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

Case Reference : **LON/00BC/OCE/2013/0253**

Property : **59 and 59a Clarendon Gardens
Ilford Essex IG1 3JW**

Applicants : **Siew Choo Koh, Jack Cohen and
Rachel Ann Cohen**

Representative : **Russells, solicitors**

Respondent : **Fazal Mohammed**

Representative : **Not represented (missing
landlords)**

Type of Application : **Application under section 26
Leasehold Reform, Housing and
Urban Development Act 1993 (the
“Act”) for collective
enfranchisement where the
relevant landlord cannot be found.**

Tribunal Members : **Judge Pittaway
Mr D Jagger**

Date of Decision : **Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**
11 February 2014

DECISION

Introduction

1. The Respondent is the freehold proprietor of 59 Clarendon Gardens, Ilford registered at the Land Registry under title number NGL59524.
2. Jack Cohen and Rachel Ann Cohen are the leaseholders of the ground floor maisonette 59 Clarendon Gardens held under a lease dated 15 February 1980 for a term of 99 years from 25 December 1980 at a rent of £25 p.a until 23 March 2008, £50 until 24 March 2041 and £75 for the remainder of the term. This is registered at the Land Registry under title number EGL145304

Jack Cohen and Rachel Ann Cohen are also the leaseholders of the land at the rear of 59 Clarendon Gardens under a lease dated 12 April 1983 for a term of 99 years from 25 October 1980 at a rent of £25 p.a. until 23 March 2008 “and thereafter in accordance with the terms of the main lease”.

Both the above registered titles refer to a Deed of 28 March 1984 having varied the terms of each of the registered leases. As this has not been provided (nor referred to in the Applicants’ witness statements) no account has been taken of its terms in this decision.

Siew Choo Koh is the leaseholder of the first floor maisonette 59A Clarendon Gardens held under a lease dated 3 October 1975 for a term of 99 years from 3 October 1975 at a rent of £25 p.a until 23 March 2008, £50 until 24 March 2041 and £75 for the remainder of the term. This is registered at the Land Registry under title number EGL41980.

(collectively the “Premises”)

3. By a claim (No.3RM02301) issued 11 September 2013 (the “relevant date”) in the Romford County Court the Applicants applied for a Vesting Order under section 26(1) of the 1993 Act, vesting in themselves as nominee purchasers any interests of the freeholder in the Premises to which they have the right of collective enfranchisement by virtue of sections 1(1), 1(2) (a) or 2(1) of the 1993 Act, upon terms and at such price as may be determined by a First-tier Tribunal (Property Tribunal) as if they had given notice under section 13 of the Act.
4. By an Order dated 11 November 2013 District Judge Wright added the Respondent as defendant to the claim and transferred the application to the First-tier Tribunal (Property Tribunal).
5. The Tribunal issued Directions on 14 November 2013 which, inter alia, requested a schedule of relevant variations from any of the leases provided.
6. The Applicants have provided the Tribunal with a copy of the Applicants’ claim in the county court, official copies of the freehold and leasehold

interests in the Premises, copies of the two leases of the flats (but not a copy of the lease of the land at the rear of 59 Clarendon Gardens nor the Deed of Variation of 28 March 1984), a sealed copy of the Order of 11 November 2013, an expert witness report and valuation by Mr Stephen Barrable FRICS dated 3 December 2013 and a draft transfer (TR1).

7. The Applicants did not request an oral hearing.
8. At the request of the Tribunal the Applicants provided the Tribunal with the lease of the land at the rear of 59 Clarendon Gardens of 12 April 1983 and two deeds of variation dated 28 March 1984 and 13 September 1990. Mr Barrable provided a revised valuation to take into account the rent reserved by the lease of the land at the rear of 59 Clarendon Gardens.

Decision

1. The Tribunal did not carry out an inspection but relied on the description of the Premises given on pages 1-4 of Mr Barrable's report.
2. The relevant valuation date is 11 September 2013.
3. At the relevant date the leases had remaining terms of
 - Flat 59: 65.29 years
 - Land at rear of 59: 64.29 years
 - Flat 59A: 61.06 years
4. The relevant legislation is annexed to this decision as Appendix 2
5. As the leases of have less than 80 years to run marriage value at 50% is payable.
6. Compensation under paragraph 5 of Schedule 6 of the 1993 Act does not arise.
7. The Respondent landlord had not served any rent demands in statutory form so no arrears of rent is payable.
8. The Tribunal accept Mr Barrable's submission that the ground rents should be capitalised at 7 per cent per annum.
9. The Tribunal do not agree with Mr Barrable's use of 5.25% for the deferment of the reversion, and adopt a rate of 5% which is in accordance with the decision in *Sportelli*.
10. The Tribunal considers that Mr Barrable's opinion of the freehold vacant possession values of the Premises to be below the tone of value in this locality for this type of property and have adjusted the unimproved freehold values accordingly. The Tribunal also consider that the ground

floor maisonette should be treated as a potential two bedroom flat and that its value should reflect that it also has a lease of the whole of the rear garden. The Tribunal notes Mr Barrable's statement that the flats are unimproved. It is the opinion of the Tribunal, based on the comparable evidence provided and their knowledge and experience, that the unimproved freehold value of each flat is as follows;

Flat 59 £175,000; and

Flat 59A £190,000

11. In the absence of transaction evidence Mr Barrable assesses the existing leasehold value of each flat by applying relativity of 89.51% to Flat 59 for a remaining term of 65.29 years and applying relativity of 87.5% to Flat 59a for a remaining term of 61.06 years, which he submits is derived from the RICS Research Report October 2009 Leasehold Reform Graph of Relativities, taking an average of the "non PCL" graphs relating to suburban locations, being those of Beckett & Kay, Nesbitt and Co, South East Leasehold and Pridell and Austin Gray. He did not apply any relativity in respect of the land at the rear because marriage value did not exist.

The Tribunal accept these relativities in the absence of transaction evidence and the average of the five graphs came to above figures. The Tribunal does not consider evidence of other settlements to be persuasive comparable evidence.

12. The Tribunal's valuation is annexed and shows the amount payable is **£30,073.00**
13. As to the terms of the transfer the draft TR1 provided is approved subject to the following amendments;
 - a. The consideration in Clause 8 of the TR1 is £30,073.
 - b. In clause 9 the transferees should transfer with limited title guarantee, as required by paragraph 2(2) (b) Schedule 7 of the 1993 Act.
 - c. The transfer must contain a statement that it is a conveyance executed for the purposes of Chapter 1 of the Act in such a form as complies with land registry requirements; and

It is not a matter for approval by the Tribunal but the Applicants may care to consider whether a corporate transferee might simplify future transfers of part interests in the freehold.

Judge Pittaway

APPENDIX 1

59 and 59A Clarendon Gardens Ilford Essex IG1 4NR
Assessment of premium for Collective Enfranchisement
In accordance with Section 24 Leasehold Reform, Housing and Urban
Development Act 1993 (As Amended)
Ref: Lon/OOBC/OCE/2013/0253

Components

Valuation date:	11/09/2013
Yield for ground rent:	7.0%
Deferment Rate:	5.0%
Extended lease value	
Flat 59	£175,000
Flat 59A	£190,000
Relativity Flat 59	89.51 %
Relativity Flat 59A	87.5%
Unexpired Term (flat 59)	65.29 years
Unexpired Term (flat 59A)	61.06 years

Diminution in value of Freeholders Interest

1-Freeholder's Present Interest

Flat 59	£50 for 27.52 years @ 7.0%		
	£50 x 12.065	£603	
	£75 for 37.77 years		
	£75 x 13.176		
	PV of £1 for 27.52 years @ 7%=0.155	£153	£756
Flat 59A	£50 for 27.52 years @ 7.0%		
	£50 x 12.065	£603	
	£75 for 33.54 years		
	£75 x 12.8		
	PV of £1 for 22.52 years @ 7%=0.155	£149	£752
The garden land (Flat 59)	£50 for 27.52 years @ 7%		
	£50 x 12.065	£603	
	£75 for 36.77 years @ 7%		
	£75 x 12.14		

PV of £1 for 27.52 years @ 7%=0.155	£141		
Reversion to Open Market Value say £5000			
PV of £1 for 64.29 years @ 5% 0.04342	£217	£961	

2- Valuation of reversion:

Flat 59	£175,000 @ 5.0% def'd 65.29 years		
	£175,000 x 0.04136	£7238	
Flat 59A	£190,000 @ 5.0% def'd 61.06 years		
	£190,000 x 0.043966	£8353	£18,060

Marriage Value

Extended lease value			
Flat 59 Existing lease	£190,000		
Flat 59A Existing lease	£175,000		£365,000
LESS			
Existing leasehold value			
Flat 59	£156,664		
Flat 59A	£166,250	£322,914	
Freehold interest			
Flat 59	£8,955		
Flat 59A	£9,105	£18,060	£340,974
Marriage value			£24,026
50% of Marriage Value			£12,013
Price to be paid for a share in the freehold interest			£30,073

APPENDIX 2

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

S 24 Applications where terms in dispute or failure to enter contract.

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser—
 (a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(7) In this section “the parties” means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter “the terms of acquisition”, in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

S 26 Applications where relevant landlord cannot be found.

(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) (in a case to which section 9(2) or (2A) applies) each of the relevant landlords is someone who cannot be found or whose identity cannot be ascertained,

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 (2)(a) or section 2(1), or

(ii) with respect to any interests of those landlords which are so liable to acquisition by virtue of any of those provisions,

as the case may be.

S 32 Determination of price.

(1) Schedule 6 to this Act (which relates to the determination of the price payable by the nominee purchaser in respect of each of the freehold and other interests to be acquired by him in pursuance of this Chapter) shall have effect.

SCHEDULE 6 PART II FREEHOLD OF SPECIFIED PREMISES

Price payable for freehold of specified premises

2(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of—

- (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
- (b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the freeholder under paragraph 5.

(2) Where the amount arrived at in accordance with sub-paragraph (1) is a negative amount, the price payable by the nominee purchaser for the freehold shall be nil.

Value of freeholder's interest

3(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple—
 - (i) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but
 - (ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;
- (b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant);
- (c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7.

(1A) A person falls within this sub-paragraph if he is—

- (a) the nominee purchaser, or
- (b) a tenant of premises contained in the specified premises, or
 - (ba) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or
 - (c) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the valuation date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining that amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of the interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

Freeholder's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent. of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value—

(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

(3) For the purposes of sub-paragraph (2) the value of the freehold or any intermediate leasehold interest in the specified premises when held by the person from whom it is to be acquired by the nominee purchaser and its value when acquired by the nominee purchaser—

(a) shall be determined on the same basis as the value of the interest is determined for the purposes of paragraph 2(1)(a) or (as the case may be) paragraph 6(1)(b)(i); and

(b) shall be so determined as at the valuation date.

(4) Accordingly, in so determining the value of an interest when acquired by the nominee purchaser—

(a) the same assumptions shall be made under paragraph 3(1) (or, as the case may be, under paragraph 3(1) as applied by paragraph 7(1)) as are to be made under that provision in determining the value of the interest when held by the person from whom it is to be acquired by the nominee purchaser; and

(b) any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser shall be disregarded.