



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

Case Reference : **LON/00AZ/OCE/2021/0047**

HMCTS Code : **V-CVP REMOTE**

Property : **90 Blackheath Hill, London SE10 8AD**

Applicant : **Amy Elizabeth Lainchbury, Ian Martyn Lainchbury, Catalina Ganea and Mikheil Ghughunishvili**

Representative : **Mr Arthur Row BSc (Hons) MRICS of Arnold & Baldwin Chartered Surveyors instructed by Arcadia Law**

Respondent : **Loizos Theodorou and Simon Theodorou as Trustees of the L Theodorou Discretionary Trust**

Representative : **Mr B Lettin CEng,BSc(Hons),MSc (Strut),DipHTE,MICE,MCIM,MCHIT of Lettin & Associates**

Type of Application : **Application under section 24 of the Leasehold Reform Housing & Urban Development Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mr M Taylor MRICS**

Date of Hearing : **15 March 2022**

Date of Decision : **5 April 2022**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents that we were referred to were in a bundle of papers of some 207 pages together with a number of Respondent exhibits, which were lodged by way of separate PDF documents.

DECISION

- 1. The Tribunal determines that the premium payable for the collective enfranchisement is £17,369 being the sum agreed for the basic enfranchisement of £4,369, the sum of £500 we consider appropriate for the additional land to the front of the Property and £12,500 being the development value in respect of the conversion of the loft space above the first floor flat.**
- 2. The transfer has been agreed save only for the premium payable.**

BACKGROUND

1. This is an application made by Mr and Mrs Lainchbury the owners of the ground and lower ground floor flat and Miss Ganea and Mr Ghughunishvili the owners of the upper flat both within the property at 90 Black Heath Hill, London SE10 8AD (the Property). The application is made pursuant to section 24 of the Leasehold Reform Housing & Urban Development Act 1993 (the Act) for the determination of the premium to be paid for the collective enfranchisement of the Property. The notice of claim under section 13 of the Act, which is dated 30th July 2020, put forward a price payable for the freehold of £4,344 together with a sum of £100 for the additional property being the front garden and entrance pathway shaded green on the plan annexed to the initial notice.
2. A counter notice was sent by the Respondents dated 1st October 2020 proposing the sum of £79,500 for the freehold and £500 in respect of the front area. An application was made to the Tribunal by the Applicants' solicitors on 8th March 2021 for the determination of the premium and terms of acquisition.

ISSUES

3. Matters agreed. Unfortunately, little had been agreed between the parties before the start of the hearing. Of relevance to us was the fact that the valuation date was agreed as 30th July 2020, that the unexpired term of the two leases was also agreed, as was the ground rent. What was not agreed, however, was the following:

- The value of the long leasehold unimproved interests.
 - Development potential.
 - Capitalisation rate.
 - Accommodation and floor areas.
 - Deferment rate.
 - Premium.
 - Freehold addition.
4. The hearing, which took place on 15th March, was conducted by video. As we have indicated above, we were in receipt of a bundle consisting of some 207 pages which comprised the application to the Tribunal, the directions dated 1st October 2021, the section 13 and 21 notices, copies of the freehold and leasehold titles and a copy of the lease of the first floor flat dated 14th March 1997 and the extended lease dated 29th May 2020. In addition, there was an agreed transfer which required only the premium to be assessed and then copies of Mr Row's and Mr Lettin's reports and documents produced by Mr Lettin, which included an estimate of a loft conversion at the Property, a copy of an invoice from Lopes Contractors in relation to another property, a letter from a unknown source again in respect of another property and the calculation of the development potential for the subject property with plans. There were also emails.
 5. In addition to these documents, as we indicated above, the Respondent had submitted by separate PDF documents, a number of plans and drawings as well as photographs which we will refer to as necessary in the course of this decision.
 6. An inspection did not take place.
 7. At the beginning of the hearing, we were told that the parties could agree the basic enfranchisement price of £4,369, which was provided for by Mr Row in his report. This was divided as to £4,237 for the ground and lower ground floor flat and £132 for the upper flat. The issues therefore we were required to determine related to the development value attributed both to the basement flat, which had not been considered by Mr Row in his report, and the loft space above the first floor flat.
 8. In Mr Row's report he gave no value for the development of the basement but attributed development value to the loft space of £8,630. In contrast, Mr Lettin as set out on valuation document, appeared to provide development value for the first floor flat of £97,875 and for the lower maisonette an additional sum of £12,000 giving an estimated development value of £109,875 for the Property.
 9. Mr Lettin is a chartered, civil, structural and transportation engineer and chartered manager and party wall surveyor. A man of clear construction and planning experience but he is not a chartered surveyor with valuation experience. Furthermore, his report, which is unsigned and undated, does not contain the usual wording leading us to accept this as an independent expert's report. We made this clear to Mr Lettin at the hearing and confirmed that we were happy to accept his evidence as a witness for the Respondent but could not afford it the weight that might be available if it were an independent expert's report.

10. As it was he that had raised the potential for basement development, we asked him to explain to us first the basis upon which he made that assessment. He was of the view that the basement could be extended by digging into the front garden area to create a light well, which would in turn enable an additional bedroom and bathroom to be created at the lower ground level. He accepted that both extensions to the basement and the loft would require planning permission but that his own opinion was that the works to a lower basement flat would be granted by the local planners. He told us in his report that he had carried out a number of developments and enclosed some photographs as examples. He said that to create the increase in the living area and the provision of a light well to the front it would be necessary to remove a substantial tree, which he did not think was protected.
11. In his report he told us that the basement extension had been deemed “feasible” from the freeholder’s advice and that there would need to be a patio of sufficient size to provide natural light and ventilation. He had set out on separate documents the estimated cost for the basement works which he put at £25,137.
12. In evidence to us he told us that there had been no calculations as to the amount of light that might be admitted to the Property but that his view was you only needed to provide ‘a zone of open space’, which had to be one tenth of the room that it was lighting. He was satisfied that the existing storeroom was of sufficient height but that it would need to be treated for damp, the window created, a light well created and also an en- suite bathroom, which would also need to be damp proofed.
13. As to his estimates for the basement works, he told us that he often went to ‘Estimators Online’ to get the job price but had not in this case. Instead, he relied on past experience and “gut instinct.”
14. Mr Row in response said that he had not been able to find the area, which was labelled as storage on one of the plans produced by Mr Lettin. He thought that the plans in any event were wrong because what was shown as a toilet was in fact a bathroom and some walls were wrongly positioned. So far as he could ascertain there was no access from the lower ground to the storage area which was intended by Mr Lettin to form the bedroom and ensuite.
15. We were assisted by Mr Lainchbury, who attended the hearing by video and was able to give us a guided visual tour through his laptop of the lower ground floor of the Property. It became quite clear from viewing this “tour” that there was no obvious access to the storage area and indeed Mr Lainchbury told us that the layout of the lower ground floor was as it was when they had purchased. Furthermore, at the bottom of the stairs was an area used as a study, which on Mr Lettin’s plan would have formed the en suite. However, as nobody appeared to know what the storage area comprised, it was difficult to be certain as to the extent of any property that might be the subject of the conversion and extension of the basement.
16. Mr Row told us that his understanding of the Lewisham local plan was that you could not extend into the garden by 1.5m or half the garden size. It was, he said, unacceptable, as it would remove amenity space, which was currently used by the lessees for the storage of bikes and what looked like a motorbike. Further the

light well would have to be covered by a grill and was not really useable. It was he told us not a plan the leaseholder intended to follow, and this was confirmed by Mr Lainchbury.

17. An assessment of the area that might have been available appeared to indicate that it would afford, at best, a single bedroom only. It was in Mr Row's words not feasible.
18. We then turned to the loft area. Mr Row had valued the upper flat at £375,000 and with the additional en-suite bedroom and dormer conversion this increased to a value of £500,000. The £375,000 value was the same as a valuation last year for re-mortgage purposes. He confirmed that the present owners had not applied for planning and that access could only be made to the loft area from the upper flat. There was some suggestion made by Mr Lettin that it might be possible to access this part of the Property from neighbouring properties and we will consider that point in due course. He assessed the value of the development potential at £8,630 as set out at paragraph 3.5 of his report.
19. In addition to these points Mr Row attacked Mr Lettin's use of comparables where he had initially assessed a current valuation for the flat of £350,000 with an uplift to £600,000 once the conversion works had been undertaken. He had assessed the value of the Property before the works, we were told, by taking the average of the comparables put forward by Mr Row in his report, which included flats of different sizes. Mr Row's view was it was not appropriate to average out the comparables in this way as smaller properties tended to have larger per square foot values. He told us that he accepted there was the potential to utilise the top floor space and had concluded that a build cost of somewhere between £78,000 and £86,000 was appropriate and in that regard had produced a quotation from Evoque Design and Build Limited showing a cost of £105,000 excluding VAT and an email from Build Com putting the cost at somewhere between £78,000 and £86,000 to include all first fix. Mr Row considered it was fair to take this lower cost when assessing the potential. With adjustment for contingency and fees producing a figure of £90,500.
20. Mr Lettin in contrast had relied on an invoice from Lopes Contractors dated 26th September 2019 in relation to loft conversion works at another property owned by the Respondents at 7 Thorngate Road, London W9. That appeared to indicate in a two-line invoice that the costs of those conversion works were £45,000 plus VAT. In addition, we were provided with a letter from an unknown source dated 8th December 2017 which gave a list of the costings, which included the construction of the loft room at £42,486 but with other costs for heating, removal of rubbish etc. He also provided his own elemental estimate of £46,800 inclusive of fees.
21. It was put to Mr Lettin that his figures were not to be relied upon. For example, there appeared to be no allowance for the removal of water tanks and extending the central heating, also the possible problems with regard to asbestos. They also related to another property.
22. From Mr Lettin's point of view, there seemed to be commonality with regard to the floor space of the extension into the loft area, which together with the agreed

floor area of the first floor gave something in the region of 100m². His original valuation of £600,000 may drop slightly as a result of this 'agreed' area.

23. After a short adjournment Mr Lettin confirmed that he considered the basement conversion plans were correct and that there is more space than was envisaged. The loft conversion was viable and there was additional potential for a roof terrace, although this was not included within the proposal. In his view, this would be the best floor in the Property and concluded that a value of somewhere in the region of £575,000 when finished would be appropriate.
24. Mr Row in his final submissions to us said that the comparable evidence in his view showed that he was being generous with the gross development value. He asked why planning had been applied for by the Respondents but then withdrawn. He accepted that there might be a planning risk but perhaps not great but in any event the works would not happen tomorrow. There were extra works that had not been included in any of the documentation provided by Mr Lettin, for example the removal of the tanks and a new boiler and also Lewisham's requirements as to conversions both of the loft and the basement needed to be considered.
25. Mr Letting was asked by the Tribunal when he had last inspected the Property and he confirmed that it was in 2019 but he had been back on a couple of occasions to view the exterior. It appears there were not vertical section plans for the upper floors and there was a suggestion that it may be a good thing to raise the roof but that had not been included within the costings and might result in a planning risk.

FINDINGS

26. We are grateful to the parties for agreeing the essential enfranchisement value. We approve those, subject to an additional sum of £500 for the garden land to the front. We think that is a fair figure given the use that it has been put to provide a bike store, which has been erected, and from the photographs provided it seemed that both rubbish bins and a motorbike were also stored in that vicinity.
27. With regard to the basement, although there is some space it is clear from Mr Lainchbury's tour of the lower floor that there is no access presently to that area. We have no idea what is behind the wall. Mr Theodoru, who attended the hearing with Mr Lettin, indicated that it was a full head height and of a good size but if that were the case we wonder why he did not carry out the extension works that were argued for by Mr Lettin when he modernised the Property. The time of the conversion of the Property would have been the appropriate moment to undertake this development but he did not do so. Furthermore, there would be little chance of installing an en-suite given the current layout of the Property. In addition, it is not clear to us what structures would need to be put in place to create the opening to the patio, which would itself be a fairly 'mean' development covered by the grill and providing little aesthetic value. We do not consider that the creation of what would appear to be a single bedroom together with alterations to downstairs would warrant the expense and the uncertainty of pursuing this particular element of development, given the existing size and layout of the flat and we give no value for the potential creation of an additional

room in the basement area. Also there appears to be no consideration by Mr Lettin that this area of land would be owned by both leaseholders. Presumably if Mr and Mrs Lainchbury wished to make exclusive use of this part of the Property, in the manner suggested, they would need to pay some money to their co- owners of the Property.

28. Insofar as the loft is concerned, we accept that there is development potential. However, we do not consider that the invoice from Lopes dated some two years before the valuation date with scant information based upon works to another property can be taken as evidence as to the likely cost of this development.
29. As we indicated above, we have our concerns about accepting the evidence of Mr Lettin, who is without valuation experience. We do, however, accept that he has experience in respect of the alteration works but we cannot accept his evidence as an independent expert. Many of the figures that he has come up with appear to be based on his experience and estimation, with little compelling evidence to support them. We consider that they require some adjustment as during evidence it was said that the roof or loft floor would likely require raising /lowering and that a water tank would need to be moved and a new boiler installed. In his schedule he lists cost totalling just short of £47,000. These costs include preliminaries of £3,700, leaving a build cost of £43,000 or thereabouts with the equivalent sqm rate of £1,075. Mr Row has started with the lower estimate of Buildcom at £78,000 but this was based upon an area estimated at 59 sqm. Taking the sq m rate of £1322 and applying to the actual size of 40sqm gives a cost of just shy of £53,000. If one considered the range suggested by Buildcom the upper rate would give rise to a price of £58,280 on the same basis as we considered the lower estimate. The average of these three would give a price, based on 40 sqm of £51,400. We consider that to achieve the correct build cost it is necessary to add back a contingency but the 5% as suggested by Mr Lettin seems too low when one factors in the potential for roof/floor works and central heating. The suggestion from Mr Row of 10% seems more realistic. The professional and other fees we have averaged between Mr Lettin and Mr Row at £4,000. This gives a total build cost of circa £61,000. In addition, there is likely to be an element of supervision and cost management and VAT would have to be added giving a figure of circa £75,000. This we find is the amount that appears reasonable to us as a base figure for the development costs.
30. We prefer the valuation opinion and approach of Mr Row as set out at paragraph 3.5 of his report. Mr Row provided a cost estimate of £90,480, which we consider is too high, for which we have substituted our figure of £75,000. His post completion increase in value of £125,000 is realistic. Further the concerns about the uncertainty surrounding the development seem well placed. Taking these matters into account, we find that his assessment of the value to reflect the development potential should be increased to £12,500.
31. Some suggestion was made that neighbours might wish to make use of the space to extend their own property. With respect to the Respondents, that seems to us to be something of a flight of fancy. We have seen the photographs of the Property kindly provided by Mr Lettin, which in our view would not seem to support such possible contention.

32. In reaching our decision we have considered the various documents appended to Mr Lettin's report, which included plans showing the existing layout of both Properties and the proposals. As we have said in respect of the lower flat the storage area appears to be larger on the plan than in reality and taking the matter in the round confirms our view that the basement has no benefit for potential but that the loft does.
33. In regard to the loft development potential we were referred to the decision of the FTT in case reference LON/00AP/OCE/2020/0070, 73 Mount Pleasant Road, London N17 6TW. Whilst decisions of other tribunals are not binding upon us, we do accept the basis upon which they dealt with the assessment of development value to be correct and have applied that in this case.
34. We therefore conclude that the enfranchisement price should be £17,369, being the agreed basic enfranchisement price of £4,369, our assessment of the additional land price of £500 and the value of the development potential at £12,500.

Andrew Dutton

Judge: _____
A A Dutton

Date: 5 April 2022

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 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 to 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 (ie 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.