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

Case Reference : **OT/LON/OOAE/OCE/2016/0079**

Property : **10 Hartland Road, London NW6
6BJ**

Applicants : **Trevor Vyze (1)
Elizabeth Pugh (2)**

Representative : **Black Graf LLP Solicitors**

Respondent : **Lorraine Anderson**

Representative : **None**

Type of Application : **Determination of premium payable
– missing landlord section 26 of the
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Mrs Sonya O’Sullivan – Tribunal
Judge
Mr Luis Jarero BSc FRICS – Valuer
Member**

**Date and venue of
Paper Determination** : **10 May 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 May 2016**

DECISION

Decisions of the tribunal

The tribunal determines that the appropriate sum to be paid into Court for the purchase of the freehold interest by the Applicants of 10 Hartland Road, London NW6 6BJ comprising the ground and first floor flats and curtilage (“the Property”), pursuant to Part 1 of the Leasehold Reform and Urban Development Act 1993 (“the Act”), is £32,804.

The application

1. The Applicants who are the qualifying tenants of 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 27 July 2015 the Applicants issued a Part 8 Claim in the Willesden County Court under claim number B02W1043. On 15 January 2016 an order was made by District Judge Dabezies under Part 1 of the 1993 Act which confirmed that the Court was satisfied that the Applicants were entitled pursuant to the provisions of the Act to have the freehold of the Property known as 10 Hartland Road, London NW6 6BJ being registered at HM Land Registry under freehold title NGL444442. It was further ordered that service under section 13 of the Act be dispensed with given the Court was satisfied that all reasonable attempts had been made by the Applicants to serve notice.
3. Further it was ordered that the transfer of the freehold shall vest in the Nominee Purchasers upon such terms and at such prices as shall be determined by the tribunal and in a form of transfer approved by the tribunal and that a District Judge shall be entitled to execute the form of transfer to vest the said freehold in the Applicants. It was further ordered the claim be transferred to this tribunal.
4. This determination is made on the basis of written representations in accordance with the tribunal’s procedure. The application was first considered on the papers on 14 April 2016 when a further direction was made for a revised valuation report to be submitted adopting the correct valuation date. An amended valuation was subsequently provided and the paper determination took place on 10 May 2016.
5. The Applicants’ solicitors supplied the tribunal with a hearing bundle that contained copies of the existing leases, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings and a valuation.

6. 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 Firrell (see below).

Tenure

7. The lease of the ground floor is dated 16 November 1987. The demise includes the rear and front gardens. The flat comprises reception room, 2 bedrooms, kitchen, bathroom and separate WC. The lease expires on 23 June 2086. The ground rent payable is £50 per annum to 24 June 2020, £10 per annum to 24 June 2053 and £150 per annum to 24 June 2086.
8. The lease of the first floor flat is dated 22 June 1987. It is noted that a conversion of the loft area has taken place to provide a double bedroom and en suite shower/wc area. The flat comprises reception room, 2 bedrooms, kitchen, bathroom/wc on the first floor and bedroom with en suite shower/wc on the second floor. The lease of the first floor flat has also been extended by a further lease dated 13 October 2008 for a term expiring on 24 June 2176.

The tenants' valuation

9. The tenants rely on a valuation prepared on their behalf by Terence Firrell FRICS dated 25 April 2016 of Raza Firrell, chartered surveyors. Mr Firrell has inspected the Property on a number of occasions and has provided a photograph, description and a list of comparable transactions.
10. He describes the Property as a terraced building constructed of solid bonded brickwork under a pitched and slated roof constructed circa 1890. It was originally constructed as a single family dwelling but was converted into two separate self contained residential flats some time ago.
11. The county court claim was issued on 21 July 2015 and that is the valuation date which has now been correctly adopted by Mr Firrell.
12. Mr Firrell goes on to review 6 local comparables. He analyses the rate per square foot from each of those transactions but does not adjust them to the valuation date. He then stands back to adopt a long lease value of £550,000 for the ground floor flat and £795,000 for the first floor flat.
13. He adopts an investment rate of 6% in assessing the capital value of the ground rent.

14. Mr Firrell adopts a deferment rate of 5% on the basis of *Sportelli*.
15. He adopts a relativity of 92.98% for the ground floor flat and states that in relation to the first floor flat due to the length of the unexpired term relativity is not an issue.

The tribunal's decision

16. The premium payable is £32,804.

Reasons for the tribunal's decision

17. The tribunal carefully considered the contents of Mr Firrell's report. The tribunal notes that his firm is long established in providing valuations in relation to the area in which the Property is situated.
18. We considered the comparables relied upon and would comment as follows:
 - i) 102 Charteris Road is a first floor flat without a garden which sold for £550,000. This would suggest the valuation of the ground floor flat is too low.
 - ii) 11 Algernon Road is larger and has the benefit of a second bathroom and sold at £620,000 again suggesting that the figure of £550,000 for the ground floor flat is too low.
 - iii) 17 Lynton Road is a two bedroom flat with a garden and garage, somewhat larger than the subject flats and sold for £697,500 which again suggests the valuation for the ground floor is too low.
 - iv) We discounted Flat 1, 93 Hartland Road as we were not provided with any details.
19. Having regard to the comparables in the round we concluded that the freehold vacant possession of the ground floor flat is £575,000.
20. Mr Firrell relied on the RICS published graphs. As far as the relativity of the ground floor flat was concerned Mr Firrell excluded only the Beckett & Kay graph. We consider Austin Gray should also be excluded as that is primarily concerned with the Brighton and Hove area. Taking an average of the remaining graphs we reached a figure of 92.1%.
21. As far as the unexpired term of the leases is concerned by our calculations those are 70.93 years for the ground floor and 160.93 years for the first floor and those are the figures we have used.

22. In relation to the first floor flat it appears that Mr Firrell has valued the flat with improvements, i.e. with the benefit of the converted loft used as third bedroom. However as we are only dealing with the reversion of in excess of 160 years the landlord's interest has not been prejudiced by this approach. Although we consider the valuation of the first floor flat to be on the high side, any differential in the valuation would be marginal given the length of the reversion. We therefore accept his valuation of £795,000 for the first floor flat.
23. We accept Mr Firrell's figures for capitalisation and deferment rates.
24. Accordingly we conclude that the price to be paid into court for the freehold of the property is £32,804. We attach a revised valuation at Appendix A.
25. We note that the order of the District Judge Dabezies dated 15 January 2016 did not provide for the vesting order under section 26(1) to be conditional on the paying into court of the appropriate sum pursuant to section 27 (3) of the Act. The Applicants may wish to consider whether an application for an amendment to the order is necessary in this regard and must, in any event, have regard to this provision.
26. 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"*.

Name: S O'Sullivan

Date: 10 May 2016

First-tier Tribunal

10 Hartland Road London NW6 6BJ

Ref OT/LON/00AE/OCE/2016/0079

Flats on ground floor and 1st floor

Valuation Date	21 July		
	2015		
Ground Floor Flat			
Lease	99 years from 24 June 1987		
Unexpired term	70.93 years		
Ground rent			
1st 33 years	£50		
2nd 33 years	£100		
3rd 33 years	£150		
Deferment rate	5%		
Capitalisation rate	6%		
Relativity	92.10%		
Freehold VP value	£575,000		
Existing lease value	£529,575		
1st/2nd Floor Flat			
Lease	99 years from 24 June 1987		
	160.93		
Unexpired term	years		
Ground rent	Peppercorn		
Deferment rate	5%		
Freehold VP value	£795,000		
Ground floor flat			
Ground rent	£50		
YP 4.93 yrs @ 6%	4.1615	£208	
Revised Ground rent in 4.93 years	£100		
YP 33 yrs @ 6%	14.2301		
PV £1 in 4.93 years @ 6%	0.7503	£1,068	
Revised Ground rent in 37.93 years	£150		
YP 33 yrs @ 6%	14.2301		
PV £1 in 37.93 years @ 6%	0.10970	£234	
Reversion to long lease value	£575,000		
PV of £1 in 70.93 years @ 5%	0.0314	£18,055	
Diminution in freehold interest			£19,565
Marriage value			
Proposed interest			
Freeholder	0.00000		
Tenant	£575,000		
Existing interest			
Freeholder	£19,565		
Tenant	£529,575		
Marriage value		£25,860	£12,930
Divide equally			

First Floor Flat		
Reversion to long lease value	£795,000	
PV of £1 in 160.93 years @ 5%	0.0003891	£309
Diminution in freehold interest		
Price to be paid to Freeholder		£32,804

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.