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

**Case reference** : **CAM/22UJ/OCE/2017/0008**

**Property** : **Flats 11, 13, 15, 17, 19 and 21  
Mulberry Green, Harlow, Essex  
CM17 0EY**

**Applicant** : **Cotswold House Management Co  
Limited**

**Representative** : **Mr T Palmer MRICS**

**Respondent** : **(1) Legra Investments Limited  
(2) Cotswold House Ltd**

**Representative** : **(1) Mr R Plant, solicitor of Tolhurst  
Fisher LLP  
(2) No representative**

**Type of application** : **Sections 24 and 33 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993**

**Tribunal members** : **Judge S Brilliant  
Mr R Thomas MRICS  
Mr G Smith MRICS FAAV**

**Date of determination  
and venue** : **14 June 2017  
Harlow Magistrates Court, Harlow,  
Essex CM20 1HH**

**Date of decision** : **1 August 2017**

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**DECISION**

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**Summary of the Tribunal's decisions**

- (1) The appropriate capitalisation rate is 6.5%.

- (2) The appropriate premium payable for the collective enfranchisement is £37,550 (in accordance with the calculation at page 144 of the trial bundle).
- (3) The costs claimed by Tolhurst Fisher LLP as solicitors representing Legra Investments Limited are reduced to £4,358.80 including VAT.

### **Background**

1. This is an application made by the applicant nominee purchaser pursuant to sections 24 and 33 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of:
  - (1) the premium to be paid for the collective enfranchisement of Flats 11, 13, 15, 17, 19 and 21 Mulberry Green, Harlow, Essex CM17 0EY;
  - (2) other terms of acquisition which remain in dispute;
  - (3) the amount of costs payable to Tolhurst Fisher LLP as solicitors representing Legra.
2. The 6 flats are situated in a substantial, double fronted 4 storey house, known as Cotswold House, which was constructed in about 1750 and is now a Grade II listed building (“the building”). The building was refurbished and converted into flats in 2013. The flats were sold off on 125 year leases between March and June 2014.
3. There is an area of enclosed space to the rear of the building which is used for car parking and access (“the rear land”). The rear land includes 4 car parking spaces which are used by Flats 13, 17, 19 and 21, communal roadway and gardens.
4. There is a narrow strip of paved land to the front of the building (“the strip”) which abuts the public highway.
5. The building and the strip are registered at Land Registry under title number EX895693. Since 17 March 2016, the registered proprietor of the building and the strip has been the First Respondent (“Legra”). Legra bought the building and the strip on 18 February 2016 for £30,000.
6. The rear land is registered at Land Registry under title number EX921666. Since 9 June 2015, the registered proprietor of the rear land has been the Second Respondent (“Cotswold House”). Cotswold House bought the rear land on 15 May 2015 for £1.

7. By an initial notice dated 13 July 2016, served pursuant to section 13 of the Act, the applicant purported to acquire the freehold of the building, the strip and the rear land (save one parking space).
8. This was incorrect as far as the strip was concerned. The strip is communal property falling within section 1(3)(b). The applicant proposed a price of £32,400 for the building and the strip.
9. The applicant proposed a price of £600 for the relevant part of the rear land.
10. On 9 November 2016, Legra served a counter notice admitting the claim to acquire the building, but requiring permanent rights to be granted over the strip, which was to be retained in its ownership under section 1(4)(a). Legra proposed a price of £77,400 for the building.
11. The counter notice also made certain proposals in respect of the rear land. We were told shortly before the hearing that agreement had been reached between the applicant and Cotswold House in respect of the terms upon which the applicant would acquire the rear land. Accordingly, this decision is not concerned with the rear land.
12. By an application dated 13 February 2017, the applicant applied to the tribunal for a determination of the premium and terms of acquisition.
13. Directions were given on 9 March 2017.

### **The hearing**

14. The hearing in this matter took place on 14 June 2017. The applicant was represented by Mr T Palmer MRICS, who also gave expert evidence on behalf of the applicant in accordance with a written report dated 12 May 2017.
15. Legra was represented by Mr R Plant, a partner at Tolhurst Fisher LLP. Towards the end of the hearing it was revealed that he is also a director of Legra. There is a potential conflict of interest arising in this situation. Mr Plant should consider chapter 5 of the SRA Code of Conduct and whether he ought to reveal that he is, in effect, acting on behalf of his own interests at the same time as appearing as an advocate.
16. Legra relied upon the expert evidence of Mr W Gillespie FRICS. He provided a written report dated 11 May 2017. He did not attend the hearing to give expert evidence, so there was no opportunity for him to be questioned on his report. No reason was advanced as to why he was unavailable to give oral evidence.

17. The tribunal conducted an inspection prior to the hearing. The tribunal could see that the strip is a small piece of tarmacked land lying between the frontage of the building and the public highway.

### **The issues**

#### **Matters agreed**

18. The following matters were agreed between the respective experts in a memorandum dated 26 April 2017:

|  |                                   |
|--|-----------------------------------|
| Date of valuation                                    | 13 July 2016                      |
| Leases   | All 125 years from 1 January 2013 |
| Unexpired term at valuation date                     | 121.5 years                       |
| Total passing rent                                   | £2,100 per annum                  |
| Total rent on first review                           | £2,244 per annum                  |
| Total unimproved freehold capital value of the flats | £1,215,657                        |
| Deferment rate                                       | 5%                                |
| Section 33 valuation costs                           | £1,853.36 (including VAT)         |

#### **Matters in dispute**

19. The following matters remained in dispute:

|                     |  |
|---------------------|--|
| Capitalisation rate | The applicant: 6.50%<br>Legra: 3.11%     |
| Valuation           | The applicant: £37,550<br>Legra: £73,440 |

20. The ground rent of each of the 6 leases is £350 per annum. The ground rent is reviewed every 5 years in accordance with the RPI.
21. Mr Palmer adopts a capitalisation rate of 6.50%. He says in paragraph 12.5 of his report that this compares to those fixed ground rents which double every 25 years or 33 years. Apart from one enfranchisement transaction, all the capitalisation rates which he has agreed, either on behalf of the long lessees or the freeholder, have been 6.50% or above.
22. Mr Palmer relies upon a capitalisation rate of between 6.50% and 7% where the ground rent doubles in the following cases in which he acted:
  - (1) 26 Elton Park, Langley Road, Watford WD17 4NW (valuation date 21 June 2016, capitalisation rate 6.50%);
  - (2) 12 Glebe House, 12 St Andrews Road, Bedford MK40 2LJ (valuation date 19 March 2015, capitalisation rate 7%);
  - (3) 26 Princes Court, The Mall, Dunstable LU5 4WH (valuation date 27 August 2015, capitalisation rate 6.50%).
23. A capitalisation rate of 6.50% is one with which the tribunal is well familiar.
24. Mr Gillespie says in paragraph 11.7 of his report that he relies upon two sources, where ground rents increased every 5 years by reference to RPI.
25. First, he relies upon Flats 1-9, Craven Gate, 2 Lorne Road, Brentwood, Essex CM14 5HH. On 13 June 2016, Freehold Property 23 Ltd purchased the freehold. The initial annual rent reserved was £400, reviewed every 5 years by reference to RPI. The capitalisation rate was 3.78%.
26. Secondly, he relies upon an offer made by Consensus Business Group (Ground Rents) Ltd for the freehold interest in the building and the strip on 12 September 2016. The capitalisation rate was 3.11%.
27. Mr Palmer said in his evidence said that these comparables were not reliable. They were both off market deals. Mr Gillespie's daughter had bought one of the flats at Craven Gate. The tribunal has no idea of the development potential or the hope of lucrative management rights which drove up the purchase price and thus reduced the capitalisation rate. Mr Palmer made enquiries of Mr Gillespie because he wanted further details of these transactions, but Mr Gillespie failed to respond to the enquiries.

28. No details were provided to us about the circumstances in which Craven Gate was sold or in which the offer on the building and the strip was made. We do not know whether the market was restricted or the details of precisely what land was being included.
29. The tribunal prefers the evidence of Mr Palmer to that of Mr Gillespie.
30. We were told at the hearing that prior to the purchase of the building and the strip on 18 February 2016 by Legra the £30,000, it had been offered for sale to the long lessees for £30,000. At that time, the long lessees failed to complete the sale. This equates to a capitalisation rate of 7%. This further supports Mr Palmer's figure of 6.50%.

### **Terms of acquisition**

31. The only matter in dispute between the parties concerned the maintenance and service charges relating to the strip which Legra has elected to retain in its ownership.
32. The applicant proposed in clause 12.4.5 of the draft TP1 the following:
- To pay on demand to the Transferor the reasonable and fair sums which the Transferor expends maintaining and repairing the Retained Land to a reasonable standard*
33. Legra proposed a 16 paragraph clause in its place. This involved paying managing agents, accountants and other persons retained to act in respect of the strip and paying into a sinking fund.
34. In our judgment, Legra's proposal is unnecessarily complicated in relation to such a small piece of land. It is a recipe for extravagant future claims. We prefer the proposal of the applicant.

### **Costs**

35. Legra's costs schedule is at pages 23–24 the trial bundle. We reduce the amount claimed for correspondence and telephone calls to £175 from £275. We reduce the amount claimed for investigating the qualification of the tenants etc to £375 from £500. We reduce the anticipated costs of letters out to £150 from £200. This is a reduction of £275.
36. The costs payable are as follows:

|            |           |
|------------|-----------|
| Solicitors | £2,150.00 |
|------------|-----------|

|               |           |
|---------------|-----------|
| VAT           | £430.00   |
| Valuer        | £1,432.00 |
| VAT           | £286.40   |
| Disbursements | £60.40    |
| Total         | £4,358.80 |

**Name:** Judge Simon Brilliant      **Date:** 1 August 2017

### **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, the property 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).