



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

**Case Reference** : **MR/LON/OOBH/OCE/2014/0264**

**Property** : **36 Howard Road, Walthamstow,  
London E17 4SJ**

**Applicant** : **Mr James Mace  
Mrs Emily Mace  
Mr Shakel Butt**

**Representative** : **Cavendish Legal Group**

**Respondent** : **Mohammed Walid Kaddah**

**Representative** : **None**

**Type of Application** : **Determination of premium payable  
under Schedule 6 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993 – missing  
landlord**

**Tribunal Members** : **Mrs Sonya O’Sullivan – Tribunal  
Judge  
Mr Charles Norman FRICS –  
Valuer Member**

**Date and venue of  
Paper Determination** : **25 November 2014  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **25 November 2014**

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**DECISION**

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## **Decisions of the tribunal**

The tribunal determines that the appropriate sum to be paid into Court for the freehold of the property known as 36 Howard Road, Walthamstow, London E17 4SJ pursuant to Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £49,045.

## **The application**

1. The Applicants who are the qualifying tenants of the two flats at 36 Howard Road, Walthamstow, London E17 4SJ (the “Property”) seek the tribunal’s determination of the price to be paid for and the terms of the transfer of the freehold interest in the Property.
2. The landlord is missing and on or around 29 July 2014 the Applicants issued a Part 8 Claim in the County Court at Bow under claim number A02B0461. On 10 October 2014 an order was made by District Judge North under section 26 of the 1993 Act which confirmed that the Court was satisfied that the Applicants were qualifying tenants for the purpose of section 5, were entitled to claim collective enfranchisement of the Property, would not have been precluded by any provision of the 1993 Act and that the landlord of the Property could not be found. It was further ordered that that the matter be transferred to this tribunal for a determination of the terms and form of the transfer and the premium payable under schedule 6 of the 1993 Act and any other sums payable by virtue of section 32. On the Applicants then paying into court such sum as determined by the tribunal Mr Frankel of Cavendish Legal Group is empowered to sign a transfer and any other necessary documentation to enable the Applicants to obtain a transfer of the freehold and register the same with the Land Registry.
3. This determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Tribunals (Procedure) (England) Regulations 2003. Directions were issued on 15 October 2014. The paper determination took place on 25 November 2014.
4. The Applicants’ solicitors supplied the tribunal with a hearing bundle that contained copies of the existing lease, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings and a valuation.
5. The tribunal did not consider that an inspection of the property was necessary given that we had been provided with a photograph of the property and full details of the comparables relied upon and the information provided in the report of Mr Henson (see below).

6. The relevant legal provisions are set out in the Appendix to this decision.

### **Tenure**

7. Both of the leases are in identical form for a term of 99 years from 1 January 1982 expiring on 31 December 2080. The ground rent is set at £50 per annum on each flat until 20 December 2015 when it increases to £100 per annum until 2048 and then £1350 per annum for the remaining 33 years. The first review of rent is due on some 0.42 years from the relevant date of the valuation being 31<sup>st</sup> July of this year. There are some 66.42 years unexpired as at the relevant date.
8. The tenants rely on a valuation prepared on their behalf by Timothy John Henson BSc MRICS of Clarke Hillyer Limited, chartered surveyors. Mr Henson has inspected the Property and has provided a photograph, description and a list of comparable transactions and a valuation rationale.
9. He describes the Property as a two storey mid-terraced property originally built as a house amongst similar age and type of property. It now comprises a ground and first floor flat. The building is believed to date from circa 1900 and was converted in the early 1980's.

### **The tenants' valuation**

10. The county court claim was issued on 31 July 2014 and that is the valuation date which has been correctly adopted by Mr Henson.
11. He relies on the following three comparables, all of which are situate in the same road as the subject property with completion dates between April and August 2014;
  - i. 46 Howard Road - This is a 2 bedroom flat which sold at £329,000 on 11 April 2014. It has the benefit of an unofficial loft conversion. He makes a deduction of £5,000 in respect of the loft room and a 1% allowance for what he says is market improvement for the August to July period. The adjusted price is £344,500. This is Mr Henson's preferred comparable being very similar to the subject property and close to the valuation date.
  - ii. 105 Howard Road – This is a 3 bedroom flat which sold at £410,000 on 6 June 2014. It is said to be in exceptional condition. A deduction is made of £50,000 to reflect the additional bedroom and a further £315,000 to reflect the internal condition and fixtures and fittings.

Again a 1% deduction is made for what he says is market improvement for the August to July period to reach an adjusted price of £353,350.

- iii. 103 Hoard Road – This is a 3 bedroomed flat which sold at £376,510 on 15 August 2014. A deduction of £50,000 is made to reflect the additional bedroom and a 1% deduction for what he says is market improvement for the August to July period to reach an adjusted price of £323,250.
12. The front of the subject property is noted to be coated with spar dash render which Mr Henson considers is a negative feature for this road of period property and accordingly a deduction of £2,500 is made per flat to allow for this adverse feature.
13. Mr Henson then goes on to take an average of the three long lease prices of £340,366 and adopts a value of £340,00 less £2,500 in respect of the render to reach a value of £337,500 per property for the long lease value.
14. Mr Henson has relied on the RICS Research paper with graphs of relativity published in October 2009 and the more recent analysis of 601 cases from the London Valuation Tribunal analysed and published by John D Wood. An analysis of the RICS graphs outside the prime central London area indicates that a 66.42 year lease would have an average relativity of some 90.24%. The John D Wood paper shows a relativity of approximately 87% for a 66.42 year term although Mr Henson says that this includes decisions in the prime central London areas which in his opinion will act to lower the relativity. He therefore adopts the relativity of 90.24% which he says is consistent with his experience of agreed settlements on similar unexpired lease terms.
15. He adopts a capitalisation rate of 7% for the ground rental income as he says there is no reason to depart from this figure.
16. Likewise he adopts a reversionary interest rate of 5%.
17. As there are less than 80 years unexpired the apportionment of the marriage value is split equally between the parties.
18. He confirms that there is no other value for which the freeholder should be compensated.

### **The tribunal's decision**

19. The premium payable under Schedule 6 of the 1993 Act is £49,045.

## **Reasons for the tribunal's decision**

20. The tribunal carefully considered the contents of Mr Henson's report. The tribunal notes that his firm is long established in Walthamstow and is situated very close to the subject property.
21. We agree that 46 Howard Road is the best comparable given that it is like the subject property a 2 bedroom flat which sold on 11 April 2014. We do not consider that the other two sales relied upon are reliable given that they are three bedroom flats and require substantial adjustment. We therefore took the sale of 46 Howard Road as our starting point.
22. We do not agree that 1% should be added to reflect what Mr Henson says is the premium of a freehold above virtual freehold value. We have no evidence to support this addition.
23. We agree that a deduction of £2,500 should be made to reflect the render. We therefore reach an adjusted long lease value of £342,000 in respect of each flat.
24. As far as relativity is concerned we consider a figure of 90% rather than 90.24 to be appropriate. The graphs relied upon are a guide only and cannot be accurate to the degree suggested by Mr Henson.
25. We agree the interest rate and reversionary interest rate to be adopted of 7% and 5%. We agree that there is no other value for which the freeholder should be compensated.
26. Accordingly we conclude that the price to be paid into court for the freehold of the property is £49,045.
27. We are satisfied with the terms of the transfer as set out in the transfer submitted to us save for the following
  - i. The transfer must contain a statement that it is executed for the purposes of Chapter 1 of the 1993 Act as required by section 34(5) as follows "*This conveyance (or transfer) is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993*".
  - ii. The transferor may only transfer with limited title guarantee.

**Name:** S O'Sullivan

**Date:** 25 November 2014

## **Appendix of relevant legislation**

### **Leasehold Reform, Housing and Urban Development Act 1993 (as amended)**

#### **Section 26**

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.

(2) Where in a case to which section 9(2) applies—

(a) 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, and

(b) paragraph (b) of subsection (1) does not apply, but

(c) a notice of that claim or (as the case may be) a copy of such a notice cannot be given in accordance with section 13 or Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give such a notice or (as the case may be) a copy of such a notice to that person.

(3) If, in a case to which section 9(2) applies, that person is the person who owns the freehold of the premises, then on the application of those tenants, the court may, in connection with an order under subsection (2), make an order appointing any other relevant landlord to be the reversioner in respect of the premises in place of that person; and if it does so references in this Chapter to the reversioner shall apply accordingly.

(3A) Where in a case to which section 9(2A) applies—

(a) 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, and

(b) paragraph (b) of subsection (1) does not apply, but

(c) a copy of a notice of that claim cannot be given in accordance with Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give a copy of such a notice to that person.

(4) The court shall not make an order on any application under subsection (1) (2) or (3A) unless it is satisfied—

(a) that on the date of the making of the application the premises to which the application relates were premises to which this Chapter applies; and

(b) that on that date the applicants would not have been precluded by any provision of this Chapter from giving a valid notice under section 13 with respect to those premises.

(5) Before making any such order the court may require the applicants to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person or persons in question; and if, after an application is made for a vesting order under subsection (1) and before any interest is vested in pursuance of the application, the person or (as the case may be) any of the persons referred to in paragraph (a) or (b) of that subsection is traced, then no further proceedings shall be taken with a view to any interest being so vested, but (subject to subsection (6))—

(a) the rights and obligations of all parties shall be determined as if the applicants had, at the date of the application, duly given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises to which the application relates; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(6) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a conveyance under section 27(3) and, after it is withdrawn, subsection (5)(a) above shall not apply; but where any step is taken (whether by the applicants or otherwise) for the purpose of giving effect to subsection (5)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of every person who is the owner of any interest the vesting of which is sought by the applicants, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the applicants in consequence of the tracing of any such person.

(7) Where an order has been made under subsection (2) or (3A) dispensing with the need to give a notice under section 13, or a copy of such a notice, to a particular person with respect to any particular premises, then if—

(a) a notice is subsequently given under that section with respect to those premises, and

(b) in reliance on the order, the notice or a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(8) Where a notice under section 13 contains such a statement in accordance with subsection (7) above, then in determining for the purposes of any provision of this Chapter whether the requirements of section 13 or Part II of Schedule 3 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of the notice or a copy of it to the person referred to in subsection (7) above.



(9) Rules of court shall make provision—

(a) for requiring notice of any application under subsection (3) to be served by the persons making the application on any person who the applicants know or have reason to believe is a relevant landlord; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

APPENDIX

IN THE MATTER OF SECTION 13 OF THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 RE 36 HOWARD ROAD  
WALTHAMSTOW LONDON E17 4SJ

VALUATION BY THE FIRST -TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation		31-Jul-2014
Lease expiry Date		31-Dec-2080
Unexpired Term		66.42
Virtual Freehold Values of Flats unimproved	£	684,000
Value of 66.47 year lease @ 90% of virtual freehold value	£	615,600
Ground rent capitalisation rate		7.00%
Reversionary deferment Rate		5.00%
<b>Premium Payable</b>	£	-

Diminution in Value of Freeholder's Interest

Value of Freeholder's Present Interest

Term 1

Ground rent		£	100	per annum	
YP 0.42 years @	7.00%		0.40023		
					£ 40

Term 2

Ground rent		£	200	per annum	
YP 33 years @	7.00%		12.7538		
PV 0.42 years @ 7%			0.97198		
					£ 2,479

Term 3

Ground rent		£	300	per annum	
YP 33 years @ 7%			12.7538		
PV 33.42 years @	7.00%		0.10423		
					£ 399

Reversion

Unimproved value of virtual freehold flats		£	684,000		
Present Value of £1 in 66.42 years' time @ 5.00%			0.03914		
					£ 26,772
					<u>£ 29,690</u>

Calculation of Marriage Value

Value of Proposed Interest

Virtual freehold of the flats in aggregate	£	684,000
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Less

Value of Present Interests

Present Leasehold value at @ 90% of virtual freehold value	£	615,600
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and

Present freehold	£	29,690
		<u>£ 645,290</u>

Hence Marriage Value, Difference Between Proposed and Present Interests	£	<u>38,710</u>
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Divide Marriage Value equally between the Parties

	£	19,355
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Add Freeholders present interest

	£	<u>29,690</u>
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Hence Premium Payable is

	£	<u>49,045</u>
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