



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

**Case Reference** : **LON/00BA/OCE/2021/0112**  
**P:REMOTE**

**Property** : **47 Pelham Road London SW19 1SU**

**Applicant** : **47 Pelham Road Freehold Ltd**

**Representative** : **South East Leasehold Ltd**

**Respondent** : **Mahwash Tanveer**

**Representative** : **Not represented**

**Type of Application** : **Collective enfranchisement, missing landlord s27 Leasehold Reform Housing and Urban Development Act 1993**

**Tribunal Member** : **Judge F J Silverman MA LLM  
Mrs S Redmond MRICS**

**Date of paper consideration** : **23 August 2021**

**Date of Decision** : **23 August 2021**

## DECISION

The Tribunal determines that the appropriate sum to be paid into Court for the freehold interest in **47 Pelham Road London SW19 1SU** ('the property'), pursuant to sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 is **£88,857.58** (eighty eight thousand eight hundred and fifty seven pounds and 58 pence).

## REASONS

1 This has been a paper decision which has been consented to by the applicant. The documents referred to below are in an electronic bundle prepared by the applicant in accordance with the Tribunal's directions.

2 The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle to be sufficient to enable the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

3 The representatives of the tenants of Flats A,B,D and E at the property issued a Part 8 Claim in the County Court seeking a vesting order under section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). Flat C is vacant and undemised and remains as part of the freehold.

4 On 27 May 2021 District Judge Jarzabkowski made an order in the following terms:

'1. Pursuant to s 26 of the Leasehold Reform Housing and Urban Development Act 1993 the freehold property comprised in title SGL 80995 and known as 47 Pelham Road London SW 19 1SU is vested in the Claimants (or in a company to be nominated by them on terms to be determined by the First Tier Tribunal (Property Chamber)).

2. The Claimants may dispense with the service of an initial notice under s13 of the Leasehold Reform Housing and Urban Development Act 1993 on the Defendant.

3. These proceedings shall be transferred to the London region of the First Tier Tribunal (Property Chamber).

4. In addition to the terms of acquisition pursuant to s27 of the 1993 Act the First Tier Tribunal (Property Chamber) shall also determine the amount of service charges paid by the Claimants on behalf of the Defendant as result of her absence and the sum so determined shall be deducted from the appropriate sum to be paid into court.

5. The Claimant's costs of this claim (to be assessed) shall be deducted from the appropriate sum to be paid into court pursuant to s 27(3) of the 1993 Act.'

- 5 The Applicant's representatives have been unable to locate the Respondent landlord.
- 6 The application was presented to the Tribunal on 07 June 2021 and directions were issued on 28 June 2021. 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 23rd August 2021.
- 7 In accordance with the Tribunal's directions, the applicant's solicitors supplied the Tribunal with an electronic document bundle containing copies of relevant documents from the County Court proceedings, various title documents, the existing leases and a valuation report from Simon J Brook MSc MRICS dated 12th July 2021.
- 8 The property comprises a three storey semi-detached house thought to have been constructed in about 1890 and now converted into 4 studio and a single one bedroom flat. Four of the flats are currently held on long leases the owners of which are the beneficiaries of the vesting order made by the county court referred to above. Flat A on the ground floor also has the benefit of the basement and rear garden area. Flat C, studio flat on the first floor of the building, remains in the ownership of the missing landlord is vacant, unlet, unmodernised and in a very poor condition.
- 9 The property is located in an established residential area with access to local amenities. Parking is by permit holders only with some metered parking nearby.
- 10 In reaching its conclusions the Tribunal was assisted by Mr Brook's report which contained a good selection of comparables relevant to the valuation of the one bedroom flat but was lacking in similar evidence for the studio flats. The Tribunal would also have appreciated the inclusion of interior photos of the individual flats (a number of photos of the vacant Flat C were included) together with an explanation of the valuer's approach and methodology. Mr Brook's chosen capitalisation rate of 6.5% is accepted by the Tribunal.
- 11 The Tribunal considered that there was insufficient supporting evidence in Mr Brook's report to permit them to accept all his adjustments without modification. Mr Brook stated that he had made allowances of £10,000 per flat to account for tenants improvements to central heating and double glazing but provided no evidence to support the amount of this adjustment nor regarding the provision of heating and double glazing at the commencement of the leases in 1982 and 1988. The Tribunal concedes that an adjustment for these items is appropriate but considers that there is sufficient allowance in the 5% deduction which Mr Brook made for condition. Again, he has not provided any evidence of actual condition for his comparables but simply states that condition is excellent. The subject flats are of course to be considered as unimproved and in tenantable repair. The Tribunal accepts the adjustment of £10,000 for the basement.
- 12 On that basis the Tribunal has recalculated the comparables excluding the £10,000 deductions for double glazing and gas central heating giving

- £425,338, £374,540 and £420,720. This produces an average of £406,866. The Tribunal determines the value of the ground floor/basement flat at £406,866 with a 1% adjustment to a freehold value of £410,976.
- 13 Only one comparable was provided by Mr Brook for the studio flats and the Tribunal was unable to locate other examples in the immediate locality of the subject properties. The comparable had a private decked area and the Tribunal agreed his deduction of £10,000 for this feature. He made further deductions for condition and tenants' improvements. The Tribunal considered that an inclusive deduction of £10,000 was appropriate here and did not agree the additional £5,000. Using its own knowledge and experience of similar flats in similar locations the Tribunal considered that a suitable starting point for the studio flats would be £180,000.
- 14 Mr Brook made further adjustments for size and position of the subject flats. The Tribunal does not agree that there should be a 5% deduction for having to walk up to the top floors (although such a deduction might be appropriate in eg a 15 floor block) and considers that the adjustment for size should be made on a psf calculation rather than by percentage. Using a psf measure the Tribunal derives a figure of £566 pfs. The Tribunal does not consider that a further adjustment to freehold value is required in this case. Using the floor areas provided in the description give freehold values of Flat B - £186,780; Flat D of £154,518 and £192,440 for flat E.
- 15 The Tribunal valued the vacant Flat C (part of the freehold) at £566 psf which would give a figure of £168,668 for the flat in an unmodernised but average condition. The photographic evidence shows this flat to be in below average condition. The quotes provided by Mr Brook are for conversion and refurbishment and appear to go beyond putting the flat into tenantable repair and the Tribunal therefore makes an allowance of £70,000 to put the property into repair leaving a net value of £98,668. Modernisation would be at the cost of the tenant.
- 16 Using the above figures the Tribunal therefore values the freehold interest at £116,854, shown in the attached calculation. This is the base price payable by the Applicant for the freehold but is subject to deductions as below.
- 17 In the Respondent's absence the tenants of flats A,B,D and E have had to perform the landlord's repairing covenants on her behalf. Their expenditure is substantiated by the account and receipts in the hearing bundle and totals £14,659.83 for repairs, £12,799.98 for insurance and £1,207.63 for communal electricity. These sums total £28,667.44, 81.5% of which would normally have been paid by the tenants in the appropriate proportions of the service charge reserved under their respective leases. The balancing 18.5% would have been met by the Respondent as freeholder and owner of Flat C. In the present circumstances the tenants have paid 100% of the service charge and are entitled to reimburse themselves by deduction of the overpayment from the freehold price shown in paragraph 16 above. This entitlement is confirmed by the terms of the vesting order (see paragraph 4 above).
- 18 The Respondent is liable for 18.5% of the total service charge. This equates to £5,303.47 which when deducted from the price payable by the Applicant leaves a sum of £111,550.53.

- 19 The vesting order also entitles the tenants to deduct their reasonable costs from the purchase price. In this respect the tenants have submitted legal costs totalling £8,831.90 and valuation costs of £3,900 both of which the Tribunal consider to be excessive in a situation where the acquisition of the freehold has been effectively unchallenged. If the freeholder been traced and served with a notice the tenants would have been responsible for their own legal and valuation costs which would probably have included an application to the Tribunal, and would have had to pay part of the freeholder's cost as well. The solicitors' costs included items for attending a Tribunal hearing (none took place) and for post completion matters such as registration at the land registry which would normally be the responsibility of the buyer(s). The Tribunal considers that in these circumstances it will allow the sum of £4,416 for legal costs which includes court and Tribunal fees. (ie a 50% deduction) and £2,400 for the valuations. No explanation has been provided as to why a second valuation was undertaken. The total sum of £6,816 may therefore be deducted from the purchase price on account of costs.
- 20 The freehold title is currently encumbered by a charging order in favour of the London Borough of Merton in respect of unpaid council tax. The Applicant is entitle to deduct from the purchase price the sum which is required to discharge that charge. That sum, including accrued interest, is £15,876.89 .
- 21 The total deductions from the purchase price are therefore £5,303.44 (repairs and insurance ), £6,816 (costs) and £ 15876.89 (charging order) totalling £27,996.42, leaving a net purchase price to be paid into the county court of £88,857.58. The amount of the payment is to be shared between the tenants in the same proportions as currently apply to their obligation to pay service charges.
- 22 The Tribunal approves the draft transfer as drawn a copy of which is attached to this decision.
- 23 The Tribunal's valuation is attached to this decision.
- 24 Relevant legal provisions

### **Leasehold Reform Housing and Urban Development Act 1993**

section 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.

27 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 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.

Judge F J Silverman

Date:23 August 2021

Note:

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

