



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

Case reference : LON/00BH/OCE/2014/0321

Property : 19 Kings Road
London E11 1AU

Applicants : Pamela Linwood
Oonah Newbury

Representative : Cavendish Legal Group, E17

Respondent : John Eddery (Missing Landlord)

Representative : None

Type of application : Section 26 of the Leasehold
Reform, Housing and Urban
Development Act (as amended)
("the Act") for a determination of
the terms and price for collective
enfranchisement

Tribunal member : Mr Charles Norman FRICS (Valuer
Chairman)

Date of decision : 8 February 2015

**DETERMINATION BASED ON WRITTEN REPRESENTATIONS
WITHOUT A HEARING**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the freehold of the property known as 19 Kings Road Leytonstone London E17 4SJ pursuant to Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £32,415 (thirty-two thousand four hundred and fifteen pounds) .
- (2) The Tribunal approves the draft transfer subject to the qualifications set out at paragraph 20 below.

Reasons

Introduction

1. This is an application made by the applicants under section 26 of the Leasehold Reform, Housing and Urban Development Act (as amended) (“the Act”) for a determination of the terms and price for the collective enfranchisement of the property known as 19 Kings Road Leytonstone, London E11 1AU (“the property”).
2. By proceedings brought under CPR Part 8 and issued on 19 August 2014 (“the valuation date”), the Applicants applied for an order dispensing with the requirement to serve a section 13 initial notice upon the respondent and for other relief. By an Order made by Deputy District Judge Reissner in the County Court at Bow dated 29 November 2014, the application for dispensation was granted. The matter was transferred to the Tribunal for the determination of:
 - (a) The terms and form of the transfer and
 - (b) The premium payable under schedule 6 of the Act and any other sums payable under section 32.
3. The Tribunal issued directions on 17 December 2014 requiring bundles to be provided by 15 January 2015. These were helpfully supplied on 9 January 2015 and were compliant with the directions. The applicants were given an opportunity to request a hearing, but have not done so and the matter has therefore come before me for determination based on written representations, in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the rules”).

Expert Evidence

4. The Tribunal was supplied with an expert valuation report prepared by Mr Timothy John Henson BSc MRICS, a Director of Clarke Hillyer Limited. Clark Hillyer is a well-known firm operating in East London. Mr Henson has correctly addressed his report to the Tribunal and included declarations of truth required by the RICS. Following my direction to him and by amendment, he has also included the declaration required by rule 19. The obligation on experts to be objective is particularly high in missing landlord cases, which are, by

definition, ex parte applications. I am satisfied that Mr Henson fully understands his duties to the Tribunal.

5. The substantive valuation sections of Mr Henson's report may be summarised as follows. Mr Henson inspected the property on 3 March 2014. The property comprises ground and first floor flats in a converted terraced house. The building dates from around 1900 and was converted in the mid 1980s. Flat A (Ground floor) comprises one double bedroom, reception, kitchen, bathroom/WC and private rear garden. The floor area was 538 sq. ft. The first floor also comprised one bedroom, reception, kitchen, bathroom/WC but was larger at 630 sq ft but without rear garden access. Each flat had gas fired central heating. An exterior photograph was included.
6. The leases of the flats were granted on slightly different dates, and the terms were therefore non-identical. Flat A was let for 99 years from 25 December 1985, at a current ground rent of £45 per annum until 29 September 2035 rising to £60 per annum until 29 September 2060 and thereafter rising to £75 per annum. At the valuation date, there was 70.35 years unexpired. Flat B (First floor) was let for 99 years from 29 September 1985, at a current ground rent of £45 per annum until 29 September 2033 rising to £60 per annum until 29 September 2058 and thereafter rising to £75 per annum. At the valuation date, there was 70.11 years unexpired.
7. Mr Henson relied on comparables sales which completed between July and August 2014. The stated sources were RightMove and the Land Registry. The price range was £330,000 to £258,000. All five comparables are within ¼ mile of the subject property. Only limited details of each comparable were provided and it was necessary for me to direct that the report be amended to include the respective unexpired lease terms as these had been omitted. In the event these terms were all in excess of 100 years and therefore "virtual freeholds" in valuation terms. Photographs and sales particulars were not included and I therefore carried out an unaccompanied external inspection of each of the comparables (and the subject property) on 4 February 2015. The five comparables relied on were as follows.
 - i. 70 Colworth Road, sold for £330,000, is described as a larger ground floor flat (592 sq. ft.) with large kitchen dining room, private garden and parking. Mr Henson adjusted this by 15% for size and condition, giving an adjusted value of £280,500.
 - ii. Flat A, 22 Richmond Road E11, sold for £305,000, is described as a larger ground floor flat with cellar, improved condition, marginally inferior location. To compare this to the subject property, Mr Henson has adjusted this price by deducting 5% for size, 5% for condition and adding 5% for location, giving an adjusted value of £289,750.

- iii. Flat A 137 Colworth Road E11 sold for £310,579 is a ground floor flat, described as refurbished. Mr Henson has deducted 10% for condition giving an adjusted value of £279,500.
 - iv. Flat B 137 Colworth Road E11 sold for £300,000 is a first floor flat, also described as refurbished. Mr Henson has deducted 7.5% for condition giving an adjusted value of £277,500.
 - v. Flat D, 137 Whipps Cross Road E11 sold for £258,500. Mr Henson added 10% for location giving an adjusted value of £285,350.
8. The average adjusted price was £282,320 which Mr Henson adopted for the ground floor of the property. He then reduced this by £10,000 for the first floor flat, because of the lack of garden.
 9. As to lease relativity, 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 70 year lease would have an average relativity of some 92% as against a freehold. The John D Wood paper shows a relativity of approximately 89.5% for a 70 year unexpired 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 92% which he says is consistent with his experience of agreed settlements on similar unexpired lease terms.
 10. He adopts a capitalisation rate of 7% for the ground rental income as he says there is no reason to depart from this figure. Likewise he adopts a reversionary interest rate of 5%. As there are less than 80 years unexpired the apportionment of the marriage value is divided equally between the parties. He confirms that there is no other value for which the freeholder should be compensated. Arithmetically this resulted in a premium of £37,825 but I identified an error in his calculation. Following his correction of this at my direction, his amended premium calculation was reduced to £32,230.

Decision

11. Having seen the comparables it is clear that all are converted flats and I infer, one-bedroomed. The subject property is in a good location in a pleasant, wide tree-lined street. It appeared to be in good condition externally.
12. Colworth Road is parallel to Kings Road and broadly similar, being tree-lined and comprising terraced housing of the same age as the property. 70 Colworth Road (£330,000) is described as having a large kitchen dining room, private garden and parking and therefore being worth 15% more than the subject flats. I regard that differential as too great. I adopt a 10% differential giving an adjusted figure of £297,000.

13. Flat A 22 Richmond Road E11 is also comparable. I agree that this location is slightly poorer and agree with Mr Henson's adjustments for condition and size giving an adjusted value of £289,250.
14. Flat D, 137 Whipps Cross Road is situated in a multi-storey block of flats. The building is different in character from the subject property, situated much further from Leytonstone underground station and overlooking a busy 40 mph road with considerable road noise. I therefore place no weight on this comparable.
15. I find that the closest comparables are Flat A (ground floor) and Flat B (first floor), 137 Colworth Road. I noted that this property has been refurbished and accept the adjustments for condition put forward by Mr Henson. I accept his adjusted prices of £279,500 and £277,500 respectively.
16. The average of the adjusted comparables I have accepted for ground floor flats equates to £288,583 say £288,500 which I adopt as a virtual freehold value for the ground floor flat at the property. I agree with Mr Henson's evidence that the first floor flat should be worth £10,000 less on the same basis, or £278,500, because of the lack of garden.
17. As to relativity, I accept Mr Henson's evidence that 92% is the appropriate relativity of a 70 year lease, against virtual freehold value.
18. I agree that the capitalisation rate for ground rent should be 7% and the deferment value 5%, the latter being supported by case law as Mr Henson correctly states.
19. I do not agree that 1% should be added to reflect what Mr Henson says is the premium of a freehold above virtual freehold value. There is no evidence provided to support this opinion. I append my valuation calculation and extracts of relevant legislation.
20. As to the transfer, I am satisfied with the terms of the draft transfer as submitted to the Tribunal, 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.

Right to Seek Permission to Appeal

21. The applicants are referred to the appended guidance notes.

Name: Charles Norman FRICS **Date:** 8 February 2015

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 THE COLLECTIVE ENFRANCHISEMENT OF 19 KINGS ROAD LEYTONSTONE E11 1AU
VALUATION BY THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation	19-Aug-2014
Lease expiry date Flat A (ground floor)	25-Dec-2084
Unexpired Term Flat A	70.35 years
Lease expiry date Flat B (ground floor)	20/09/2084 years
Unexpired Term Flat B	70.11
<i>Virtual Freehold Values of Flats 1 and 2:</i>	
Flat A	£ 288,500
Flat B	£ 278,500
Value of 70.35 year lease of Flat A @ 92% of virtual freehold value	£ 265,420
Value of 70.1 year lease of Flat B @ 92% of virtual freehold value	£ 256,220
Ground rent capitalisation rate	7.00%
Reversionary deferment Rate	5.00%
Premium Payable	£32,415

Value of Freeholder's Present Interest

Flat A

Term 1

Ground rent	£	45.00	per annum	
21.08 Years' Purchase @ 7.00%		10.8541		£ 488.43

Term 2

Ground rent	£	75.00	per annum	
25 Years' Purchase @ 7.00%		11.65		
PV £1 in 21.08 years @ 7.00%		0.2402		
		2.79833		£ 209.87

Term 3

Ground rent	£	100.00	per annum	
24.30 Years' Purchase @ 7.00%		11.526		
PV £1 in 46.09 years @ 7.00%		0.0443		
		0.5106		£ 51.06

Reversion

value of virtual freehold flat A	£	288,500		
Present Value of £1 in 70.35 years time @ 5%		0.0323		
				<u>£ 9,318.55</u>

Flat B

Term 1

Ground rent	£	45.00	per annum	
19.08 Years' Purchase @ 7.00%		10.3569		

Term 2

Ground rent	£	75.00	per annum	
25 Years' Purchase @ 7.00%		11.65		
PV £1 in 19.08 years @ 7.00%		0.275		
		3.20375		£ 240.28

Term 3

Ground rent	£	100.00	per annum	
26 Years' Purchase @ 7.00%		11.526		
PV £1 in 44.08 years @ 7.00%		0.0507		
		0.58437		£ 58.44

Reversion

value of virtual freehold flat A	£	278,500		
Present Value of £1 in 70.1 years time @ 5%		0.0327		
				<u>£ 9,106.95</u>
				£ 19,473.59

Calculation of Marriage Value

Value of Proposed Interests

Leaseholders

value of virtual freehold flats	£	288,500.00
Freehold after sale	£	278,500.00
		<u>NIL</u>

Total Value of Proposed Interests £ 567,000.00

Value of Present Interests

Leaseholders

Value of the aggregate value of the existing leases see above £ 265,420.00

Freeholder (see above) £ 256,220.00

£ 19,473.59

Total Value of Present Interests £ 541,113.59

Hence Marriage Value, Difference Between Proposed and Present Interests £ 25,886.41

Divide Marriage Value equally between the Parties £ 12,943.21

Hence Premium Payable for Collective Enfranchisement is £ 32,416.79

say £32,415