



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

Case Reference : **LON/00BC/OCE/2018/0222**

Property : **38 St Albans Crescent, Woodford Green,
Essex IG8 9EH**

Applicants : **The Property Development Partnership
Limited (Co Regn 05376959) (1);
Emma Lu Castro and Roberto Anonas
Castro (2); and
38 St Albans Crescent Limited
(As the nominee purchaser) (3)**

Representatives : **Mr James Castle Counsel
Mr Obiora Chianumba BA (Hons) MRICS**

Respondents : **Ms Christine Helen St George (1)
Mr David Christopher Child**

Representative : **Mr Peter Gunby MRICS**

Type of Application : **S24 Leasehold Reform, Housing and
Urban Development Act 1993 (the Act) –
determination of terms of acquisition in
dispute**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan) FRICS**

**Date and venue of
Hearing** : **22 January 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **4 February 2019**

DECISION

The issues before the tribunal and its decisions

1. The issue before the tribunal was the premium payable to the respondent for the freehold interest in the Property
2. The decisions of the tribunal are that:
 - 2.1 The name of the first applicant shall be corrected to The Property Development Partnership Limited (Co Regn 05376959);
 - 2.2 38 St Albans Crescent Limited (Co Regn 11552762) (the Company) shall be joined in the proceedings as the third applicant; and
 - 2.3 The premium so payable to the respondent is the sum of £102,894 made up as to:

Flat 38A	£ 84,229
Flat 38B	<u>£ 18,665</u>
	£102,894

as calculated in the two valuations marked 'A' and 'B' appended to this decision.

3. The reasons for these decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number (where legible) of the hearing file provided to us for use at the hearing.

Background

4. The freehold interest in 38 St Albans Crescent is registered at HM Land Registry with title number EGL85816. On 7 November 2011 the respondents were registered as proprietors [27].

The Schedule of notices of leases set out in the Charges Register records two leases:

38A Dated 22 January 1960 - 99 years from 30.09.1959 - EGL110267

38B Dated 20 May 1960 – 99 years from 25.03.1960 – EGL518234

This lease was varied twice – 02.05.1991 – to extend the term to expire on 24 March 2090 [51] and – 23.08.2005 to include in the demise the loft space above the first floor flat [36].

5. On 15 December 2017 The Property Development Partnership Limited (Co Regn 05376959) was registered at HM Land Registry as proprietor of the lease of 38A [55]. The price said to have been paid is recorded as being £170,000.

6. On 1 March 2007 Emma Lu Castro and Roberto Anonas Castro were registered at HM Land Registry as proprietors of the lease of 38B [31]. The price said to have been paid is recorded as being £250,000.
7. By an initial notice given pursuant to s13 of the Act and dated 25 January 2018 [6] The Property Development Partnership as the participating and qualifying tenant of 38A and Emma Lu Castro and Roberto Anonas Castro as the participating and qualifying tenant of 38B sought to exercise the right to enfranchise and acquire the freehold interest in the Property.

By paragraph 7 of the notice the price proposed for the specified premises was £80,000 and £500 for the property mentioned in paragraph 2 (*a slither of land to the side of* [the Property]).

By paragraph 9 of the notice the nominee purchaser was named as '38 St Albans Crescent Limited'.

The accompanying Tenant Information Sheets recorded that:

Emma Lu Castro and Roberto Anonas Castro were the tenant of 38A (we infer that was a typo and it should have read '38B'): and

The Property Development Partnership Limited was the tenant of 38A

8. By a counter-notice given pursuant to s21 of the Act and dated 6 March 2018 [19] the respondents admitted that on the date when the initial notice was given, the participating tenants were entitled to exercise the right to collective enfranchisement in relation to the specified premises.

The respondents did not accept the proposals as to the price and counter proposed:

£120,000 for the specified premises;

£2,500 for the property mentioned in paragraph 2 of the initial notice; and

£15,000 for the freehold of garden grounds and garage demised under the respective leases – the appurtenant property.

9. An application dated 22 August 2018 and made pursuant to Chapter 1 of the Act was filed with the tribunal [1]. The application was stated to have been made by:

The Property Development Partnership of 118-120 London Road, Mitcham, London CR4 3LB; and

Emma Lu Castro and Roberto Anonas Castro of 38B St Albans Crescent.

The application was lodge by solicitors, Boulter and Company.

10. Directions were given on 24 September 2018 [4].
11. The application came on for hearing before us on 22 January 2019.

The applicants were represented by Mr James Castle of counsel. Mr Castle called Mr Obiora Chianumba BA (Hons) MSc MRICS to give expert valuation evidence.

The respondents were represented by Mr Peter Gunby MRICS who acted as advocate and who also gave expert valuation evidence.

The parties

12. Post the hearing and in the course of preparing this decision we have identified an issue as to the correct party or parties to this application.
13. Two points arise.
14. First on several, but not all documents, the tenant of 38A is named as simply as The Property Development Partnership. The name of the registered proprietor as recorded at HM Land Registry is The Property Development Partnership Limited (Co Regn 05376959). The tribunal has undertaken a company search of that company which shows that its registered office is at 118-120 London Road, Mitcham, London CR4 3LB; and that its sole officer is named as George Agyekum.

We infer that the named first applicant was intended to be The Property Development Partnership Limited as registered with Co Regn 05376959 and we made an order to record that the name of the first applicant is The Property Development Partnership Limited (Co Regn 05376959).

15. Second, the first and second named applicants are the two participating and qualifying tenants. Paragraph 9 of the initial notice names 38 St Albans Crescent Limited (the Company) as the nominee purchaser. S24 of the Act provides that where terms of acquisition are in dispute, the tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute. Thus, here the application to the tribunal ought to have been made by the Company.
16. The tribunal has undertaken a company search in respect of the Company which records:

Incorporated: 4 September 2018

Registered office: 118-120 London Road, Mitcham, London CR4 3LB

Officers: Emma Castro of 38b St Albans ...
Roberto Castro of 38b St Albans ...
George Yaw Friyie-Agyekum of 118 – 120 London Road ...

We infer that it was in error that the application was made by the participating tenants and that it was intended the application should be made by the Company.

For the sake of good order, we have made an order to join the Company as the third applicant, and so that we can make a determination on an application by (or at least which includes) the nominee purchaser.

17. If either party has any concerns or representations to make on either of these orders concerning the names of the applicants, they may make a written request to the tribunal to review them by **5pm Friday 22 February 2019**.

The matters in agreement and in dispute

Agreed matters

18. Prior to the hearing the parties had been able to agree several of the component parts of the valuation. These are set out in a statement of matters at [347]. We need not set them out in detail.

At the hearing we were told it was now agreed that:

- 18.1 The annual ground rent payable in respect of 38B was £12.10 and not £12.00; and
 - 18.2 The GIA of 38B (excluding the improvement of the extension of the demise into the roof space) was 786 ft²/73m².
19. Thus, the matters in dispute were the freehold and reversionary values and the relativities to adopt so as to arrive at existing lease values.

The rival positions are set out in the table in paragraph 23 below.

The Property

20. The Property was originally constructed as an end of terrace Edwardian house in traditional solid brick beneath a pitched roof covered in slate tiles. It is an elegant building with interesting period features including a turret. Photographs are at [74].

In 1960 the building was adapted to create two self-contained flats. Most of the rooms remain of good proportion. Each flat has a gas-fired combi boiler to provide central heating and domestic hot water.

38A is arranged as a one-bedroom flat with a small reception room close to a small kitchen and with a large reception room which enjoys bay and turret windows.

38B was originally demised as a two-bedroom flat, with a kitchen/diner and a smaller reception room but which also enjoys bay and turret windows. Subsequently, and pursuant to the 2005 deed of variation, this flat has been extended into the roof space to provide an additional bed-room and bathroom. It was agreed that these works

amount to tenant's improvements. The 2005 deed of variation also included a covenant on the part of the lessee to maintain the roof of the building and the joists and beams to which the ceilings of that flat are attached.

Agreed plans of the ground and first floors of the Property are at [273].

Each flat has its own entrance door at street level.

The front garden and a part of the rear garden is demised to 38A, the ground floor flat (GFF). The remainder of the rear garden to include a garage is demised to 38B, the first floor flat (FFF).

On street parking is available immediately outside the Property and in neighbouring roads.

21. The Property is located in a residential area comprising character Edwardian terraced housing, most of which have been converted to flats. Shopping facilities are available in the nearby Woodford Green, about a quarter of a mile to the west. Public transport facilities are good with South Woodford and Woodford Underground stations on the Central Line each being about one mile away and which connect easily into central London.
22. The immediate area around the Property can reasonably be described as desirable and favoured by commuters into London.

Valuation Matters

23. At the hearing the rival evidence was as follows:

GFF (38A)	Mr Chianumba	Mr Gunby
Freehold value:	£360,000	£424,200
Long lease value (-1%):	£356,400	£420,000
Relativity:	69.63%	65.05%
Existing lease value:	£250,668	£275,942
FFF (38B)		
Freehold value:	£410,000	£424,200
Long lease value (-1%):	£405,900	£420,000
Relativity:	93.25%	87.90%
Existing lease value:	£382,385	£372,871

GFF (38A)

24. To arrive at £360,000 Mr Chianumba has taken four comparables. He made a number of adjustments to each one to arrive at an average £ft² and then applied that to the subject flat. His first comparable, 52a Stanley Road, is not a ground floor flat, but a first floor flat with the benefit of a loft converted room [95]. We disregard it because, in our judgment, it is not a helpful or appropriate comparable.

Of the remaining three, the adjusted purchase prices were:

		Size ft ²
22a Stanley Road	£364,181	660
8a Stanley Road	£368,815	543
Flat 2, 11 Chelmsford Road	£367,187	627

The ft² of 38A is 795.

Thus, all three comparables are a fair bit smaller.

25. Mr Gunby's approach was to value this flat at the same value as the FFF 38B, and so he arrived at value of £424,200. In doing that Mr Gunby accepted that he had shifted from his original position of £410,000 for 38A. Despite very focussed cross-examination in which Mr Castle urged Mr Gunby to agree that, for several reasons, the GFF must be worth less than the FFF, Mr Gunby was adamant that in his professional opinion it was not. Mr Gunby accepted that the valuation of 38B at £424,200 included the benefit of a demised garage, which both valuers had valued at £15,000.
26. Mr Gunby also asserted that Mr Chianumba's comparables were in roads to the south-west of St Albans Crescent, on the other side of the main A1199 High Road Woodford Green, with different postcodes, were less grand and of a different architectural style and were less attractive and desirable in features and location than the subject Property. Thus, Mr Gunby was of the opinion that an adjustment was required to reflect those matters.

Discussion

27. In broad terms we preferred Mr Chianumba's general approach. His three adjusted comparables were of some assistance to us. We accept Mr Gunby's evidence about location. That evidence strikes a chord with us and is supported by the external photographs of the several properties in the trial bundle.
28. We do not share Mr Gunby's view that the values of 39A and 38B are going to be broadly the same. There are pro's and cons to both flats. Just by way of example, 38A has the benefit of direct access into the rear garden, whilst 38B has the benefit of there being no one above and is a little more secure. Also, we have to bear in mind the agreed value of the garage at £15,000.

29. We were not persuaded that valuation by £ft² was appropriate here. In the accumulated experience of the members of the tribunal in suburban London the market does not price one-bedroom flats on such a basis. A one-bedroom flat is still a one-bedroom flat. Whilst size will have some bearing on value, we do not find that £ft² is a helpful tool for comparison purposes, especially where the difference in size of the subject flat and the comparables is quite significant.
30. Our preferred approach is to take an average of the adjusted sales prices of the of the three comparables and then to make a broad adjustment to reflect size and location.

The average price is £366,727. We make an adjustment for size and location and arrive at a long lease value of £386,140. We have tested this against our valuation of 38B, set out in paragraph 39 below and we find it sits well. Unlike Mr Gunby, we find that the market will see a modest differential in the values of 38A and 38B. We find that the value of £409,200 for 38B (excl the garage - £15,000) mentioned in paragraph 39 below and £386,140 for 38A – a difference of just over £23,000 is an appropriate differential in line with market sentiment.

FFF (38B)

31. Inevitably, and as is to be expected, prior to the hearing the respective valuers had discussed the matters in issue with a view to reaching an agreement. Evidently a tentative (but not binding) understanding had been arrived at as regards the freehold value of the FFF at £424,200, to include the value attributed to the garage.
32. When Mr Chianumba's expert report was finalised, he put the value at of the FFF at £410,000. This took Mr Gunby by surprise because his report was drafted on the basis of the informal understanding of a value of £424,200.
33. Mr Chianumba's approach was to identify eight comparables. He arbitrarily dismissed two because he considered they were out of sync with the remainder. But he did include one, 20 St Albans Crescent even though it had not sold but was simply under offer.
34. Mr Chianumba then made a number of adjustments to reflect time, particular features such as condition, garden, parking and size. Mr Chianumba then averaged those comparables to arrive at a value of £469 per ft². His valuation was thus:

GIA – 839 ft ² @ £469 per ft ²	£393,491	
Garage	<u>£ 15,000</u>	
	£408,491	say £410,000

At the hearing Mr Chianumba agreed that the GIA of 38B was in fact 786 ft², and not 839 ft². However, he did not want to make any

adjustment to his value because, in his view, the adjusted figure 786 ft² @ £469 = £368,634 would be too low.

35. Mr Gunby was critical of Mr Chianumba for including a comparable of a property which was under offer and for excluding two actual transactions which were both in St Albans Crescent.
36. Because Mr Gunby was working on what he thought might have been an agreed value of £424,200, Mr Gunby did not have a detailed analysis of how that figure might have been arrived. Mr Gunby was very clear that 38B had a value of at least £424,200 and he considered he could justify a higher value, perhaps around £438,000, but for the purposes of the hearing he was prepared to stand by the lower value of £424,200, and not to exceed it.
37. Mr Gunby had included in paragraph 10.12 of his report seven comparables, three of which were ground floor flats. Of the first-floor flats, only one was in the same road, namely 23A St Albans Crescent. But Mr Gunby has not made any adjustments whatsoever. One had a garage, one off-street parking, one had a balcony, one was said to be in excellent condition internally, one in average condition and one in need of updating. As to dates, the subject valuation date is 25 January 2018. The transactions cited by Mr Gunby ranged from 18 July 2016 to 13 February 2017 but no adjustments for time were made.

In these circumstances we found we could not be confident that the comparables were of much assistance.

Discussion

38. In broad terms we preferred Mr Chianumba's general approach. It was more methodical and in line with usual valuation practice. But we could not understand the logic in including an 'under offer' property yet excluding an actual transaction in the same road.
39. We find that the preferred approach is take the average adjusted sales values of the four transactions – 19A & 23A St Albans Crescent and 2B and 15A Malmesbury Road. The average size of those properties is 792.75 ft² which sits well with the agreed 786 ft² for the subject flat. That average value is £407,530. A modest adjustment to allow for style and location of the two Malmesbury Road properties might take that to, say £415,000 and a value of £15,000 for the garage produces a total of £430,000. Given that Mr Gunby wished to stand by his figure of £424,200 and not go beyond it, we find that the long lease value of 38B is it be regarded as £424,200.

Relativity

40. Mr Chianumba said that he had been unable to find any transactional evidence of short lease sales. His approach was to resort to the graphs in the RICS report, excluding those for Prime Central London (PCL). This was on the footing that Woodford Green is plainly not in PCL. Having considered the range of graphs Mr Chianumba relied upon

three of them, South East Leasehold, Nesbitt and Co and Andrew Pridell because they are based predominantly on transactional data of flats within outer London and the suburbs which sits well with and are representative of Woodford Green.

41. Mr Chianumba took an average of those three graphs to arrive at:

38A 69.63%
38B 93.25%.

Mr Castle submitted that this approach was in line with the guidance given by the Upper Tribunal (Lands Chamber) in *Kosta v Trustees of the Phillimore Estate* [2014] UKUT 0319 (LC) and *Roberts v Fernandez* [2015] UKUT 0106 (LC).

Mr Castle also submitted that in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0233 (LC) whilst the Upper Tribunal placed greater weight on the Savills Enfranchiseable (2015) graph and the Gerald Eve graph, it did so in the context of a case in which all the subject properties were in PCL. Evidently the raw data was gathered from PCL transactions, where the market is largely not mortgage-dependent.

42. Mr Gunby took a different approach. Mr Gunby relied upon one transaction – the sale of a FFF at 12 Pretoria Road, Ilford IG1 2HW in June 2016 for the price of £227,000 where the unexpired term was 70.56 years. Mr Gunby estimated the reversionary value to be £250,000 from which he concluded the no act world relativity amounted to 87.90%.
43. Mr Gunby acknowledged in cross-examination that the guidance of the Upper Tribunal in *Mallory v Orchidbase Ltd* [2016] UKUT 0468 (LC) was that: “*We endorse and reiterate the Tribunal’s preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation.*” Mr Gunby also accepted that in *Orchidbase* the comparables were flats in the same block, sold close to the valuation date and with almost identical unexpired terms and that no substantial adjustments were required to be made to them to provide useful market evidence.
44. Mr Gunby also accepted that he had no other information about the Pretoria Road transaction, had not inspected the property although he was generally aware of the location and that it was quite different in style to St Albans Crescent and at the opposite end of the Borough of Redbridge. He agreed it was not a great comparable and he agreed with Mr Castle that it might be “*an outlier*”. Nevertheless, Mr Gunby gave it some weight because it was in sync with Savills Enfranchiseable 2015 graph.

45. Mr Gunby sought to moderate the transactional evidence by reference to graphs. He said that prior to *Mundy* he would have adopted an average of several graphs and would have arrived at a relativity of:

38A 63.72%
38B 93.65%

But, since *Mundy* two additional graphs have emerged – Savills 2015 Enfranchiseable and Gerald Eve. If he were to average those graphs he would arrive at:

38A 64.60%
39B 86.96%

Standing back Mr Gunby said that in his professional opinion he adopted relativities of:

38A 65.05%
38B 87.90%

In support of his approach Mr Gunby relied upon the guidance given by the Upper Tribunal in *Reiss v Ironhawk Ltd* [2018] UKUT 0311 (LC), a decision issued on 27 September 2018.

46. In cross-examination Mr Gunby accepted that the valuation date of the subject properties was 25 January 2018. The task of valuation was the determination of the values as at that date based on hypothetical market transactions in which the parties are advised by valuers adopting the approach and methodology in vogue and in common usage at that time. Mr Gunby accepted that the *Ironhawk* guidance did not come along until September 2018 and thus would not have been adopted in January 2018. Mr Gunby also accepted in cross-examination that in January 2018 he would have adopted the approach of an average of the graphs, which was the approach he had actually adopted in a valuation report to the FTT in September 2017 in LON/00BC/OLR/2017/0847 and in an expert witness report signed off by him and filed in March 2018 in LON/00BB/OLR/2018/0219.

Discussion

47. In these circumstances we find that do not need to consider *Ironhawk* and to the extent to which it may turn on its very particular circumstances.
48. We accept and prefer the approach taken by Mr Chianumba and his reasoning for his reliance on the three graphs he refers to. We therefore adopt his relativities of 69.63% and 93.25% respectively.

Valuation

49. For the reasons set out above we find that the premium payable to the respondent for the freehold interest is £102,894 made up as to:

Flat 38A	£ 84,229
Flat 38B	<u>£ 18,665</u>
	£102,894

Judge John Hewitt
4 February 2019

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

TRIBUNAL VALUATION
38a ST. ALBANS CRESCENT (Ground Floor), WOODFORD GREEN, ESSEX

Valuation date: 25th January 2018

Unexpired term: 40.62 years

Relativity: 69.63%

Existing leasehold value: £271,557

Extended leasehold value: £386,140

Freehold value: £390,000

Yield's term: 7%

Reversion: 5%

Term

Value agreed: £ 134

Reversion

Freehold value: £390,000

PV 40.62 years 0.1378 £53,742

Freeholder's interest £53,876

Marriage Value

Extended lease: £386,140

Less:

Existing lease £271,557

Less:

Freeholder's interest £ 53,876

50% £ 60,707 £30,353

Premium: £84,229

TRIBUNAL VALUATION
38b ST. ALBANS CRESCENT (First Floor), WOODFORD GREEN, ESSEX

Valuation Date: 25th January 2018

Unexpired term: 72.16 years

Relativity: 93.25%

Existing leasehold value: £395,566

Extended leasehold value: £420,000

Freehold value £424,200

Yield's term: 7%

Reversion 5%

Term

Value agreed: £ 170

Reversion

Freehold value: £424,200

PV 72.16 years 0.030 £12,726

Freeholder's interest £12,896

Marriage Value

Extended lease: £420,000

Less:

Existing lease £395,566

Less:

Freeholder's interest £ 12,896

50% £ 11,538 £ 5,769

Premium: £18,665