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

Case Reference : LON/00BG/OLR/2014/1796

Property : Flats 1 to 6 170-172 Mile End Road,
London E1 4LJ

Applicants/Claimants : (1) Robert Alexander Craney
(2) Esther Stern
(3) Muzaffar Ali Khan and
Zainab Bibi Khan
(4) Simone Brooks
(5) James Edward Dumbledon
(6) Saeed Khan

(the "Leaseholders")

Representative : Kingsley Napley LLP

(1) Persons Unknown (the
"Freehold Owner")

Respondents/Defendants : (2) Wildcross Properties Ltd (the
"Intermediate Landlord")

Representatives : Jay Vadher & Co, solicitors (2nd
Respondent)

Type of Application : Leasehold Reform Housing and
Urban Development Act 1993:
sections 50 & 51 (missing landlord)

Tribunal : 1. Mr A Vance, Tribunal Judge
2. Mr N Martindale, FRICS

Date of Decision : 15 April 2015

DECISION

Decisions of the Tribunal

1. The Tribunal makes the determinations as set out under the various headings in this Decision
2. This matter should now be referred back to the County Court at Central London including for consideration as to whether or not the Court wishes to vary or set aside its' Order of 28 October 2014.

Background

3. This is an application under sections 50 and 51 of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act") for determination of the terms of new leases to be granted each of the six Applicants and for the determination of the premium and other sums (if any) to be paid to the Respondents.
4. Numbers appearing below in square brackets refer to pages in the hearing bundle provided by the Applicants.
5. Extracts of the key relevant legislation are at the Appendix to this decision.
6. Proceedings were originally issued in the County Court at Central London under claim no. A01CL715 [2]-[3]. The exact date of issue of the claim is unclear as the Claim form itself records a date of 20 June 2014 whilst the Notice of Issue states 23 June 2014 [135]. We consider that the earlier date is likely to be correct.
7. The claim was transferred to this Tribunal, by order of District Judge Lightman dated 28 October 2014 (the "County Court Order") [144]-[147] for the Tribunal to determine:
 - 7.1. the terms of the new leases of the Applicants' flats (as if they had each, as at the date of issue of the County Court claim, each given notice under section 42 of the 1993 Act);
 - 7.2. The amount of the premiums payable under Schedule 13 of the 1993 Act by each of the Applicants;
 - 7.3. Such other amounts (if any) that the Tribunal determines are payable by the Applicants under Schedule 13 in connection with the grant of the new leases; and
 - 7.4. Any amounts or estimated amounts that the Tribunal considers are due to the Respondents (the Defendants in the County Court claim) as at the time of execution of the new leases.

- 8.** The County Court Order orders the First Defendant to pay the Claimants' costs of the claim to be assessed at a hearing following this Tribunal's determination. It is clear that the reference to a hearing is to a hearing in the County Court and not in this Tribunal. On 16 March 2015 (after the hearing of this matter) the Tribunal received a request from the Applicants' to assess the Claimants' costs by way of summary assessment. However, the Tribunal has no jurisdiction to do so as this is a matter for the County Court.
- 9.** The Applicants are the leasehold owners of six flats in a four storey purpose built mid-terrace building at 170-172 Mile End Road, London E1 4LJ (the "Building") constructed in the 1980's. There are two flats on each floor and commercial parts on the ground floor which are occupied by the Second Respondent.
- 10.** The Intermediate Landlord is the head leaseholder of the Building pursuant to a lease dated 19 March 1753 and made between John Groome of the one part and George Newell of the other part for a term of 500 years (less 9 months) from 29 September 1585. The Second Respondent's leasehold interest expires on 28 December 2084.
- 11.** The Applicants' leases were granted by Meir Myerson for a term of 99 years commencing on 29 September 1985. The Tribunal was informed that for the purposes of this application there are no material differences in the terms of the six leases. Each lease reserves a ground rent of £75 a year for the first 33 years rising to £125 and then to £175 for the remainder of the term.
- 12.** The Applicants' leasehold interests in the flats are held as follows:

 - 12.1. Robert Alexander Craney – Flat 1
 - 12.2. Esther Stern– Flat 2
 - 12.3. Muzaffar Ali Khan and Zainab Bibi Khan – Flat 3
 - 12.4. Simone Brooks – Flat 4
 - 12.5. James Edward Dumbledon – Flat 5
 - 12.6. Saeed Khan – Flat 6
- 13.** In the County Court and in this Tribunal application the Applicants' asserted claim was that the identity of the Freehold owner of the Building was unknown. It was their case that the Freehold title for the Building was unregistered and that the identity of the owner had been lost in the midst of time. This was accepted by the County Court and the

County Court Order records that it was satisfied that the Leaseholders had taken all reasonable steps to ascertain the identity of the First Defendant and that this could not be found.

14. The County Court duly made a vesting order which is contained in the County Court Order. On the making of that order the Applicants therefore became entitled to a new leases of their flats for the residue of the term of their respective leases plus an additional 90 years, at a peppercorn rent, on such terms and on the payment of such a premium determined in accordance with Schedule 13 to the 1993 Act as this Tribunal may determine.
15. Directions were issued by the Tribunal on 21 November 2014 and the matter was heard on 17 February 2015.

The Hearing and the parties' positions

16. The Applicants were represented by counsel, Ms Rebecca Cattermole. The Applicants' valuer, Genevieve Mariner of Strettons Chartered Surveyors did not attend the hearing.
17. The Second Respondent was represented by Mr Nicholas Berry of counsel. Mr Kunes, solicitor for the Second Respondent was also present. After setting out his clients' position (as set out below) Mr Berry asked to be released from the hearing and the Tribunal acceded to that request.
18. There was no attendance on behalf of the First Respondent.
19. Prior to the hearing the Applicants' solicitors provided replacement pages for each of the six proposed new leases contained in the hearing bundle as the page numbering was out of sequence. These were inserted into the bundle and the offending pages removed.
20. The only statement of case provided by the Applicants was a one-page case summary [1] in which they set out brief details of the background to the application and in which they requested that the Tribunal determine the terms of six new leases to be granted under the 1993 Act. These new proposed terms were, Ms Cattermole confirmed, identical for each of the new leases.
21. The Applicants relied on Ms Mariner's report dated 8 January 2015 in which she calculated the premiums payable to be £12,225 each for Flats 1 to 4 and £12,075 each for Flats 5 and 6.
22. Mr Berry agreed that his client, the Intermediate Landlord, could not be the competent landlord for the purposes of the 1993 Act as the unexpired residue of the term of its' Head Lease was too short.

23. In its statement of case, the Second Respondent stated that its involvement in this application was to seek to protect its interests in the common parts of the Building and any shared responsibility for maintenance and repair of the Building. Its primary position was that it considered it had a claim for adverse possession over its own demise and the common parts.
24. Mr Berry confirmed this to be the case and that an application for first registration of those areas had been lodged with Land Registry. Mr Berry confirmed that his client did not wish to make any representations concerning the premium and any other sums payable by the Leaseholders under the 1993 Act or in respect of the terms of the proposed new leases. His presence at the hearing was to notify the Tribunal of the claim for adverse possession and the application made to the Land Registry. He considered that this application took subject to his client's application the first registration by way of adverse possession.

The Tribunal's further directions

25. The Tribunal considered it necessary to issue further directions after the hearing on 17 February 2015. It did so because it was its understanding following the hearing that the terms of the proposed new leases included substantial amendments to the terms of the existing six leases and that it was envisaged that the parties to the new leases were to include an unnamed management company that was not a party to the existing leases. The Tribunal was concerned that the proposed changes fell outside the Tribunal's limited jurisdiction to modify the terms of the existing leases under section 57(6) of the 1993 Act.
26. As this was not an issue identified by the Tribunal at the hearing and nor was it one on which the Tribunal had received representations from the parties the Tribunal directed the Applicants to provide a supplementary statement of case addressing these points with provision for the Second Respondent to provide a statement in reply.
27. The Tribunal indicated in its directions that it considered that the matter could then be fairly and conveniently be determined on the papers but that any party could, if it so wished, request a further hearing by no later than 19 March 2015. No such request was made.
28. It also invited the parties to address the question of whether or not the new leases should make provision, in accordance with s.59(3) of the 1993 Act: (a) excluding the right to acquire a new lease where a long lease has been created under the lease; and (b) reserving to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with s.61.

The subsequent representations received from the parties

- 29.** In the Applicants' supplementary statement of case Ms Cattermole corrected the Tribunal's misunderstanding of the Applicants' position. The hearing bundle contained two different forms of leases: (a) tripartite leases that included new terms [306]–[359]; and (b) leases on the same terms as the existing leases save as to term and rent to be entered into by Persons Unknown and the leaseholders [360]. However, the Applicants were no longer proposing entry into the tripartite leases.
- 30.** Ms Cattermole agreed that the new leases should make the provisions required by s.59(3) of the 1993 Act as referred to in paragraph 28 above.
- 31.** Mr Berry provided further written representations dated 16 March 2015 in which he confirmed that it had been agreed between counsel by both parties prior to the hearing that the tripartite leases would not be pursued. He also stated that whilst the 2nd Respondent's position was that it was entitled to the freehold of the premises it occupies by way of adverse possession that in the event that it was not so entitled it would be entitled to seek six years back rent from each of the Applicants from the date of a demand being made and future rent due under the intermediate leases. Further, it would be entitled to sums payable for the diminution in value of its intermediate interest and compensation as provided for in Schedule 13 to the 1993 Act together with costs under s.60 of that Act
- 32.** At paragraph 8 of his further submissions Mr Berry states that whilst this Application has proceeded on the basis that there was no identifiable freeholder the Second Respondent had now identified that the freehold interest in the Building had been registered at the Land Registry on 4 February 2014 under title number AGL303491. He suggested that the Applicant may have relied upon old office copy entries from 2011 when making its application for a vesting order to the Court.
- 33.** The Applicants' solicitors wrote to the Tribunal on 20 March 2015 in response and provided a copy of the Office Copy Entries for title number AGL303491 showing the register as at 18 March 2015. These identify that the freehold title of land at 160-174 (Even) Mile End Road, London E1 4LJ and 1-5 (odd) Hayfield Passage London E1 3LG had been registered on 4 February 2014 in the names of Robert Michael Julian Wentworth Byng, Patrick James John Wentworth Byng, Thomas Francis Edmund Byng and Georgina Margret Elizabeth Monckton ("Messrs Byng, Byng, Byng and Monckton").
- 34.** However, as pointed out by the Applicants' solicitors, no reference is made in those Office Copy Entries to either the Applicants' or the Second Respondents' leasehold titles. They reject the suggestion that they relied upon old office copies and asserted that the Land Registry had informed them that the registration had, in fact, been completed on 20 January

2015. There is, therefore, considerable uncertainty as to when and how the registration of this freehold interest (which appears to include the Building) took place.

35. The Tribunal has considered whether or not it is appropriate for it to delay its determination and/or to add or substitute Messrs Byng, Byng, Byng and Monckton as Respondents as suggested by the Applicants' solicitors in their letter of 20 March 2015. However, we have decided to proceed with our determination. The County Court has made a vesting order and has directed that this Tribunal determine the issues of the premiums payable and the new lease terms. The Tribunal's jurisdiction arises from that order and we consider it appropriate to determine the questions asked of us by the County Court on the basis that the vesting order is currently effective.
36. However, the County Court will, we anticipate, wish to revisit whether or not the County Court Order was properly made and may seek to vary or set aside that order and/or direct that Messrs Byng, Byng, Byng and Monckton be notified of the County Court claim and the Tribunal's determination or added as parties to that Claim. The Applicants should ensure that the County Court is fully apprised about the circumstances surrounding the registration of the freehold interest following this determination.

Inspection

37. The Tribunal inspected the Building on the afternoon of 17 February 2015. As notified to Ms Cattermole at the end of the hearing the Tribunal's view was that if the Tribunal considered that an inspection was required it would only be an external inspection of the Building. This was so that the Tribunal could compare the external condition of the Building to the other comparable properties relied upon by the applicants. The Tribunal considered it disproportionate given the unknown identity of the First Respondent and the position of the Second Respondent (as referred to above) for the Tribunal to carry out internal inspections of each of the subject flats and the Building. The Tribunal did not, therefore, consider it necessary for any of the parties to be present at that inspection and none were, in fact, present.
38. The external condition of the brickwork on the front elevation was reasonable. Access could not be gained to the rear of the Building. The Building is located close to Stepney Green Underground station and the Royal London Hospital.
39. The Tribunal also carried out an external inspection of two of the comparable properties relied upon by the Applicants at 200 Mile End Road and 24 Ansell House.

40. An external photograph of the Building and sales particulars for Flat 31 200 Mile End Road and 24 Ansell House were attached to Ms. Mariner's report.

The evidence before the Tribunal

41. The evidence before the Tribunal comprises the valuation report of Ms Mariner FRICS dated 8 January 2015. Her report contains a formal Statement of Truth confirming that the facts and matters referred to in her report that are within her own knowledge are believed by her to be true and includes a statement of compliance confirming that she understands her duty to this Tribunal as an expert witness.
42. The Tribunal is satisfied that her report is impartial and objective and is satisfied that the method she has adopted is appropriate to determine the premium payable for the new lease of the Property.
43. The Tribunal carried out its own checks on the information and calculations provided by Ms Mariner but do not diverge from her valuation. There was some rounding of figures in her report but this makes no material difference to the valuations.

The statutory basis of valuation

44. Schedule 13 to the Act provides that the premium to be paid by a tenant for the grant of a new lease shall be the aggregate: (a) of the diminution in the value of the landlord's interest in the tenant's flat; (b) the landlord's share of the marriage value; and (c) the amount of any compensation payable for other loss. An equivalent amount is also payable to any intermediate landlord in respect of their interest.
45. The value of the landlord's interests before and after the grant of the new lease 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 neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any Property containing the tenant's flat or to acquire any new lease.
46. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
47. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Valuation

48. Ms Mariner has only inspected four of the six flats but we agree that it is reasonable to assume the same floor areas for the other two flats from the measurements taken of the flats above and/or below them.
49. Ms Mariner states that all four flats comprise one bedroom, an internal bathroom and a kitchen that is open plan to the reception room. She records that the floor areas for Flats 1 and 3 are 39.85 m²; Flats 2 and 4 are 39.77 m²; Flat 5 is 36.94m²; and Flat 6 is 36.79m²
50. She states that the windows are double glazed and each of the flats that were inspected has a combination boiler providing hot water and heating via wall mounted radiators. It is assumed that all flats have similar arrangements. Ms Mariner did not identify any significant items of improvement or alteration to be ignored in the valuation.
51. The valuation date prescribed by section 51(1) of the Act is the date of the Applicant's application to the Court, namely 20 June 2014.
52. The unexpired residue of each of the six leases at the date of valuation was 70.28 years and the unexpired residue of the Head Lease was 70.53 years.
53. Ms Mariner's assessment of the value of the new leases to be granted to the Applicants is based on evidence of sales of comparable flats in the area. Flat 31, 200 Mile End Road, is a one-bedroom flat on the fourth floor that has the benefit of a lift. This, we are told, sold in May 2014 for £250,000 and has a similar floor area to the subject flats. Ms Mariner states that 24 Ansell House, a one-bedroom ground floor flat in an ex-local authority block on the Mile End Road, sold for £230,000 in April 2014 with an unexpired term of 94 years.
54. She also refers to brand new one bedroom flats on the Mile End Road being built for release in 2015 and which are being marketed for £300,000.
55. Ms Mariner's draws the conclusion that the market value of the first and second floor flats on a long lease (Flats 1-4) would be £240,000 each and that the top floor flats (Flats 5-6) would be £230,000 as there is no lift. The tribunal sees no reason to dispute these valuations and accepts them.
56. Ms Mariner arrived at her valuation of the unexpired residue of the current leases by first adjusting these figures of £240,000 and £230,000 by 1% to arrive at the virtual freehold vacant possession value of the relevant flats. That produces figures of £242,400 (rounded to £242,500) for Flats 1-4 and £ 232,300 (rounded to £232,500) for Flats 5-6.

57. In order to determine the value of the unexpired residue she then adjusted the assumed freehold value by a factor of 92.68%. Applying its own knowledge from other similar cases, the Tribunal accepts that that for leases of this duration a relativity of around this sum is correct and consistent with the average of the assessments of agents specialising in London property as represented on the RICS published graphs of leasehold/freehold relativity. The Tribunal accepts that approach to be appropriate.
58. Applying 92.68% to the virtual freehold vacant possession values of £240,000 and £230,000 produces values for the relevant current leases held by the Applicants as at the valuation date, of £222,432 for Flats 1-4 and £213,164 for Flats 5- 6.
59. The diminution in the value of the landlord's interest in the tenants' flats is represented first by the capitalised value of the grounds rent receivable under the leases which will be surrendered and replaced by a peppercorn rent under the terms of the Act. That income stream is capitalised by Ms Mariner at 6%, which the Tribunal accepts is appropriate in this case.
60. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the freehold values of £240,000 and £230,000. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Ms Mariner has also adopted the Sportelli deferment rate of 5% which the Tribunal accepts.
61. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholders, the landlord and the intermediate leaseholder before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.
62. The premiums payable for the acquisition of the new lease in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 are therefore:
- (a) **£12,228** each for Flats 1-4 (apportioned as £9,931 to the Freeholder and £2,297 to the Intermediate Landlord ; and
- (b) **£12,070** each for Flats 5-6 (apportioned as £9,724 to the Freeholder and £2,346 to the Intermediate Landlord);

63. The Tribunal does not consider that any compensation for loss arising out of the grant of a new lease is payable to the Freeholder under paragraph 5 of Schedule 13 of the 1993 Act.
64. It agrees with Mr Berry that in the event that the 2nd Respondent was not entitled to the freehold of its demise it is entitled to seek six years back rent from each of the Applicants from the date of a valid demand being made. There is no evidence of the 2nd Respondent being entitled to any sum by way of compensation under paragraph 8 of Schedule 13 of the 1993 Act.

Lease terms

65. The Applicant's solicitors have prepared draft leases which the Tribunal is invited to approve. The draft leases provide for the deemed surrender and re-grant of the Head Lease subject to and with the benefit of the new leases. They also provide for and the grant of a new term of 189 years from and including 29 September 1985 in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the six previous leases, which are incorporated by reference.
66. The Tribunal is satisfied that the terms proposed are appropriate for the new lease to be granted to the Applicants with the following amendments:
- (a) the parties to each lease (LR3) should describe the Landlord as "*John Groome his heirs or assigns*" as opposed to "*Persons Unknown*";
 - (b) Each lease should describe the Landlord as "*John Groome*" and not "*Persons Unknown*";
 - (c) At clause 2.2. of each lease the words "*has requested*" should be replaced with "*requires*" and the words "*and the Landlord has been ordered to do so*" should be inserted at the end of the clause;
 - (d) Rather than being executed by "Persons Unknown" each lease should be executed by the person designated by the Court pursuant to paragraph 3 of County Court Order"; and
 - (e) The inclusion of the additional terms set out at paragraph 10 of Ms Cattermole's submissions of 5 March 2015 as required by s.57(7) of the 1993 Act.

Amran Vance

15 April 2015

APPENDIX

Leasehold Reform, Housing and Urban Development Act 1993

Section 50 - Applications where landlord cannot be found.

(1) Where—

- (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
- (b) the landlord cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

- (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
- (b) paragraph (b) of that subsection does not apply, but
- (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,

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

(3)–(6) [.....]

Section 51 - Supplementary provisions relating to vesting orders under section 50(1).

- (1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.
- (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.
- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

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

(g) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);

and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

- (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely—
 - (a) sections 57 to 59, and
 - (b) section 61 and Schedule 14,shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.
- (8) In its application to a lease granted in accordance with this section—
 - (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and

(ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

(b) section 58 shall have effect as if—

(i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and

(ii) subsections (6)(a) and (7) were omitted.