, here no application for a costs order has been made.
20. Complaint is also made that the tribunal did not deal with alleged arrears of service charges. We made clear at the hearing that on an application under section 24(1) of the Act the tribunal does not have jurisdiction to determine disputes about service charges. Such disputes must be the subject of a separate application made pursuant to section 27A Landlord and Tenant Act 1985.
21. In relation to lease terms, neither party called any evidence. Both counsel made submissions to us. Plainly the respondents do not like our decision on the subject but there is nothing in the application for permission to appeal to suggest that we were wrong or in error in arriving at our decision.

22. For the above reasons, we conclude that permission to appeal should be refused.

Judge John Hewitt
7 February 2017