

4441



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

Case reference : **MR/LON/00AE/OCE/2016/0321**

Property : **128 Wrotesley Road
London NW10 5XR**

Applicants : **Mr Paul Todd (1)
Ms Myra Todd (2)
Mr David Fallon (3)**

Representative : **Hodders Law solicitors, Harlesden**

Respondent : **Ms Ann Williams (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 : **1 February 2017**

Determination based on Written Representations

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 129 Wrotesley Road London NW10 5XR pursuant to Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), is £11,880 (eleven thousand eight-hundred and eighty pounds).
- (2) The terms of the draft TR1 transfer as supplied to the Tribunal are approved.

Reasons

Introduction

1. This matter relates to an application made 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 129 Wrotesley Road London NW10 5XR ("the property").
2. By proceedings brought under CPR Part 8 and issued on 1 September 2016 ("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 District Judge Holmes sitting in the County Court at Willesden dated 26 October 2016, the application for dispensation was granted. The matter was transferred to the Tribunal for the determination of:
 - (a) The terms of the acquisition 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 28 October 2016 requiring bundles to be provided by 25 November 2016, later extended to 2 December 2016. 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"). I did not consider that an inspection was necessary or proportionate in this case.
4. An initial valuation report was received on 29 November 2016. The Tribunal raised some technical issues in relation to that report and a revised report was received by the Tribunal on 30 January 2017 which is before me.

Expert Evidence

5. The Tribunal was supplied with an expert valuation report prepared by Mr Stephen Baker MSc MRICS Director of Valuation and Ms Mary-Anne Bowring FRICS FIPRM FCABE FARLA, Director of Ringley Chartered Surveyors. This was a valuation of £11,909. Mr Baker and Ms Bowring have correctly addressed their report to the Tribunal and included declarations of truth required by the RICS. The actual wording required by rule 19 (expert evidence) of the Tribunal Rules "I believe that the facts stated in this report are true and that the opinions stated are correct" has not been included but I am satisfied that the declarations included are to the same effect. 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 Baker and Ms Bowring fully understand their duties to the Tribunal.
6. The substantive valuation sections of the report may be summarised as follows. Mr Baker inspected the property 8 November 2016. The property comprises a two-storey semi-detached house dating from circa 1910. The property is of solid brick under pitched tiled roofs. The property has been converted into ground and first floor flats. The ground floor flat comprises two bedrooms, living room, kitchen/diner and bathroom. The net internal area is 1147 sq. ft. The first floor comprises three bedrooms, living room, kitchen, bathroom and WC. The net internal area is 1024 sq. ft. The flats were in good condition. An exterior photograph was included. There is a single parking space in the front. The property is within ½ mile of Willesden Junction Station but on a relatively busy road.
7. The leases of the flats were each demised for 125 years from 29 September 1994. The ground rents are rising from £100 increasing by £50 every 25 years but then reducing in the last 25 years of the term by £50. At the valuation date, there were 103.69 years unexpired.
8. The experts applied 7% for the capitalisation rate and 5% for deferment based on the *Sportelli* decision and settlements. As more than 80 years remains unexpired, no marriage value is payable.
9. As to extended lease values, Mr Baker and Mss Bowring relied on four comparables, details of which were provided. 89 Wrotesley Road was the sale of a new 125 year lease in July 2015 of a converted 2 bedroom maisonette with a share of the freehold, internal area 996 sq. ft. 46b Leghorn Road NW10 is a 2-bedroom converted flat of 748 sq. ft., sold with an unexpired term of 96 years in July 2016 for £528,000. 13a Palmero Road NW10 is a 3-bedroom purpose built maisonette of 936 sq. ft. sold for £560,000 in August 2016. 10 Odesa Road is a 2-bedroom ground floor purpose-built maisonette of 840 sq. ft. sold in May 2016 for £560,000. In light of these comparables the experts opined that the

extended lease value of the ground floor flat was £570,000 and that of the first floor £540,000.

Decision

10. Regrettably, I have been unable to identify any valuation calculation appended to the revised experts' report, which increased the amount of time I needed to decide this case.
11. At the valuation date of 1 September 2016, I calculate that the unexpired terms were 103.08 years.
12. Having regard to *Sportelli* and the settlement evidence produced, I agree with the deferment and capitalisation rates put forward. Having considered the comparable evidence, I give weight to each of the four comparables and accept the extended lease values put forward. As to the ground rents, the first floor flat lease contains an inconsistency between words and numbers for the rent payable during last 25 years and I prefer the words (three hundred pounds) against "£200" which is also stated. This is because it is highly unlikely that the ground rent would diminish. Although I expect that the corresponding reference to "£200 / two hundred pounds" in the ground floor lease may be a drafting error I am bound by the clear wording. This issue is not material to the valuation.
13. I do not agree that 1% should be added to reflect what the experts say is the "uplift to freehold value", although absent a calculation it is not clear how this has been addressed. In any event, no evidence is provided to support this opinion. Flying freehold flats would not ordinarily be saleable because positive covenants, such as those for support, do not run with the land.
14. I append my valuation calculation and extracts of relevant legislation.
15. The terms of the draft TR1 transfer as supplied to the Tribunal make correct reference to the Act and transferring with limited title guarantee and are approved.

Name: Charles Norman FRICS **Date:** 2 February 2017

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.
- 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.
- 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.
- 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

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 128 WROTTESLEY ROAD LONDON NW10 5XR
VALUATION BY THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation	01-Sep-2016
Lease expiry date (both flats)	28-Sep-2119
Unexpired Term of both flats	103.08
<i>Virtual Freehold Values of Flats</i>	
First floor flat	£ 540,000
Ground floor flat	£ 570,000
Ground rent capitalisation rate	7.00%
Reversionary deferment Rate	5.00%
Premium Payable	£11,880

Value of Freeholder's Present Interest

Term 1

Ground rents	£ 200.00 per annum
3.08 Years' Purchase @ 7.00%	2.687
	£ 537.40

Term 2

Ground rents	£ 300.00 per annum
25 Years' Purchase @ 7.00%	11.65
PV £1 in 3.08 years @ 7.00%	<u>0.8119</u>
	9.45864
	£ 2,837.59

Term 3

Ground rents	£ 400.00 per annum
25 Years' Purchase @ 7.00%	11.65
PV £1 in 23.08 years @ 7.00%	<u>0.2098</u>
	2.44417
	£ 977.67

Term 4

Ground rents	£ 500.00 per annum
25 Years' Purchase @ 7.00%	11.65
PV £1 in 48.08 years @ 7.00%	<u>0.03879</u>
	0.4519
	£ 225.95

Term 5

Ground rents	£ 500.00 per annum
25 Years' Purchase @ 7.00%	11.65
PV £1 in 7 cc @ 7.00%	<u>0.0071</u>
	0.08272
	£ 41.36

Reversion

value of virtual freehold ground and first floor flats	£ 1,110,000
Present Value of £1 in 103.08 years' time @ 5%	0.00654
	<u>£ 7,263.29</u>
	£ 11,883.25
Say	£11,880