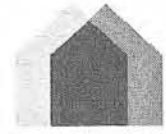


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LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AP/OCE/2013/0067 (TW)

DECISION of the LEASEHOLD VALUATION TRIBUNAL on an application to determine the premium payable on the transfer of the freehold to the Applicants pursuant to Section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (Missing Landlord)

Property: Ground and First Floor Flats, 18 Kitchener Road, London N17 6DX

Applicants: Mr U. Inyama and Mrs R. Inyama (Ground Floor Flat)
Mr A. Berthier (First Floor Flat) (Leaseholders)

Represented by: Housing and Property Law Partnership; Solicitors

Respondent: Mr D. Murphy (Missing Landlord)

Represented by: No appearance

Date of Determination: 30th May 2013

Date of Decision: 11th 2013

Tribunal: Mr L. W. G. Robson LLB (Hons)
Mrs E. Flint DMS FRICS IRRV

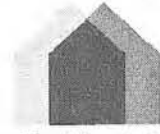
Preliminary

1. This case relates to an application made under section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) for a determination of the price to be paid for a freehold house converted into two flats, where the landlord is missing. The application was made in the Central London County Court on 16th January 2013 (Claim No 3ED0017). The case was transferred to this Tribunal for assessment of the value of the freehold reversion and determination of

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the terms of the acquisition pursuant to an Order of District Judge Silverman dated 27th February 2013 vesting the freehold interest in the property in the Applicants.

2. Extracts of the relevant legislation are set out in Appendix 1 below.
3. Pursuant to Directions issued by the Tribunal on 17th April 2013 the Tribunal considered the matter on 30th May 2013.
4. The Applicants instructed Mr Tughral Mirza Beg of McBryer Beg & Company to prepare a report and valuation relating to the freehold acquisition. He described himself as acting as an independent valuer owing his primary duty to the Court. A copy of his valuation summary is attached as Appendix 2.

Evidence

5. The Tribunal considered the (revised) Report and Valuation of Mr Beg dated 22nd May 2013. It contained the necessary statement of truth and declaration of independence as required by his professional body and in accordance with CPR Practice Direction 35 relating to Experts and Assessors. However his report did not satisfactorily address a number of matters which are noted below
6. Mr Beg inspected the property on 26th April 2013. He did not specify his valuation date but seems to have given a valuation as at the date of his report, i.e. 22nd May 2013.
7. The property was described as a brick built mid terrace house over 100 years old, now converted into 2 flats in a predominantly residential area on two floors under a pitched tiled roof comprising two purpose built flats with a small shared entrance lobby. The ground floor flat had one bedroom. It was in a poor and rundown condition. The upper flat had two bedrooms and had been recently refurbished. It was in generally good condition. The rear garden belonged to the ground floor flat. The front garden was for the communal use of the two flats. Both leases were dated 13th September 1984 for a term of 99 years from 25th March 1984. There was provision in the leases for the landlord to maintain the structure, exterior and common parts at the joint cost of the lessees. The gross internal area of the ground floor flat was 56.154 sq m or 604 sq ft, and the upper flat was 56.266 sq m or 605 sq ft. The Annual rent was £60 of the first 33 years, £120 of the second 33 years, and £240 for the third 33 years.
8. Mr Beg relied upon the following very brief comparable evidence:
Flat 2, 115 West Green Road, London N15 - a 1st/2nd floor maisonette refurbished to a reasonable standard with 2 bedrooms, an unknown GIA and sold in September 2012 on a lease with 169 years unexpired for £184,000; thus it was not possible to produce a rate per sq ft.

10 Mount Pleasant Road London N17 6TS – a 2 bedroom flat with an unknown GIA sold on 8th November 2012 for £179,000; thus it was not possible to produce a rate per sq ft.

9. Mr Beg did not mention a rate per square foot, but from his estimate of the current values, it appeared to be just under £290 per square foot for the Ground Floor Flat, and just under £306 per square foot for the First Floor Flat.

Decision

10. The Tribunal considered that Mr Beg's valuation was seriously flawed and of little assistance. It did not address many points which the Tribunal would normally expect in a valuation for this purpose, and lacked sufficient detail in respect of the comparables and relied on a relativity graph for Prime Central London for a property which was not located in that area. The Tribunal found itself unable to accept most of the main facts and assumptions used in the valuation. There also appeared to be some arithmetical errors. Fortunately the Tribunal is an expert tribunal and thus decided to rely upon its own knowledge and experience. It decided to adopt the following elements which it considered to be relevant to usually accepted methods for valuing such a property:

| | |
|--|--|
| * Statutory Valuation Date: | 9 th January 2013 (Date of receipt of claim made in County Court) |
| * Term remaining - | 70.2 years |
| * Term rate - | 7% |
| fl* Deferment rate - | 5% |
| * Relativity - | 92% |
| * Landlord's share of Marriage value - | 50% |
| | |
| * Freehold Values - | £225,000 |
| * Current Leasehold Values | £207,000 |

11. The Tribunal was mindful of its duty to the missing landlord, and applying its own knowledge and experience made its valuation as set out in Appendix 3, summarised here as follows:

Ground Floor Flat

| | | |
|----|-----------------------|---------|
| A. | Marriage Value (50%) | £4,533 |
| B. | Enfranchisement Price | £13,467 |

First Floor Flat

| | | |
|----|-----------------------|---------|
| A. | Marriage Value (50%) | £4,533 |
| B. | Enfranchisement Price | £13,467 |

Total Enfranchisement Price – Say £26,934

12. The Tribunal thus assessed the price of the freehold at £26,934 (to which any arrears or other sums due to the missing landlord under the leases should be added).

13. In the bundle, the Applicants offered a completed Form TR1 as the proposed terms of Transfer without comment. The Tribunal noted certain matters below which require amendment:

Box 6 - the full and correct correspondence addresses for the respective Transferees should be inserted.

Box 8 – delete standard wording and insert “The Transferees have paid into Court the sum of £26,934 pursuant to the Court Order dated 25th February 2013”

Box 9 – Delete “x” in the box denoting a sale with full title guarantee and insert “x” in the box denoting a sale with limited guarantee

Box 12 – Delete standard wording and insert “Signed as a Deed by [] as a duly authorised officer of the Court”.

15. This case is now referred back to the Edmonton County Court to effect the Vesting Order.

Chairman: Mr L. W. G. Robson LLB (Hons)
Signed: Lancelot Robson
Dated: 11th June 1013

APPENDIX 1

Leasehold Reform, Housing and Urban Development Act 1993

Section 26

(1) where not less than two thirds of the qualifying tenants of flats contained in any premises to which this chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises but-

- (a) (in a case to which Section 9(1) applies) the person who owns the freehold of the premises cannot be found or his identity cannot be ascertained, or
- (b)....

The court may, on the application of the qualifying tenants in question, make a vesting order under this subsection-

(i) with respect to any interests of that person (whether in those premises or in any other property) which are liable to acquisition on behalf of those tenants by virtue of section 1(1) or 1(2)(a) or section 2(1), or

(ii)

As the case may be.

Section 27

(1) A vesting order under section 26(1) is an order providing for the vesting of any such interests as are referred to in paragraph (i) or (ii) of that provision-

(a) in such person or persons as may be appointed for the purpose by the applicants for the order, and

(b) on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the interests being vested in that person or those persons in like manner (so far as the circumstances permit) as if the applicants had, at the date of their application, given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises with respect to which the order is made.

(2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 26(1), the order shall have effect in relation to interests which are less extensive than those specified in the application on which the order was made.

(3) Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which-

(a) is in a form approved by the leasehold valuation tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as is possible to the requirements of section 34 and Schedule 7;

and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.

(4) In connection with the determination by a leasehold valuation tribunal of any question as to the interests to be conveyed by any such conveyance, or as to the rights with or subject to which they are to be conveyed, it shall be assumed (unless the contrary is shown) that any person whose interests are to be conveyed ("the transferor") has no interest in property other than those interests and, for the purpose of excepting them from the conveyance, any minerals under the property in question.

(5) The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of-

(a) such amount as may be determined by a leasehold valuation tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and

(b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).

(6) where any interest is vested in any person or persons in accordance with this section, the payment into court of the appropriate sum in respect of that interest shall be taken to have satisfied any claims against the applicants for the vesting order under section 26(1), their personal representatives or assigns in respect of the price payable under this Chapter for the acquisition of that interest.

(7) Where any interest is so vested in any person or persons, section 32(5) shall apply in relation to his or their acquisition of that interest as it applies in relation to the acquisition of any interest by a nominee purchaser.

APPENDIX 2 - Mr Beg's valuation

- See attached

APPENDIX 3 - Tribunal's valuation.

See attached

APPENDIX 2

18 Kitchener Rd (Ground Floor)

Flat Value: £150,500 existing (86% relativity)

Ground Rent: £60.00 PA

LEASE EXTENSION

1. Diminution in value of Landlord's Interest

TERM

| | | | | |
|----------------|---------------|-----------|--------------|---------------|
| Ground Rent | | £60.00 | | |
| YP for | 3 years @ 8% | 2.5771 | | £155 |
| Ground Rent | | £120.00 | | |
| YP for | 33 years @ 8% | 11.5139 | £1,382 | |
| PV £1 def. for | 3yrs @ 8% | 0.7938322 | | £1,097 |
| Ground Rent | | £240.00 | | |
| YP for | 33 years @ 8% | 11.5139 | £2,763 | |
| PV £1 def. for | 36yrs @ 8% | 0.0626246 | | £173 |
| | | | TOTAL | £1,424 |

REVERSION

To share of freehold with vacant possession value:

| | | | | |
|--------------------------|-----------|--|--|---------------|
| | £150,500 | | | |
| PV £1 69 yrs @ 5% | 0.0183011 | | | £2,754 |
| Diminution in value, say | | | | <u>£4,179</u> |

2. Landlord's share of Marriage Value

| | | | | |
|--|----------|----------|--|--|
| Value of tenant's interest under a new tenancy | £175,000 | | | |
| Value of landlord's new interest | Nil | | | |
| | | £175,000 | | |
| Less: | | | | |
| Value of Tenant's existing lease | £150,500 | | | |
| Value of Landlord's existing interest | £4,179 | £154,679 | | |

| | | | | |
|---|--|---------|--|-----------------------|
| Marriage Value | | £20,321 | | |
| Landlord's share of Marriage Value @ 50% | | | | <u>£10,161</u> |
| TOTAL (Diminution in Value + Marriage Value @ 50%) | | | | <u>£14,339</u> |

18 Kitchener Rd (First Floor)

Flat Value: £159,100 existing (86% relativity)

Ground Rent: £60.00 PA

LEASE EXTENSION

1. Diminution in value of Landlord's Interest

TERM

| | | | | |
|----------------|---------------|-----------|--------------|---------------|
| Ground Rent | | £60.00 | | |
| YP for | 3 years @ 8% | 2.5771 | | £155 |
| Ground Rent | | £120.00 | | |
| YP for | 33 years @ 8% | 11.5139 | £1,382 | |
| PV £1 def. for | 3yrs @ 8% | 0.7938322 | | £1,097 |
| Ground Rent | | £240.00 | | |
| YP for | 33 years @ 8% | 11.5139 | £2,763 | |
| PV £1 def. for | 36yrs @ 8% | 0.0626246 | | £173 |
| | | | TOTAL | £1,424 |

REVERSION

To share of freehold with vacant possession

| | | | | |
|--------------------------|-----------|--|--|---------------|
| value: | £159,100 | | | |
| PV £1 69 yrs @ 5% | 0.0183011 | | | £2,912 |
| Diminution in value, say | | | | <u>£4,336</u> |

2. Landlord's share of Marriage Value

| | | | | |
|---|----------|----------|--|-----------------------|
| Value of tenant's interest under a new tenancy | £185,000 | | | |
| Value of landlord's new interest | Nil | | | |
| | | £185,000 | | |
| Less: | | | | |
| Value of Tenant's existing lease | £159,100 | | | |
| Value of Landlord's existing interest | £4,336 | £163,436 | | |
| Marriage Value | | £21,564 | | |
| Landlord's share of Marriage Value @ 50% | | | | <u>£10,782</u> |
| TOTAL (Diminution in Value + Marriage Value @ 50%) | | | | <u>£15,118</u> |

APPENDIX 3

18 Kitchener Road London N17 6DX

Valuation date 9 January 2013

Each Lease 99 years from 25 March 1984 at £60 pa doubling every 33 years

Ground Floor

| | | | | |
|------------------------------|----------|----------|--|----------------|
| Ground rent | | £60 | | |
| YP 4.2 years at 7% | | 3.534 | | £212 |
| Ground rent | | £120 | | |
| YP 33 years at 7% | 12.7538 | | | |
| x PV 4.2 years at 7% | 0.7526 | 9.5985 | | £1,152 |
| Ground rent | | £240 | | |
| YP 33 years at 7% | 12.7538 | | | |
| x PV 37.2 years at 7% | 0.0807 | 1.02923 | | £247 |
| Reversion to | | £225,000 | | |
| PV 70.2 years at 5% | | 0.03255 | | £7,324 |
| Landlord's current interest | | | | £8,935 |
| Marriage Value | | | | |
| Extended lease value | | £225,000 | | |
| less | | | | |
| Landlord's existing interest | £8,935 | | | |
| Existing lease value | £207,000 | £215,935 | | |
| Marriage value | | £9,065 | | |
| 50% marriage value | | | | £4,533 |
| Total | | | | £13,467 |

First Floor

| | | | | |
|-----------------------------|---------|----------|--|--------|
| Ground rent | | £60 | | |
| YP 4.2 years at 7% | | 3.534 | | £212 |
| Ground rent | | £120 | | |
| YP 33 years at 7% | 12.7538 | | | |
| x PV 4.2 years at 7% | 0.7526 | 9.5985 | | £1,152 |
| Ground rent | | £240 | | |
| YP 33 years at 7% | 12.7538 | | | |
| x PV 37.2 years at 7% | 0.0807 | 1.02923 | | £247 |
| Reversion to | | £225,000 | | |
| PV 70.2 years at 5% | | 0.03255 | | £7,324 |
| Landlord's current interest | | | | £8,935 |
| Marriage Value | | | | |

| | | | |
|------------------------------|----------|----------|---------|
| Extended lease value | | £225,000 | |
| less | | | |
| Landlord's existing interest | £8,935 | | |
| Existing lease value | £207,000 | £215,935 | |
| Marriage value | | £9,065 | |
| 50% marriage value | | | £4,533 |
| Total | | | £13,467 |
| Premium payable | | | £26,934 |