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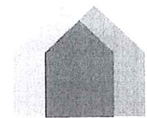

LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BF/OCE/2012/0062

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 24 (1) OF THE LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993

Address:	Stratheden Court, 33 Grove Road, Sutton, SM1 2AQ
Applicant:	Stratheden Court (Sutton) Ltd
Respondent:	Raymere Ltd
Application:	15 March 2012
Hearing:	3 September 2012
Reconvene:	9 October 2012

Appearances

Applicant

Mr T Jeffries	Counsel
Mr M Tibbatts MRICS	Chartered Surveyor of Tibbatts & Co
Mr D Lewis	Expert witness (Planning)
Mr J Whitley	Expert witness (Builder)

Respondent

Mr M Jones	Counsel
Mr W Dunsin MRICS	Chartered Surveyor of Dunsin Surveyors
Mr A Spaul	Director of AA Property & Construction Services Ltd
Mr A Qureshi	Expert witness (Architect)

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Miss M Krisko BSc(Est Man) BA FRICS

Introduction

1. This decision is supplemental to the Tribunal's earlier decision dated 9 July 2012 and should be read together with that decision.

2. This decision is limited to the issues of the "hope value", if any, to the Respondent of carrying out a development of the roof space and the value of the appurtenant property. In the earlier decision, the Tribunal gave Directions on the issue of the development of the roof space, which have been complied with by the parties.

3. The Applicant's primary expert evidence on hope value was set out in the supplemental report of Mr Tibatts, a Chartered Surveyor, dated 6 August 2012. The Respondent's expert evidence is set out in the report of Mr Dunsin dated 16 August 2012, who is also a Chartered Surveyor.

4. Both experts had, helpfully, set out those matters agreed and not agreed in relation to the valuation of the premium to be paid for the freehold interest. These together with the rival figures contended for regarding the development value of the roof space are annexed hereto.

5. During the course of the hearing, both experts also agreed that the gross internal area of the two one-bedroom flats that could possibly be added to the property is 105 square metres with an agreed profit of £52,500, being 15% of the agreed value of £350,000.

Decision

6. The hearing in this matter took place on 3 September 2012. The Applicant was represented by Mr Jeffries of Counsel. The Respondent was represented by Mr Jones of Counsel.

Development Value

7. In addition to the evidence given by the respective surveyors instructed by the parties, the Tribunal heard oral evidence from a number of other witnesses. The

Applicant called Mr David Lewis MRICS to give evidence on the prospects for and the implications of the grant of planning permission to redevelop the roof space. His evidence was set out in his report dated 3 August 2012. The Applicant also relied on the evidence on Mr James Whitley, a builder, on the estimated cost of developing the roof space. His evidence was contained in a witness statement dated 31 August 2012.

8. The Respondent relied on the evidence of Mr Ashfaq Spaul, a Director of the Respondent company, on the cost of developing the roof space. His evidence was set out in his witness statement dated 28 August 2012. The Respondent also relied on the evidence of Mr Abid Qureshi, an Architect, confirming that a planning application to carry out the development had been submitted by him. In addition, the Respondent relied on the evidence of Mr David Wadsworth, a Chartered Structural Engineer, set out in a witness statement dated 31 August 2012. He did not attend the hearing to give oral evidence. However, the substance of his evidence was to confirm that the development was structurally feasible.

9. It was common ground that the current application for planning consent submitted by the Respondent posed little or no risk of not being granted. It was also common ground that the development was structurally possible. The argument between the parties was whether the attendant risks dealt with below made the development a realistic prospect. The Applicant submitted that it was not and placed a nil value on the development value. The Respondent submitted that the development was possible and contended for a value of £155,000.

Builders Cost

10. Mr Dunsin contended for a figure of £72,680. Essentially, this was based on the Mr Spaul, who is an experienced property developer with his own in house tradesman, carrying out the work. This would result in significant cost savings instead of the development being carried out at arms length by a contractor.

11. Mr Spaul gave evidence of his experience as a property developer of 30 years including recent developments of a similar nature. In cross-examination on various elements of building cost, he conceded that the Applicant's estimated cost omitted the cost of such matters as the installation of bathrooms and kitchens, parking and landscaping, cycle storage and parapet railings.

12. In cross-examination, Mr Dunsin, conceded that it would have been better to obtain an independent cost estimate, but there had been insufficient time to do so.

13. Both Mr Tibbatts and Mr Lewis maintained that the development could not be done at a profit. Whilst Mr Lewis accepted in principle that developers could achieve cost savings, he did not consider that this development could be carried out based on the estimate given by Mr Spaul. Mr Tibbatts said that his estimate was based on the figures provided by Mr Whitley and the BCIS House Rebuilding Cost Index. Apparently, he had unsuccessfully attempted to obtain other estimates. Mr Whitley also gave similar evidence that cast doubt on the accuracy of Mr Spaul's estimate.

14. The Tribunal accepted the thrust of the evidence given on behalf of the Applicant that the Respondent's estimate of the building costs was too low. It was clear from the evidence given by Mr Spaul that his estimate had failed to include a number of elements of cost. Equally, the Respondent's estimate appeared to be excessive. For example, it included items of cost relating to a site office. For a development of this nature, these matters appeared to be unnecessary and excessive. Furthermore, the Applicant's estimate also included VAT, which is not recoverable. The Tribunal was given evidence that these flats, being self-contained, would be regarded as new build and would therefore not be liable to VAT.

15. Having regard to all of these matters, the Tribunal found that the appropriate unit building cost was £1,400 per square metre. When applied to the GIA of 105 square metres, it produced an overall building cost of £147,000.

Professional Fees

16. Mr Dunsin and Mr Tibatts contended for professional fees of 10% and 12.5% respectively. These figures were simply based on their professional opinions. The Tribunal found that a rate of 12.5% was appropriate and in accordance with industry norms.

Party Wall Matters

17. Mr Dunsin and Mr Tibatts contended for costs of £12,000 and £21,300 respectively.

18. Mr Lewis said that all of the lessees shared in the basic elements of the structure and may need to be served with a party wall notice. He qualified his evidence by saying that it was doubtful if all of the lessees would have to be notified.

19. Mr Tibbatts said that his figure was based on a cost of £1,500 plus VAT per flat. He asserted that each of the 9 lessees would be entitled to appoint their own surveyor. However, in practice, often one surveyor was appointed. Mr Dunsin said that he had not experience of party wall fees, as his firm does not deal with such matters.

20. Both parties agreed that party wall notices may need to be served. However, the Tribunal concluded that the only appropriate notices that may need to be served were party structure notices in relation to the structural works needed to develop the roof space. These alterations would only materially affect the lessees of the upper flats in the building. It was highly unlikely that notices would have to be served on the lessees of the lower flats. Therefore, the Tribunal found that the lower estimate of £12,000 proposed by Mr Dunsin should be adopted in this instance.

Disposal Fees

21. Mr Dunsin and Mr Tibatts contended for costs of 2% and 3% respectively. Again these figures were based on their professional opinions. There was no compelling evidence either way on this matter and the Tribunal adopted a rate of 2.5%.

Finance Costs

22. Mr Dunsin and Mr Tibatts contended for costs of 7% and 8% respectively based on their professional opinions. For the same reasons applied in relation to disposal fees, the Tribunal adopted a rate of 7.5%.

Profit

23. These were agreed at £52,500, being 15% of the (agreed) freehold value of the two flats in the sum of £350,000.

Legal Fees

24. Mr Tibbatts contended for a provisional figure of £18,000 should be included for anticipated legal proceedings brought by one or more of the lessees against the landlord for breach of covenant and/or nuisance during the course of the development works. When it was put to him, he did not accept that his figure was speculative. Mr Dunsin submitted that no such provision was required. He said that if a hypothetical purchaser carried out the work correctly, there should not be requirement to resort to litigation.

25. Mr Jeffries, for the Applicant, set out at some length in his skeleton argument the potential hypothetical claims that could be brought by any one of the lessees. Whilst this is theoretically correct, in the Tribunal's judgement the risk of such litigation was largely speculative and remote. It is not inevitable assumption that the landlord would be subject to various claims brought by the lessees by merely commencing the development work. An actionable breach would have to be established first of all. Moreover, the risk of such litigation would be further diminished, especially if compensation was paid by the landlord to the affected lessees. Therefore, the Tribunal concluded that nothing should be allowed for legal costs.

Compensation

26. Mr Tibbatts contended for a figure of £90,000 (£10,000 per flat) whereas Mr Dunsin argued that no compensation was payable to any of the lessees.

27. Mr Lewis said that compensation is normally payable for "putting things right". Any loss of amenity by the lessees would depend on the way the contractor

worked including any health and safety restrictions. The tenants of the ground floor flats at the front would be affected by the creation of additional parking spaces and all of them would be suffer the loss of the in/out driveway. In addition, the loss of the central skylight would result in less daylight in the common parts. The additional traffic and sharing of the facilities caused by the creation of two more flats would diminish the value of the flats in the building generally.

28. In his evidence, Mr Tibbatts went further. He argued that compensation would be payable by the landlord for any sub-tenant of the lessees not willing to live on a building site or for any voids created as a result of the works. He said that the two top floor flats were let at £20,400 per annum. Any developer would have to pay compensation to the lessee of the remaining top floor flat to move out whilst the works were carried out. This would amount to £20,000 for the loss of rent and a further £30,000 by way of additional compensation. A further £40,000 would have to be paid to the other 6 lessees in the building.

29. The Tribunal concluded that some compensation would be payable by the landlord if the roof space was developed. Almost inevitably there would be disruption and noise nuisance to the lessees of the upper flats and possibly some minor loss of amenity generally, for example, in relation to parking access for approximately 6 months. However, the Tribunal did not accept that the addition of two flats would generally result in a loss in value of the flats in the building. Save for Mr Lewis's assertion, there was no evidence of this before the Tribunal. Equally, there was no evidence to support the various assertion made by Mr Tibbatt as to the loss of rent and/or voids or the occupiers of the top floor flats having to be relocated. As a matter of causation, these matters were not inevitable. The Tribunal, therefore, allowed compensation of £1,000 per flat, making a total of £9,000.

30. Accordingly, the Tribunal concluded that the development of the roof space would result in a potential development profit of £95,395 to the Respondent. This sum deferred for one year at 7% provides a figure of £89,154. A deduction

of 15% is then made to reflect the absence of planning consent at the present time to leave a value of £75,781.

Appurtenant Property

31. The Applicant contended for a figure of £250 whereas the Respondent contended for a figure of £5,000.

32. No real argument or evidence was advanced by either party on this matter. It was clear that the garages are demised to each of the lessees. Therefore, the only appurtenant property was the communal gardens. In the absence of any compelling evidence either way, the Tribunal found that a value of £2,000 was appropriate.

33. Accordingly, the Tribunal determined that the price to be paid by the Applicant to acquire the freehold interest is £79,681. The Tribunal's valuation is annexed hereto.

Dated the 22 day of October 2012

CHAIRMAN....................................
Mr I Mohabir LLB (Hons)