



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

Case reference : **LON/00AH/OCE/2019/0139**

Property : **188 Canterbury Road, Croydon CR0
3HF**

Applicant : **Canterbury Management Ltd**

Representative : **Mr S Gallagher of counsel**

Respondent : **Gainsford Enterprises Ltd**

Representative : **Mr P Lim**

Type of application : **For the determination of the premium
payable: collective enfranchisement**

Tribunal members : **Judge S Brilliant
Mr Neil Martindale FRICS**

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

Date of decision : **1 February 2020**

Decision of the Tribunal

The Tribunal determines that the premium payable by the applicant to the respondent is £70,500.

The premises

1. 188 Canterbury Road, Croydon CR0 3HF (“the premises”) is a modern purpose-built block of six flats. Each flat has a single car parking space let with it. There is an undercroft providing four parking spaces. Two further parking spaces are situated in the yard behind. The premises are physically joined on the left-hand side (facing from the road) to 190 Canterbury Road. To the right of the premises is a row of houses at 186–178 Canterbury Road. There are photographs at [106-108].
2. The six leases were each granted on 16 May 1986 for a term of 99 years from 24 June 1985. The Tribunal was provided with a specimen lease [57-73].
3. The respondent acquired the freehold reversion on 22 December 1988 and was registered as the proprietor under title number SGL173215 on 25 January 1989 [44-48].

The application collectively to enfranchise

4. By an initial notice dated 1 November 2017, three of the six leaseholders of the premises applied collectively to enfranchise the premises [17-33]. The nominee purchaser was the applicant.
5. The initial notice, as retrospectively corrected by an order of the County Court Croydon, proposed a premium of £39,500 for the building and £500 for the appurtenant land.
6. The respondent served a counter notice dated 18 January 2019 [38-43] following the order of the County Court [36].
7. The counter notice proposed a premium of £860,330 for the building and £1,000 for the appurtenant land.
8. We were told by Mr Lim, who appeared on behalf of the respondent, that he compiled these figures. The respondent is an offshore company. It is controlled by members of Mr Lim’s extended family. The respondent owns 180, 184, 188 and 190-196 Canterbury Road. Mr Lim and his wife own 178, 182 and 186 Canterbury Road. Mr Lim’s son owns 176 Canterbury Road. In other words, members of the Lim family are either the owners of or have control of the ownership of 178-196 Canterbury Road.

These proceedings

9. By an application notice dated 5 July 2019, the tenant applied to the Tribunal for a determination of the terms of acquisition [1-14].

10. Directions were given on 26 July 2019 [15-16].

11. It was directed that the parties' valuers must by 9 August 2019 exchange valuation calculations and meet to clarify the issues in dispute. It was also directed that the parties must by 13 September 2019 exchange statements of the agreed facts and disputed issues and send copies to the Tribunal.

12. At the hearing the applicant was represented by Mr S Gallagher of counsel. As we have said, Mr Lim appeared for the respondent. He relied upon a witness statement provided by him the day before the hearing and, in effect, acted both as a witness and as a representative. Mr Gallagher called Mr J Dean MRICS to give expert valuation evidence on behalf of the applicant. Mr Lim did not call any valuation evidence on behalf of the respondent, but relied upon the written evidence summarised below.

The valuation evidence

13. The applicant obtained a valuation report dated 14 October 2019 from Mr Dean [91-144]. The respondent obtained a valuation report from Mr T Mir, a director of Drakesfield Management Ltd. The respondent did not rely upon this report at the hearing. In accordance with the Tribunal's directions the parties' valuers exchanged valuation calculations.

14. The statement of facts agreed and in dispute is dated 27 September 2019 and was signed by Mr Mir and Mr Dean [145].

15. The premium to be paid for the appurtenant land was agreed at £500.

16. It was agreed that, subject to any additional development value, the premium to be paid for the building was £70,500.

17. As far as the additional development value is concerned, the statement read:

The freeholder maintains that there is additional value to be derived from the possibility of developing the loft space of No 188, and also linking it to the adjoining building No 190 to enable extra flats to be constructed on the roof, as well as allowing a vehicular right of access to the rear of Nos 176-186 to enable a block of flats with underground car parking to be construction there.

The leaseholder maintains that there is no such additional value.

18. "Development value" is defined in paragraph 5 of schedule 6 to the Leasehold

Reform, Housing and Urban Development Act 1993 as follows:

(1) *Where the freeholder will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.*

(2) *This paragraph applies to—*

(a) *any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and*

(b) *any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.*

(3) *Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the specified premises to the extent that it is referable as mentioned in that paragraph.*

(4) *In sub-paragraph (3) “development value”, in relation to the specified premises, means any increase in the value of the freeholder’s interest in the premises which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction on, the whole or a substantial part of the premises.*

(5) *Where the freeholder will suffer loss or damage to which this paragraph applies, then in determining the amount of compensation payable to him under this paragraph, it shall not be material that—*

(a) *the loss or damage could to any extent be avoided or reduced by the grant to him, in accordance with section 36 and Schedule 9, of a lease granted in pursuance of Part III of that Schedule, and*

(b) *he is not requiring the nominee purchaser to grant any such lease.*

19. The development value said to have been lost resulting from the enfranchisement is a loss or curtailment of the respondent’s intention to develop the premises (by adding two floors) jointly with the erection of a block of flats on 186–176 Canterbury Road (see page 10 of Mr Wilson’s report referred to below). As stated above, Mr Lim’s family have control of these properties.

20. The hearing was listed for Tuesday 22 October 2019.

21. In his expert’s report dated 14 October and 2019, Mr Dean concluded that there was no development value.

22. On the Thursday before the hearing, 17 October 2019, the respondent served a

new expert's report dated that day and prepared by Mr J Wilson FRICS. This took issue with a number of matters which fell within the agreement reached in the joint experts' agreed statement of facts. As far as development value (described as injurious affection) was concerned, it put forward a figure of £845,000.

23. Insofar as Mr Wilson's report takes issue with matters which had already been agreed by the experts, we disallow this. No application had been made for permission to resile from the earlier agreement, it was far too late to take new points two clear working days before the hearing and, importantly, Mr Wilson did not attend to be cross examined.

24. As to whether or not there is any development value, and if so how much, we have come to the firm view that no such value has been proved.

25. We say this the following reasons:

(a) There can be no development of the roof of the premises for another 66.65 years from the valuation date.

(b) There is no expert planning evidence.

(c) There are no details of the costs of building the proposed development.

(d) The only other properties in which the respondent (as opposed to someone connected with the respondent) has an interest are 180 and 184 Canterbury Road. 176, 178, 182 and 186 Canterbury Road fall out of the claim. 180 and 184 Canterbury Road are neither contiguous with the premises or each other.

(e) 176-186 Canterbury Road is right for development and has a considerable value. The Tribunal does not accept that such a development would await the time when the existing leases of the flats in the premises fell in.

(f) Mr Wilson did not attend to give oral evidence, so there was no opportunity for him to be cross examined.

(g) On the contrary, Mr Dean did attend to give oral evidence. We found his evidence cogent and persuasive. We accept his conclusion in paragraph 9.2 of his report which is as follows:

I anticipate that an argument will be made for additional value of which the freeholder is deprived, not only in relation to the subject building but also in relation to those surrounding. However, it is my conclusion that there is no additional value to be derived for the subject building because of the unlikelihood of obtaining planning consent, the possible inadequacies of the structure and the need to give quiet enjoyment to the leaseholders. The development of the adjoining buildings can carry on, subject to obtaining planning permission for a suitable design scheme, regardless of whether No 188 forms part of the scheme.

Terms of the transfer

26. Finally, Mr Gallagher informed us that the respondent has failed to comply with the direction to submit a draft transfer to the applicant for approval by 9 August 2019 or at all.

27. In the circumstances we order that the terms of transfer shall be in the form that gives the effect to the proposals at paragraphs 1, 2 and 3 of the initial notice, as amended pursuant to the order of the County Court dated 20 December 2018 [17A and 19A].

Simon Brilliant	1 February 2020
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ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.