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

Case Reference : **RC/00AC/OCE/2017/0269**

Property : **8 Garrick Road,
London NW9 6AP**

Applicants : **(1) Dolores K Guckion
(2) Teresa M Joyce
(3) Daniel Hayward**

Representative : **MHS Sprecher Grier Ltd**

Respondent : **John P Henderson**

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

Tribunal Members : **Mr N Martindale FRICS**

Date of Decision : **14 February 2018**

DECISION

Decisions of the Tribunal

1. The premium to be paid by the applicants for the freehold interest in 8 Garrick Road, London NW9 6AP, registered at HM Land registry under title number MX204520 (the "Property") is **£42,230**.
2. The Tribunal did not receive a draft form TR1 with the application and is therefore unable to approve same or otherwise amend.

Introduction

3. 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 the Appendix to this decision.
4. The Property is a two level detached late Victorian building consisting of two self contained flats from the former house. Flat 8 Garrick Road is the ground floor flat (lower) and Flat 33a is the first floor flat (upper).
5. The First Applicant, Dolores Guckion is the long leaseholder of Flat 8a and holds her interest under the terms of a lease dated 19 December 1984 and registered under title number NGL517951. That lease was granted by the respondent to the applicant’s predecessors Pankaj Shah and Savita Shah, for 99 years from 19 December 1984. The lease reserves a fixed ground rent of £10 a year. The residual term of the lease is now vested in the first applicant who was registered as the leasehold proprietor on 19 March 2007.
6. The Second Applicant and Third Applicant, are Teresa Joyce and Danial Hayward, the long leaseholders of Flat 8, and hold their interest under the terms of a lease dated 12 August 1987, registered under title number NGL596365. That lease was granted by the respondent John Henderson to Stephen Malcolm Taylor, for a term of 99 years from 24 April 1987. The lease reserves a fixed ground rent of £10 a year. The residual term of the lease remains vested in the second and third applicants who were registered as the leasehold proprietors on 25 July 2016.
7. The registered freehold proprietor of the Property is the respondent John Henderson, who was registered as such under title number MX204520 on 12 May 1986.
8. By order made by Deputy District Judge Tomlinson 31 October 2017, and on the court being satisfied that the respondent 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.
9. 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).
10. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on

15 December 2017, in the week commencing 8 January 2018. However owing to a failure by the applicant to fully comply with these directions the matter was considered by the Tribunal in the week beginning 12 February 2018.

11. The Tribunal's jurisdiction is derived from the vesting order issued by the court on 31 October 2017 in which the court dispensed with service of a notice under section 13 of the Act.

The statutory basis of valuation

12. 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.
13. 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.
14. 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.
15. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

The evidence before the Tribunal

16. The applicants have provided a valuation report dated 17 December 2017 by A Row, of Messrs Lamberts 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 their own knowledge that he believes them to be true and includes a statement of compliance confirming that they understands their duty to this Tribunal.
17. This valuation report was however inadequate, it had the wrong valuation date by 7 days and had to be supplemented on request from the Tribunal with additional information which was received with a covering letter dated 18 January 2018.

18. 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.
19. 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

20. According to the Valuation Report, 8 Garrick Road consists of two flats: is a ground floor flat which has access to the rear garden. It comprises an entrance hall, three bedrooms, living room, kitchen, and bathroom/WC. 8a Garrick Road is a first floor flat and comprises an entrance hall, two bedroom, living room, kitchen and bathroom/WC.
21. Entry to the two flats is via a shared ground floor entrance door and small front garden.
22. No tenants' improvements are mentioned in the Valuation Report.
23. The valuation date prescribed by section 27(1) of the Act is the date of the applicants' application to the court namely 6 July 2017 not 29 June 2017 as stated in the report. The unexpired residue of the leases for Flat 8 is approximately 68.47 years and for Flat 8a is 66.47 years.
24. The valuer's assessment of the market value of both flats is based on evidence of completed sales of five comparable flats during November 2016 to May 2017.
25. From this material the valuer draws the conclusion that as at the valuation date, the long lease value, of Flat 8, with the benefit of the rear garden was £400,000 and that of 8a, with the benefit of the loft space, was £375,000. The Tribunal is satisfied with the relevance and details of the five comparable property sales provided in the Valuation Report and their analysis by the valuer to reach the assessment of virtual freehold vacant possession value for each of the two flats.
26. The Tribunal notes and accepts the 1% adjustment by the valuer in uplifting each of the long lease values to their notional freehold value.
27. The valuer having found no reliable sales of short leasehold flats of otherwise similar flats in the locality, considered all of the RICS published graphs of relativity, but selected the South East Leasehold graphs of relativity contained within the RICS Greater London and

England graphs. The valuer then proceeds identify the resulting percentages to the corresponding unexpired terms for each lease which are slightly different. The Tribunal accepts, for Flat 8 of 92.39% and for Flat 8a of 91.59% relativity figures.

28. The valuer duly applies these percentage relativities to each of the virtual freehold values for the respective flats to obtain the value of the current short leasehold interest in each case.
29. 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 the valuer at 7%, which the Tribunal accepts is robust and appropriate in this case owing to the relatively unchanging and very low ground rents.
30. 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. The valuer also adopts the Sportelli deferment rate of 5% which the Tribunal accepts.
31. The marriage value is to be shared equally between the parties, as required by the Act.
32. The valuer's final valuations for each part of the property to be acquired are as follows: 8 Garrick Road (lower) £20660; 8a Garrick (upper) £21570. The valuer places no value on the 'compensation' for loss by the freeholder of the final reversion.
33. The Tribunal accepts the valuations for each flat and the submission that no value should be ascribed for compensation.
34. The premium to be paid by the applicants for the freehold interest in the property is therefore **£42,230, (forty two thousand, two hundred and thirty pounds)**.

Name: Neil Martindale

Date: 14 February 2018

Appendix

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.