



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

Case Reference	:	BG/LON/00AN/OCE/2019/0087
Property	:	38-41 St Clements Mansions, Lillie Road, London SW6 7PQ
Applicant	:	38-41 St Clement's Mansions Limited
Representative	:	Ms Gemma de Cordova (Counsel)
Respondent	:	Goodmeres Ltd
Representative	:	Mr Justin Perring (Counsel)
Type of Application	:	Enfranchisement
Tribunal Members	:	Judge Robert Latham Mr Richard Shaw FRICS
Date and venue of Hearing	:	17 September 2019 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	27 September 2019

DECISION

The Tribunal determines that the premium payable by the Applicant in respect of the enfranchisement of 38-41 St Clements Mansions, Lillie Road, London, SW6 7PQ is £56,000.

Introduction

1. By an application dated 3 May 2019, the Applicant asks the Tribunal to determine the premium to be paid in respect of their collective enfranchisement of 38-41 St Clements Mansions, Lillie Road, London, SW6 7PQ (“the property”) pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”).
2. The tenant’s Initial Notice is dated 14 December 2018 and proposes a premium of £43,400 together with an additional £500 for appurtenant property. The participating tenants are the lessees of Flats 39, 40 and 41. The lessee of Flat 38 is not participating. The reversioner’s Counter-Notice is dated 13 December 2018 and admits the right to collective enfranchisement. The reversioner proposes a premium of £96,700 together with an additional £1,000 for appurtenant property. On 28 May 2019, the Tribunal gave Directions.

The Hearing

3. The Applicant nominee purchaser, was represented by Ms Gemma de Cordova (Counsel) instructed by Russell-Cooke LLP. She adduced evidence from Mr Matthew Price MRICS and Mr Jonathan Wright who is a Chartered Town Planner and a Member of the Royal Town Planning Institute. Mr Price proposes a premium of £55,233.
4. The Respondent reversioner was represented by Mr Justin Perring (Counsel) instructed by WGS Solicitors. He adduced evidence from Mr Myron Green MRICS and Mr Warren Pierson, a Member of the Royal Town Planning Institute. Mr Green proposes a premium of £95,000.
5. Both Counsel provided Skeleton Arguments. We are grateful to the assistance that they provided.
6. On 16 July 2019, the parties agreed a Statement of Agreed Facts and Disputed Issues. A number of issues were in dispute albeit that the difference between the experts, excluding development value, was some £3,000. The issues in dispute included the capital values of the flats, the capitalisation rate, and the hope of marriage value for Flat 38. The substantive issue in dispute is the compensation payable respect of a potential roof top development. The Respondent assesses the development value at £37,744. The Applicant responds that only a nominal “gambling chip” value of £1,000 is appropriate.
7. The Tribunal granted the parties an adjournment and they were able to agree all elements of the premium, except for any development value. The agreed figure is £55,000 to include any appurtenant land. The sole issue which the Tribunal is required to determine is the compensation payable in respect of any roof top development.

The Law

8. Both Counsel referred the Tribunal to the decision of the Upper Tribunal (“UT”) in Trustees of the *Sloane Stanley Estate v Carey Morgan* [2011] UKUT 415 (LC) (“*Carey Morgan*”). The Tribunal consisted of the President, George Bartlett QC, and Paul Francis FRICS. One issue which the UT was required to determine was whether there was potential to undertake additional residential development on the roof; if so, whether there was a prospect of obtaining planning consent, and, if so, the value of that potential. The appellant, reversioner, assessed the value of the development potential (for a penthouse flat) at £664,746, whilst the respondent, tenants, had argued at the LVT for a nil value. The LVT had concluded on the evidence that a “cautious and prudent” investor would reject Mr Roberts’s residual valuation as “too unreliable” and that he would rely upon his instinct and knowledge of the market to assess the value of the potential at no more than £10,000.
9. The case for the appellant was that it was likely that planning permission for a roof extension would have been refused by the council but that there was a probability that it would be granted on appeal. The question that the Upper Tribunal was required to address was “what assessment of the prospects the hypothetical purchaser would have made and whether, in the light of this, the LVT’s attribution of a value of £10,000 to such prospect has been shown to be wrong”.
10. In assessing the evidence, the UT noted (at [72]) that in all the extensive evidence called on behalf of the appellants there was no useful factual material as to the pattern of permissions and refusals for rooftop development either by the council or on appeal. A purchaser “would undoubtedly wish to be advised about this, rather than basing his bid on the opinions of a planning consultant and a conservation area specialist unsupported by such material”. He would know that, due to the very nature of planning, it is often possible to make out a reasonable case that a particular development would accord with planning policy or would be acceptable in planning terms.
11. Having inspected the property, the UT were in no doubt that each of the schemes proposed by the appellant would have an adverse effect upon the upper floors of the buildings opposite and the lower level roof terraces of the properties at the rear. The UT agreed with the LVT that there would be serious opposition to the proposals. The LVT concluded that a purchaser might be prepared to offer a “gambling chip” in the light of the prospect that at some time in the future an application might be treated more sympathetically. The sum of £10,000 was the LVT’s opinion of this nominal amount, and the respondents accept this. The UT confirmed this decision.

The Property

12. The property is a four-storey mansion-block style building which was constructed prior to 1914. There are four self-contained purpose-built flats, one on each floor. The surrounding area is predominantly residential in use and character. St Clements Mansions fronts onto Bothwell Street. The short adjoining terrace on the east side of Bothwell Street is comprised of two storey houses. The terrace of houses to the west side of Bothwell Street were originally three storeys in height. However, a number of these three storey buildings have mansard roof extensions to the original pitched roofs.

The Submissions of the Parties

13. Mr Pierson, for the Respondent reversioner, considered that there was scope for a 549 sq ft development of the roof either being a self-contained one bedroom flat (a schematic plan for which was at p.148-150) or an extension of the existing third floor flat to add two additional bedrooms (at p.152-154). He noted that the Local Plan of the local planning authority, Hammersmith and Fulham LBC (“Hammersmith”) confirmed the need for new housing to address the chronic shortage of housing in the area. The borough’s population is expected to increase by 6.7% (11,895 people) between 2011 and 2021. He is satisfied that with a “well designed and considered scheme” planning permission could be secured.
14. Mr Green (at p.51) produced a “rule of thumb” appraisal. He has valued a new one-bedroom fourth floor flat at £453,000 based on a price per sq ft of £825. This was substantially higher than his figure of £725 per sq ft which he had proposed for the existing flats in their unimproved condition. He has applied a 1/3 rule to compute the cost of building the upper floor (£150,975). The effect of this rule is that the lower the value of the flat, the lower the building costs. In reality, the building costs would be the same. He would then give the developer a 1/3 profit (£150,975). He then computes a 1/3 for the land value (£150,975). He then takes 25% of this to compute a development value of £37,744. He has adopted this figure of 25% to reflect planning and market uncertainty. In his closing submissions, Mr Perring argued that this was a proportionate response.
15. Mr Green has cross-checked this against an appraisal carried out by the Respondent who has applied £225 per sq ft for building costs (see p.156). He accepted that the Respondent, who had owned the freehold for 12 years, had not contemplated a roof extension prior to the enfranchisement application.
16. In response to questions from Ms de Cordova, Mr Pierson conceded that he had not noticed any roof extensions at five storeys in the area. He was not aware of the close proximity to the Crabtree Conservation Area. He had

not previously given evidence before a tribunal. He had given evidence at planning inquiries.

17. Mr Price, for the Applicant nominee purchaser, has not sought to estimate the cost of such a development. He notes that there is no evidence that the upstairs tenant has expressed any interest in enlarging their flat. He suggests that the hypothetical purchaser of the freehold interest would not have attached any real value to the prospect of developing the roof. The purchaser would have reviewed past planning applications for St Clements Mansions and found that an application for the adjacent block had been refused. Had he sought advice from a planning consultant, he would have been told that it was very unlikely that planning permission could be obtained. The purchaser would anticipate opposition and challenge from the existing leaseholders. Applying the decision in *Carey Morgan*, the purchaser might be prepared to offer a “gambling chip” in the light of the prospect that at some time in the future an application might be treated more sympathetically. He suggests a figure of £1,000.
18. In concluding that it is “highly unlikely” that planning permission could be obtained, Mr Price relies on the evidence of Mr Jonathan Wright, a planning consultant who has over 40 years’ experience, initially as a Principal Planning Officer, with Hammersmith and Fulham LBC, the relevant planning authority (1975 to 1989). He has previously appeared before tribunals. He has visited the site and reviewed the Council’s planning policies. There is a plan of the property at p.170. We were also provided with two google map photographs. The property comprises a four storey (and basement) Victorian property. The subject property fronts onto Bothwell Street. It is already two storeys above the neighbouring properties. The short adjoining terrace on the east side of Bothwell Street consists of two storey houses. The terrace to the west was originally three storeys, albeit that most have mansard roof extensions to the original pitched roofs. Thus, the subject property is already substantially taller than the neighbouring properties.
19. Mr Wright referred us to the National Policy Framework (2019) (at p.221-297). Paragraph 118 states that planning policies and decisions should support opportunities to use airspace above existing residential premises for new homes. However, this is qualified by the need to ensure that upward extensions should be consistent with the prevailing height and form of neighbouring properties and the overall street scene. The Unitary Development Plan adopted by the local planning authority in December 1994, states that new buildings should not normally depart from existing streets, building bulk and height already in the area (EN8). Front roof extensions or additional storeys to flats will not be allowed where the character of the terrace or street scene has not already been significantly impaired by existing roof extensions. Roof extensions must be sympathetic to the street scene. Where extensions are found to be appropriate, they must be set back behind the parapet without radically changing the appearance of the house or the street (EN15). He also refers to the Local

Plan (Feb 2018) (at p.299-300) which requires extensions to be compatible with the scale and character of existing development, neighbouring properties and that of the area as a whole.

20. In addition to the negative visual impact of the additional storey, Mr Wright notes that there would be an adverse amenity impact on the residents of the neighbouring building at 33-37 St Clements Gardens.
21. In response to questions from Mr Perring, Mr Wright conceded that there is an element of subjectivity in assessing the prospects of a successful planning application. However, he assessed such prospects as “highly unlikely” and less than 10%. He accepted that there were mansard roof extensions in the street, but none at this floor level. Any roof extension would need to be set back behind the parapet wall, unlike the scheme proposed by Mr Pierson. He accepted that any planning application would be judged on its merits.
22. Both Mr Pierson and Mr Wright have regard to the refusal of planning permission for an additional floor at 1-32 St Clements Mansions (2001/00661/FUL) at p.302. The proposed development was considered to be unacceptable in the interests of visual amenity. More particularly, the additional floor at roof level, by reason of its height and bulk would be detrimental to the character and appearance of the application property and the street scene. Reference was made to EN8 and EN15 of the Unitary Development Plan. Mr Pierson notes that this was for 8 self contained flats for a different property which was considered in the context of the planning policies in 2001. Every planning process requires any development proposal to be considered on its own merits. Mr Wright notes that the current policies are not dissimilar. An additional ground of refusal was the loss of daylight and increased sense of enclosure to neighbouring properties.

The Decision of the Tribunal

23. The question that this Tribunal is required to address is what assessment would the hypothetical purchaser make of the prospects of a development on the roof of either being a self-contained one bedroom flat or an extension of the existing third floor flat to add two additional bedrooms? As a result of this assessment, what would he be willing to pay in respect of this development value?
24. The Tribunal preferred the evidence of Mr Wright to that of Mr Pierson. We considered Mr Wright to be a more experienced witness. We found him to be confident, clear and reliable.
25. The Tribunal is satisfied that the purchaser would have viewed the area. He would have seen that there were no similar roof extensions in the immediate area. He would have noted that the subject property is already

two storeys above the neighbouring properties. He would have considered the impact on the character and appearance on both the subject property and the street scene. He would also have considered the impact on neighbouring buildings. He would have noted the proximity to the Crabtree Conservation Area.

26. The hypothetical purchaser would have investigated the pattern of permissions and refusals for rooftop development either by the council or on appeal. He would have realised that there would be serious opposition to any application. He would have had particular regard to the refusal of planning permission at 1-32 St Clements Mansions. Whilst this was refused in 2001, the grounds of the refusal would be equally relevant today. Whilst this was for 8 self-contained flats, this was only a one storey roof extension. Arguably, the impact of a roof extension on a much larger mansion block would have been less than that the proposed roof extension to the subject property.
27. The purchaser would have wished to be advised about this, rather than basing his bid on the opinions of a planning consultant. He would know that, due to the very nature of planning, it is often possible to make out a reasonable case that a particular development would accord with planning policy or would be acceptable in planning terms.
28. The Tribunal is satisfied that the hypothetical purchaser would have concluded that the prospects of a successful planning application for a roof extension are remote. Applying the decision in *Carey Morgan*, we accept that the purchaser might be prepared to offer a “gambling chip” in the light of the prospect that at some time in the future an application might be treated more sympathetically. We accept the figure of £1,000 suggested by Mr Price.

Judge Robert Latham
27 September 2019

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).