



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

Case Reference : LON/00AT/OCE/2013/0279

Property : 36 Harvard Road, Chiswick,
London W4 4EA

Applicants : Mr B L Blinman
Ms N A Gooding
Mr N J Brown

Representative : Bartlett Gooding & Weelen,
solicitors

Respondent : J D English and A B English

Representative : Not represented (missing
landlords)

Type of Application : Application under section 26
Leasehold Reform, Housing and
Urban Development Act 1993 (the
“Act”) for collective
enfranchisement where the
relevant landlord cannot be found.

Tribunal Members : Judge Pittaway
Mr D Jagger

Date of Decision : Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013
28 January 2014

DECISION

Introduction

1. The Respondents are the freehold proprietors of 36 Harvard Road, Chiswick, London W4 4EA registered at the Land Registry under title number NGL39494.
2. Mr M M Laursen and Mr N J Brown (the latter one of the Applicants) are the leaseholders of the ground floor flat, Flat 1 36 Harvard Road held under a lease dated 28 April 1988 for a term of 99 years from 28 April 1988 at a rent of £100 p.a for the first 33 years of the term, £125 for the following 33 years and £150 for the remainder of the term.

Mr and Ms Blinman (the former one of the Applicants) are the leaseholders of the first floor flat, Flat 2 36 Harvard Road held under a lease dated 21 June 1989 for a term of 125 years from 25 March 1989 at a rent of £100 p.a for the first 50 years of the term, £125 for the following 50 years and £150 for the remainder of the term.

Mr C J Laidlaw and Ms N A Gooding (the latter one of the Applicants) are the leaseholders of the second floor flat, Flat 3 36 Harvard Road held under a lease dated 9 November 1988 for a term of 99 years from 25 March 1988 at a rent of £50 p.a for the first 33 years of the term, £125 for the following 33 years and £150 for the remainder of the term.

(collectively the "Premises")

3. By a claim (No.3ECO2352) dated 23 July 2013 (the "relevant date") in the Clerkenwell and Shoreditch County Court the Applicants applied for an Order dispensing with the need to give notice to the Respondents, as they could not be found, of the qualifying tenants' right to collective enfranchisement; and a Vesting Order under section 26(1) of the 1993 Act, vesting in themselves as nominee purchasers any interests of the freeholder in the Premises to which they have the right of collective enfranchisement by virtue of sections 1(1), 1(2) (a) or 2(1) of the 1993 Act, upon terms and at such price as may be determined by a First-tier Tribunal (Property Tribunal).
4. By an Order dated 17 October 2013 District Judge ordered that service of a Claim Form and any requirement to serve notice under section 13 of the Act on the Respondents was dispensed with and that the Applicants were entitled to have the freehold of the Premises vested in them on such terms as may be determined by the First-tier Tribunal (Property Tribunal).
5. The Applicants have provided the Tribunal with a copy of the Applicants' claim in the county court, official copies of the freehold and leasehold interests in the Premises, copies of the leases of the three flats, a sealed copy of the Order of 17 October 2013, a valuation report by Mr John

Crosbie FRICS, which the Applicants stated was dated 3 April 2013. (The copy valuation before the Tribunal is in fact dated 15 January 2014, states that the initial report was made in February 2013 but has been updated with reference to the Land Registry index to 18 July 2013.) The Tribunal has also been provided with a draft TR1 transfer.

6. The Applicants requested that the matter be determined without an oral hearing.

Decision

1. The Tribunal did not carry out an inspection but relied on the description of the Premises given on pages 1-4 of Mr Crosbie's report.
2. The relevant date is namely 23 July 2013 and not 18 July 2013 as stated in Mr Crosbie's report. The Tribunal does not consider that this discrepancy in dates of two days has any impact on the valuation.
3. At the relevant date the leases had remaining terms of

Flat 1:	73.78 years
Flat 2:	100.69 years
Flat 3:	73.69 years
4. The relevant legislation is annexed as Appendix 2 to this decision.
5. As the leases of Flats 1 and 3 have less than 80 years to run marriage value at 50% is payable. No marriage value is payable for Flat 2.
6. Compensation under paragraph 5 of Schedule 6 of the 1993 Act does not arise.
7. The Respondent landlords have not served any rent demands in statutory form so no arrears of rent is payable, and no sum is therefore payable into Court under section 27 (5) (b) of the Act.
8. Because the Tribunal does not believe that the difference has a material effect on the valuation they are prepared to accept Mr Crosbie's submission that the ground rents should be capitalised at 6 per cent per annum, although the Tribunal's own knowledge of market values suggests that a capitalisation rate of 7% might have been more appropriate.
9. The Tribunal agrees with Mr Crosbie's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.
10. The Tribunal considers that Mr Crosbie's opinion of the freehold vacant possession values of the Flats 2 and 3 to be below the tone of value in this locality for this type of property and have adjusted the unimproved freehold values accordingly. The Tribunal notes Mr Crosbie's statements in

respect of “Improvements” in his report, which they are prepared to accept although he has not provided any evidence to substantiate that they are tenants’ improvements nor the quantum claimed. It is the opinion of the Tribunal, based on their knowledge and experience, that the unimproved freehold value allowing for tenants’ improvements at the Premises is £1,280,000.00 and the unimproved freehold value allowing for tenant’s improvements of each flat is as follows;

Flat 1	£495,000.00 (because it has the benefit of a garden).
Flat 2	£460,000.00 (while it also has a garden it is less valuable by reason of its smaller size).
Flat 3	£325,000.00 (it is a smaller one bedroom loft conversion without the benefit of a garden).

11. In the absence of transaction evidence Mr Crosbie assesses the existing leasehold value of Flats 1 and 3 by applying relativity of 94.2% for remaining terms of 73.78 and 73.69 years respectively for Flats 1 and 3. Mr Crosbie submits that this is derived from the RICS Research Report October 2009 Leasehold Reform Graph of Relativities, taking an average of the “non PCL” graphs relating to suburban locations, specifically those of Nesbitt and Co, South East Leasehold and Pridell. The Tribunal accept this figure in the absence of transaction evidence.
12. The Tribunal’s valuation is annexed at Appendix 1 and shows the amount payable is **£41,220.00**
13. As to the terms of the transfer the draft TR1 provided is approved subject to the following amendments;
 - a. The consideration in Clause 8 of the TR1 is £41,220.00.
 - b. In clause 9 the transferees should transfer with limited title guarantee, as required by paragraph 2(2) (b) Schedule 7 of the 1993 Act.
 - c. The transfer must contain a statement that it is a conveyance executed for the purposes of Chapter 1 of the Act in such a form as complies with land registry requirements; and
 - d. The transfer must contain the correct sealing block for execution by such person as the County Court may designate.

It is not a matter for approval by the Tribunal but the Applicants may care to consider whether a corporate transferee might simplify future transfers of part interests in the freehold.

APPENDIX 1

36 Harvard Road London W4 4EA
Assessment of premium for Collective Enfranchisement
In accordance with Section 26 Leasehold Reform, Housing and Urban
Development Act 1993 (As Amended)
Ref: LON/00AT/OCE/2013/0279

Components

Valuation date:	23/07/2013
Yield for ground rent:	6.0%
Deferment Rate:	5.0%
Extended lease value	
Flat 1	£495,000
Flat 2	£460,000
Flat 3	£325,000
Relativity	94.2 %

Diminution in value of Freeholders Interest

1-Freeholder's Present Interest

Flat 1

£100 for 7.78 years @ 6.0%			
£100 x 6.0749		£607	
£125 for 33 years	125		
YP 33 years, deferred 7.78yrs @ 6%	9.0434	£1,130	
£150 for 33 years	150		
YP 33 years, deferred 40.78yrs @ 6%	1.3220	£198	£1,936

Flat 2

£50 for 25.69 years @ 6.0%			
£50 x 12.9364		£647	
£125 for 50 years	125		
YP 50 years, deferred 25.69yrs @ 6%	3.5278	£441	
£150 for 25 years	150		
YP 25 years, deferred 75.69yrs @ 6%	0.1553	£23	£1,111

Flat 3

£50 for 7.69 years @ 6.0%

£50 x 6.0192		£301	
£125 for 33 years	125		
YP 33 years, deferred 7.69yrs @ 6%	9.0910	£1,136	
£150 for 33 years	150		
YP 33 years, deferred 40.69yrs @ 6%	1.3290	£199	£1,637
			£4,684

2- Valuation of reversion:

Flat 1	£495000 @ 5.0% def'd 73.78 years £495000 x 0.0273	£13514
Flat 2	£460000 @ 5.0% def'd 100.69 years £460000 x 0.074	£3404
Flat 3	£325000 @ 5.0% def'd 73.69 years £325000 x 0.0275	£8938

Value of freehold

Flat 1	£15,450	
Flat 2	£4,515	
Flat 3	£10,575	£30,540

Marriage Value (2 participating flats)

Extended lease value			
LESS		£820,000	
Existing leasehold value			
Flat 1	£466,290		
Flat 2	£306,150	£772,440	
Freehold interest			
Flat 1	£15,450		
Flat 2	£10,750	£26,200	£798,640
Marriage value		£21,360	
50% of Marriage Value			<u>£10,680</u>

Price to be paid for a share in the freehold interest **£41,220**

APPENDIX 2

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

S 24 Applications where terms in dispute or failure to enter contract.

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser—

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(7) In this section “the parties” means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter “the terms of acquisition”, in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

S 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.

S 32 Determination of price.

(1) Schedule 6 to this Act (which relates to the determination of the price payable by the nominee purchaser in respect of each of the freehold and other interests to be acquired by him in pursuance of this Chapter) shall have effect.

SCHEDULE 6 PART II FREEHOLD OF SPECIFIED PREMISES

Price payable for freehold of specified premises

2(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of—

- (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
- (b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the freeholder under paragraph 5.

(2) Where the amount arrived at in accordance with sub-paragraph (1) is a negative amount, the price payable by the nominee purchaser for the freehold shall be nil.

Value of freeholder's interest

3(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises 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 no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple—
 - (i) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but
 - (ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;
- (b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant);
- (c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7.

(1A) A person falls within this sub-paragraph if he is—

- (a) the nominee purchaser, or
- (b) a tenant of premises contained in the specified premises, or
- (ba) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or
- (c) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the valuation date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining that amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of the interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

Freeholder's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent. of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value—

(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

(3) For the purposes of sub-paragraph (2) the value of the freehold or any intermediate leasehold interest in the specified premises when held by the person from whom it is to be acquired by the nominee purchaser and its value when acquired by the nominee purchaser—

(a) shall be determined on the same basis as the value of the interest is determined for the purposes of paragraph 2(1)(a) or (as the case may be) paragraph 6(1)(b)(i); and

(b) shall be so determined as at the valuation date.

(4) Accordingly, in so determining the value of an interest when acquired by the nominee purchaser—

(a) the same assumptions shall be made under paragraph 3(1) (or, as the case may be, under paragraph 3(1) as applied by paragraph 7(1)) as are to be made under that provision in determining the value of the interest when held by the person from whom it is to be acquired by the nominee purchaser; and

(b) any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser shall be disregarded.