



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

Case Reference : LON/00BH/OCE/2016/0323

Property : 29 Barclay Road, Leytonstone,
London E11 3DQ

Applicants : (1) Syeda Khanom and Michael
Garnett
(2) Herdeep Singh Gill

Representative : Curry Popeck, solicitors

Respondent : (1) Latchmandath Persaud
(2) Pillar Persaud

Type of Application : Determination of terms of
leasehold enfranchisement
(missing landlord)

Tribunal Members : (1) Judge Amran Vance
(2) Mr L Jarero, BSC, FRICS

Date of Decision : 9 January 2017

DECISION

Decisions of the Tribunal

1. The premium to be paid by the applicants for the freehold interest in 29 Barclay Road, Leytonstone, London E11 3DQ registered at HM Land registry under title number EGL17133 (the "Property") is **£42,703**.
2. The tribunal approves the terms of transfer in Form TR1 provided with the application.
3. The county court's attention is drawn to paragraphs 12 to 19 in the decision below.

Introduction

4. This is an application made under Section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of acquisition of the freehold interest in the Property. The relevant legal provisions are set out in Appendix 2 to this decision.
5. Numbers in bold and in square brackets below refer to the hearing bundle supplied by the applicants.
6. The Property is a two storey mid-terrace Victorian building consisting of two self contained flats. Flat 29 is the ground floor flat and Flat 29A is the first floor flat.
7. The First Applicants, Syeda Khanom and Michael Garnett are the long leaseholders of Flat 29A and hold their interest under the terms of a lease dated 25 July 1986 and registered under title number EGL181798. That lease was granted by the respondents to Alison Stevens and Christopher Stevens for a term of 99 years from 24 June 1986. The lease currently reserves a ground rent of £75 a year. The residual term of the lease is now vested in the first applicants who were registered as the leasehold proprietors on 1 September 2010.
8. The Second Applicant, Herdeep Singh Gill, is the long leaseholder of Flat 29 and holds his interest under the terms of a lease dated 25 July 1986, registered under title number EGL180118. That lease was granted by the respondents to Gareth David Thomas for a term of 99 years from 24 June 1986. The lease reserves a ground rent of £75 a year. The residual term of the lease is now vested in the Second Applicant who was registered as the leasehold proprietor on 26 September 2000.
- ~~9. The registered freehold proprietors of the Property are the Respondents, Latchmandath Persaud and Pillar Persaud, who were registered as such at HM Land Registry on 6 December 1985.~~
10. By order made by District Judge Pigram on 14 October 2016, and on the court being satisfied that the respondents could not be found, the respondent’s interest in the subject Property was vested in the applicants in accordance with section 26 of the Act.
11. It was further ordered that service by the applicants of a notice under section 13 of the Act was dispensed with and that the proceedings were to be transferred to this tribunal for a determination of the terms of the transfer of the respondents’ interest to the applicants (including but not limited to the price).

12. The tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 31 October 2016. The paper determination was originally scheduled to take place in the week commencing 12 December 2016 but this was not possible due to omissions and errors in the valuation report submitted by the applicants. By letter dated 12 December 2016 the applicants were directed to: (a) review and amend the valuation report stating the correct valuation date and to adjust details of the comparable evidence relied upon to that date; (b) explain the conclusion reached as to long leasehold value of the subject flats; (c) show the freehold vacant possession value adopted; (d) explain how a relativity figure of 93% was reached; and (d) set out the valuation in the normally accepted format including a marriage value calculation.
13. An amended valuation report was provided to the tribunal on 15 December 2016 and the application was considered on the papers on 9 January 2017.
14. The tribunal's jurisdiction is derived from the vesting order made by the court on 14 October 2016 in which the court dispensed with service of a notice under section 13 of the Act. The tribunal has serious concerns as to whether the first respondent is truly missing. It notes from the witness statement of Neysan Valente dated 3 May 2016 provided to the court that enquiry agents had suggested that the respondents may have immigrated to Florida in 1987 and that a letter was sent to the address in Florida provided by those agents but no response was received.
15. A letter from those agents dated 7 April 2015 [42] states that a couple with the same names had been found in Florida. Pillar Persaud had died on 29 October 2014 but was survived by her husband, Latchmandath Bharat Persaud. In their letter the agents provide the last public address for the couple and state that further enquiries could be made to confirm current residency in the US once it was confirmed that this was the couple they the applicants were searching for. In an email dated 8 April 2015 [45] the agents state that such enquiries would attract a fee of £350 plus VAT.
16. In a subsequent email dated 15 April 2015 [44] the enquiry agents state that they could say with a reasonably high degree of certainty that the persons they had identified were the respondents.
17. There is no indication in the documents before us that the further enquiries proposed by the enquiry agents at a cost of £350 plus VAT were ever undertaken. We find that unusual given the enquiry agents conclusion that they could say with a reasonably high degree of certainty that the persons they had identified were the respondents.

18. However, despite our concerns, the question of whether or not the landlords are truly missing is a matter for the county court and not for us. It is a question for the court as to whether or not it wishes to reconsider the vesting order or to stay this claim pending further enquiries as to the respondents' whereabouts.
19. We also note the highly unusual circumstances surrounding the removal, in 2010, from the freehold title of the roof space above Flat 29A and its transfer to the first applicants at a price of £5,000. This transfer was registered at HM Land Registry on 5 November 2010, about two months after the first applicants purchased their flat. In his witness statement [8] Mr Neysen Valente states that he acted on behalf of the first applicants on that purchase and that at that time the landlord was absent. That this is the case is evidenced by a letter from the first applicants' vendors solicitors, Collyer Bristow, dated 6 February 2015 [35] in which they state that the freeholder was absent prior to their own client's purchase of the flat.
20. We do not understand how the roof space was transferred to the first applicants shortly after they purchased their flat in 2010 given that the freeholders are said to have been missing at the time. No explanation as to who executed the transfer of the roof space has been provided to us. This application for collective enfranchisement will result in the highly unusual situation whereby there will be two freehold interests in respect of 29 Barclay Road.
21. Despite this observation, our jurisdiction is constrained by the terms of the vesting order. As such, we have proceeded to value the price to be paid by the applicants for the land comprised within title number EGL17133, which land excludes the roof space above Flat 29A. We assume that the applicants' valuer has adopted the same approach. There is no indication in his report that the contrary is true.

The statutory basis of valuation

22. Schedule 6 to the Act provides that the price to be paid by the nominee purchaser, in this case the applicants, for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.
23. The value of the freehold interest is the amount which, at the valuation date, that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.

24. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.
25. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

The evidence before the Tribunal

26. The applicants have provided a valuation report dated 8 December 2016 by Stephen Cornish, FRICS of Woodward, chartered surveyors ("the Valuation Report"). The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within his own knowledge that he believes them to be true and includes a statement of compliance confirming that he understands his duty to this tribunal.
27. Having considered the contents of the Valuation Report and the opinions expressed in that report the tribunal is broadly satisfied that the method adopted is appropriate to determine the enfranchisement price for the Property. The tribunal accepts the description of the property and its location as stated in the Valuation Report.
28. A photograph of the exterior of the Property was included in the Valuation Report. The tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

29. Flat 29 is a two bedroom ground-floor flat which has access to the rear garden. It comprises an entrance hall, two bedrooms (one with an ensuite shower room), a living room, a kitchen/breakfast room and a separate bathroom.
30. Flat 29A is a two bedroom flat on the first floor of the Property. It comprises a landing, two bedrooms, a living room, a kitchen and a bathroom/WC.
31. Entry to the two flats is via a shared ground floor entrance door.
32. It is stated in the Valuation Report that both flats have its own gas-fired boiler providing hot water and central heating. No tenants' improvements are mentioned in the Valuation Report.
33. The valuation date prescribed by section 27(1) of the Act is the date of the applicants' application to the court namely 5 May 2016. The

unexpired residue of the leases for both flats is approximately 69.14 years as at the valuation date and not 69.17 years as stated in the Valuation Report.

34. Ms Cornish's assessment of the market value of both flats is based on evidence of sales of five comparable flats in the E11 postcode during the period 10 February 2016 to 3 May 2016.
35. The first comparable, 72b Barclay Road was a sale of a two-bedroom ground floor conversion which sold for £372,000 on 3 March 2016 with a lease of 99 years from 10 January 2008.
36. The second comparable, 28a Beacontree Road, London, E11 3AX was a sale of a two-bedroom ground floor flat which sold for £385,000 on 29 March 2016 with a lease of 125 years from 14 June 1984.
37. The third comparable, 60 Acacia Road, London, E11 3QG was a sale of a two-bedroom ground floor flat which sold for £385,000 on 29 March 2016 with a lease of 125 years from 14 June 1984.
38. The fourth comparable, 54 Woodhouse Road, London, E11 was a sale of a two-bedroom ground floor flat which sold for £324,000 on 29 April 2016 with a lease of 99 years from 29 September 2016
39. The fifth comparable, 9b Queens Road, London E11 1BA, was a sale of a newly-renovated two-bedroom first floor flat which sold for £417,500 on 3 May 2016 with a lease of 990 years,
40. From this material Mr Cornish draws the conclusion that the long lease value of Flat 29 as at as at the valuation date was £385,000 and that the long lease value of Flat 29A on that same date was 360,000. We are satisfied with the relevance and details of all of the comparable properties provided in the Valuation Report with the exception of the fifth comparable which we do not consider to be a valuable comparable because it sold with the benefit of a garden and with a car parking space and there is no evidence before us as to the value attributable to those benefits. However, excluding that comparable does not make a significant difference to this valuation exercise and accept Mr Cornish's assessment as to the long lease values of both flats.
41. The tribunal considers it necessary to uplift the long lease values to their notional freehold value. We calculate the freehold vacant possession value ("FHVP") of Flat 29 to be £388,889 and the FHVP of Flat 29A to be £363,636 (applying a 1% uplift to the long lease values of each flat).
42. Mr Cornish relies on the Beckett & Kay and South East Leasehold graphs of relativity. He also refers to he Nesbitt graph but excludes this

from his calculation on the basis that Nesbitt acts mainly for landlords. We accept that excluding the Nesbitt graph is appropriate for that reason. We are also satisfied that it is appropriate to rely on the South East London graph given the outer-London location of the Property and that Mr Cornish's approach of adopting a mid-way point between the Beckett and Kay and South East London graphs is reasonable. We therefore accept his 92.36% relativity figure.

43. Applying 92.36% to the FHVP of Flat 29 of £388,889 produces a value as at the valuation date, of £359,178.
44. Applying 92.36% to the FHVP of Flat 29A of £363,636 produces a value as at the valuation date, of £335,854.
45. 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 their leases. That income stream is capitalised by Mr Cornish at 7%, which the tribunal accepts is robust and appropriate in this case.
46. Next, the effect of enfranchisement will deprive the landlord of the freehold reversion of the Property. The present value of the reversion is determined by applying a deferment rate to the freehold value of both flats. 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. Mr Cornish also adopts the Sportelli deferment rate of 5% which we accept.
47. The marriage value is to be shared equally between the parties, as required by the Act.
48. The tribunal's own valuation is appended to this decision as Appendix 1. It differs from Mr Cornish's valuation because of the need to uplift the long lease values to their notional freehold value which was not addressed by Mr Cornish despite the tribunal's letter of 12 December 2016 and because he has miscalculated the unexpired residue of both leases.
49. The premium to be paid by the applicants for the freehold interest in the Property is therefore **£42,703**.

Name: Amran Vance

Date: 7 January 2017

Appendix 1 – The Tribunal’s Valuation

29 Barclay Road London E11 3DQ

Ref LON/00BH/OCE/2016/0323

Collective enfranchisement

Valuation Date	05 May 2016
Lease	99 years from 24 June 1986
Unexpired term	69.14 years
Ground rent	£75 pa for the term
Deferment rate	5%
Capitalisation rate	7%
Relativity (freehold to existing lease)	92.36%
Long lease value	
Ground floor flat	£385,000
First floor flat	£360,000
Notional freehold value. Long lease value plus 1%	
Ground floor flat	£388,889
First floor flat	£363,636
Existing lease value at 92.36% of freehold value	
Ground floor flat	£359,178
First floor flat	£335,854

Freehold interest

Existing		
Ground rent receivable for both flats	£150	
YP 69.14 yrs @ 7%	14.15289	£2,123
Reversion to freehold value	£752,525	
PV of £1 in 69.14 years @ 5%	0.03427	£25,789
Value of freehold interest		£27,912

Marriage Value

Proposed interest		
Freeholder	£0	
Tenant	£752,525	£752,525
Existing interest		
Freeholder	£27,912	
Tenant	£695,032	£722,944

Marriage value	£29,581	
Marriage value @ 50%		£14,791
Value of pathways and communal areas		<u>£500</u>
Premium payable		<u>£42,703</u>

Appendix 2

Leasehold Reform, Housing and Urban Development Act 1993

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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement] 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 [RTE company], 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 the RTE company] 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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement], 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 [RTE company], 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 RTE company], 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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement], 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 [RTE company], 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 [RTE company] would not have been precluded by any provision of this Chapter from giving a valid notice under section 13 with respect to those premises[a

nd that the RTE company has given notice of the application to each person who is the qualifying tenant of a flat contained in those premises].

(5) Before making any such order the court may require the applicants [RTE company] 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 [RTE company] had, at the date of the application, duly given notice under section 13 of their [its] 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 [RTE company] 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 [RTE company], 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 [RTE company] 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 [RTE company] on any person who it knows or has] 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.