



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

Case Reference : **LON/00AH/OCE/2022/0013**

Property : **6 Elgin Road, Croydon, Surrey
CRO 6XA**

Applicants : **Tahseen Hussain, Mr & Mrs
Neeraj and Roselyn Nijhawan**

Representative : **Adcocks Solicitors**

Respondent : **Jorge Manuel Carvalho**

Representative : **None**

Type of Application : **Determination of premium to
acquire the freehold section 26,27
of the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal Members : **Mr D Jagger MRICS (Valuer
Chair)**

**Date of Paper
Determination** : **20th April 2022**

Date of Decision : **20th April 2022**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the freehold interest in **6 Elgin Road Croydon CRO 6XA** ('the premises), pursuant to section 26,27 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), is a total of **£53,000** (Fifty three thousand pounds) of which £5124 is attributed to the ground floor flat and £47,876 to the first floor flat.
- (2) The Tribunal approves the terms of the new lease in the form of the draft transfer attached to the bundle.
 1. This has been a paper decision which has been consented to by the applicants. The documents that were referred to, are in a bundle prepared by the applicant running to 167 pages, plus the tribunals Directions the contents of which we have recorded. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicants, in accordance with previous directions.
 2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

The application

1. On 3rd July 2020, Adcocks solicitors issued a Part 8 Claim in the County Court of Croydon under claim number GooCR6664 seeking a vesting order under section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act').
2. On 7th January 2022 Deputy District Judge Daley made an order in the following terms:
 - "1. *Service of a notice pursuant to section 13 of the Act shall be dispensed with.*
 2. *Pursuant to s26(1) of the Leasehold Reform Housing and Urban Development Act 1993 the interest of the Defendants registered at HM Registry with title number SY47739 (the property) are vested in the Claimants on such terms and at such price to be determined in accordance with chapter 1 of the Act by the First Tier Property Chamber (Residential Property)*
 3. *Those proceedings shall be transferred to the First Tier Property Tribunal for the purposes of determining the said terms set out in paragraph 2 above.*

4. *Pursuant to section 27(3) of the Act Once the price and terms of acquisition have been determined by the First Tier Tribunal, upon which the freehold shall vest in the claimants having determined the form and terms of the conveyance and the claimants having paid into court 50% of the appropriate sum pursuant to section 27(5) of the Act (the Defendants share) the claimants solicitor Adcocks is designated as the person to execute the freehold transfer on behalf of the defendant.*
5. *The defendant shall pay the claimants costs of this application summarily assessed in the sum of £11,129 such sum is payable by 4pm on 20th September 2021.*
6. *The claimants may set off against the Defendants share, and reduce the amount they pay into Court under paragraph 4 by, such part (if any) of the costs ordered in paragraph 5 as then remains outstanding*
3. The applicants' representatives were unable to locate Mr Jorge Manuel Carvalho.
4. The application was submitted to the Tribunal on 11th January 2022 and directions were issued on 20th January 2022. These provided that case would proceed to a paper determination. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 15th March 2022.
5. In accordance with the directions, the applicants' solicitors supplied the Tribunal with a document bundle that contained copies of relevant documents from the County Court proceedings, various title documents, the two existing leases and a comprehensive Expert Witness valuation report of Mr GR Bates BA.FRICS dated 23rd February 2022.
6. The relevant legal provisions are set out in the appendix to this decision.

The background

7. The two leasehold interests in the Flats are now registered in names of Mr T Hussain (Ground floor flat) who also owns 50% of the freehold and Mr and Mrs Nijhawan by virtue of transfers made on 23rd June 2007 and 16th July 2004 respectively. The freehold of the building has been registered in the name of Mr Jorge Manuel Carvalho.
8. The property is substantial Victorian property located in an established residential area converted to form ground and first floor flats.with two

bedrooms approached via a communal hallway. The ground floor flat has a cellar and each flat has access and use of the communal rear garden. There is informal 'off street' parking on the frontage which is within the demise of the ground floor flat.

The issues

9. The Tribunal is required to determine the premium to be paid for the freehold interest of the 1993 Act and the appropriate sum to be paid into Court pursuant to section 27(1)-(7) of the Act.
10. The Tribunal did not consider that an inspection of the Flat was necessary under current circumstances, nor would it have been proportionate to the issues in dispute.
11. Having studied the various documents in the applicant's bundle, the Tribunal has made the determination set out below.

The sum to be paid into court

12. At that date, the leases for the ground floor flat had an unexpired term of 85.5 years. The Tribunal agrees, in view of the fact, that the lease has an unexpired term greater than 80 years no marriage value is deemed to exist. Conversely, the first floor flat has an unexpired term of 53.5 years and as such a marriage value calculation must apply.
13. Having carefully scrutinised the valuation, including the comparable evidence, the Tribunal agrees the capitalisation and deferment rates, methodology to calculate relativity and the long lease values.
14. The Tribunal examined the eight comparables provided in the report, each of which were conversion of Victorian properties to form two bedroom flats located within a reasonable radius of the subject. It would be good practice on behalf of the Valuer to provide the precise unexpired term of the leases for each comparable and to prepare a schedule which makes valuation adjustments in order to provide a precise methodology. Such adjustments would take into account location, internal specification, onsite parking, private garden and indexation for time lapse in comparison with the valuation date. No such schedule was provided by Mr Bates, however, despite these minor misgivings, based upon the comparable evidence the Tribunal agrees with the two long lease valuations of £323,000 and £275,000. (Plus 1% to calculate equivalent freehold value.)
15. There was no evidence of any ground rent or service charge arrears for the Flats. In the absence of such evidence, the Tribunal determines that no additional sums are payable under the 1993 Act. It follows that the appropriate sum to be paid into Court is £53,000 and the Tribunal

agrees with the valuation prepared by Mr Bates which formed Annex 1 of his report.

Terms of the new lease

16. We have considered the Draft Transfer attached to the bundle and are content that the draft goes no further than the current lease terms. We are satisfied that the terms should be approved as drafted.

Name: Mr D Jagger MRICS

Date: 20th April 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

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

Section 26,27.

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) 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.

Supplementary provisions relating to vesting orders under section 26(1).

(1)

A vesting order under section 26(1) is an order providing for the vesting of any such interests as are referred to in paragraph (i) or (ii) of that provision—

(a)

in such person or persons as may be appointed for the purpose by the applicants for the order, and

(b)

on such terms as may be determined by the appropriate tribunal to be appropriate with a view to the interests being vested in that person or those persons in like manner (so far as the circumstances permit) as if the applicants had, at the date of their application, given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises with respect to which the order is made.

(2)

If

If the appropriate tribunal so determines in the case of a vesting order under section 26(1), the order shall have effect in relation to interests which are less extensive than those specified in the application on which the order was made.

(3)

Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which—

(a)

is in a form approved by the appropriate tribunal and

(b)

contains such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 34 and Schedule 7;

and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.

(4)

In connection with the determination by the appropriate tribunal of any question as to the interests to be conveyed by any such conveyance, or as to the rights with or subject to which they are to be conveyed, it shall be assumed (unless the contrary is shown) that any person whose interests are to be conveyed (“the transferor”) has no interest in property other than those interests and, for the purpose of excepting them from the conveyance, any minerals underlying the property in question.

(5)

The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of—

(a)

such amount as may be determined by the appropriate tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and

(b)

any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).

(6)

Where any interest is vested in any person or persons in accordance with this section, the payment into court of the appropriate sum in respect of that interest shall be taken to have satisfied any claims against the applicants for the vesting order under section 26(1), their personal representatives or assigns in respect of the price payable under this Chapter for the acquisition of that interest.

(7)

Where any interest is so vested in any person or persons, section 32(5) shall apply in relation to his or their acquisition of that interest as it applies in relation to the acquisition of any interest by a nominee purchaser.