



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

Case Reference : **LON/OOBB/OCE/2018/0249**

Property : **79 Charlemont Road London E6
6HD**

Applicants : **Mr Samraan Mahmood (1)
Mr Muhammad Faizal Islam (2)
Ms Nazia Sultana Islam (3)**

Representative : **Mr James McKean**

Respondent : **Mr Ram Patel**

Representative : **None**

Type of Application : **Missing landlord
S26 of the Leasehold Reform,
Housing and Urban Development
Act 1993**

Tribunal Member : **Evelyn Flint DMS FRICS**

**Date and venue of
Hearing** : **30 August 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 January 2020**

DECISION

Decision

1. The premium payable for the freehold interest is £8,209 (eight thousand two hundred and nine pounds).

Background

2. On 12 April 2018 the Applicants made an application to the Clerkenwell and Shoreditch County Court under Chapter I of Part I of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) seeking a vesting order under Section 26 and 27 of the Act providing for the transfer of the freehold interest in the property as the landlord cannot be found.
3. The applicants are the long leaseholders of two flats, known as 79A and 79B Charlemont Road London E6 6HD, converted in about 2006 from what was originally a two-storey end terrace house.
4. District Judge Thomas sitting at Clerkenwell and Shoreditch County Court on 12 September 2018 made an order under claim No. E01EC788 transferring the application to the Tribunal for determination of the appropriate sum to be paid for the interest.
5. The Tribunal issued Directions providing for the case to be determined on the basis of documents alone and without an oral hearing.
6. The application also includes a property known as 79C Charlemont Road. Prior to the conversion of the main house there was a garage adjacent to and abutting the house. This appears to have been developed into a single storey property and since 2009 has been known as 79C Charlemont Road. In December 2009 a long lease was granted of 79C Charlemont Road and included the gardens immediately in front of and behind the building. This lease refers to 79C as a flat, there is no dispute that the lease plan shows a single storey building. However, at some stage 79C has been developed into a two storey house.
7. The Tribunal queried the extent of the property to be acquired and the statutory provisions under which the claim was made.
8. On 29 March 2019 District Judge Manners sitting at the Clerkenwell and Shoreditch County Court ordered that the Tribunal should determine the terms of the conveyance and the price to be paid in respect of the entire freehold title of 79 Charlemont Road London E6 6HD under title number NGL140843 i.e. inclusive of 79C Charlemont Road. The relevant legislation which is contained in the Act is set out below.
9. The Tribunal issued Directions on 28 June 2019 and listed the case to be heard on 30 August 2019. At the hearing the applicants were represented by Mr James McKean of Counsel who called Ms Alison Stone BSc (Hons) MIRPM AssocRICS of McDowells as an expert witness, the leaseholder of 79C was not present or represented.

10. The Tribunal's inspection on the morning of the hearing has provided it with information regarding the physical attributes of the premises which raised questions which required clarification before the decision of the Tribunal could be made.
11. Flat 79a is held on a lease for 99 years from 12th April 2007 at £50 pa for the first 33 years, £100 pa for the next 33 years and £100 pa for the remainder of the term. The unexpired term at the valuation date is 88 years.
12. 79b is held on a lease for 99 years from 17th May 2007 at £50 pa for the first 33 years, £100 pa for the next 33 years and £100 pa for the remainder of the term. The unexpired term at the valuation date is 88.1 years.

Inspection

13. Prior to the hearing on 30 August 2019 the Tribunal inspected in the presence of the Applicants and counsel.
14. The Tribunal inspected externally and internally both 79A and 79B which comprise a ground floor flat with rear garden and a first floor flat plus loft conversion. 79A and 79B are contained in what was the original end terrace house, the rear garden fences are in line with the party walls, at no point does the rear garden extend behind 79C, there are no shared common parts other than the entrance lobby serving 79A and B within the original house.
15. The Tribunal inspected 79C externally as it was unable to gain access to the interior. It was able to see the rear elevation from the back garden of 79A as the garden fences are of low height.
16. 79C has the appearance of being a separate building abutting the original house. The front elevation of 79A and B comprises painted brickwork at ground floor level with rough rendering above. There is a row of decorative brickwork above the ground floor windows. The elevation of 79C is wholly rendered. The corbeling of brickwork immediately above the party walls throughout the terrace extends only over the original end terrace house, mirroring that at the opposite end of the terrace. There are separate gutters for each property with a shared hopper at the rear for the eaves level gutters, those above the ground floor rear extensions each have their own downpipe. The gutters to the front elevation are not at the same level to one and another. The windows are not aligned, there is a vertical crack where the two buildings abut, a common feature when structurally detached buildings abut.
17. The lease plan for 79C shows a footprint for the building larger than that of the garage in that the front and back walls of 79C are in line with the walls of the original house: the garage was not the same

depth as the house, therefore the residential accommodation cannot have been created merely by a conversion of the garage.

18. The Tribunal finds that 79C is not part of the same building as 79A and B; it is structurally detached, located within its own plot. The two properties are divided vertically, each could be developed separately and indeed 79C was developed separately from 79A and B and there are no shared services

The Hearing and the Evidence

19. Mr McKean outlined the background to the application and submitted that the Tribunal could not be expected to go behind the vesting order in line with the decision in R (On the application of Ford trading as David Sayers) v Leasehold Valuation Tribunal [2005] EWHC 503. He did not accept that the tribunal could raise queries following an inspection of the property. He further asserted that when the garage had been built it was considered to be part of the same building and that the garage was subsequently converted into a very small flat.
20. Ms Stone in cross examination said that she was of the opinion that the applicants could choose whether to include only the house containing the applicant's flats or the whole of the freehold title. She confirmed that she had only inspected 79a internally, the layout of 79a was based on the lease plan and she had assumed that the garage had been converted into residential accommodation. She proceeded to take the Tribunal through her valuation report.
21. The Tribunal raised the matter of the inclusion of 79c in the application with Mr McKean since it was apparent from the inspection that it was a separate building. Mr McKean was of the opinion that the Tribunal had to value the property based on the county court order despite any misgivings on the part of the Tribunal.
22. Following the inspection and hearing the Tribunal sought further Directions from the County Court as to the extent of the property to be vested since it appeared that the entirety of the freehold interest included two structurally separate buildings and the provisions of the Leasehold Reform Housing and Urban Development Act 1993 ("The Act") provides for the right to collective enfranchisement of flats in a single building.
23. The application included a property known as 79C Charlemont Road. Prior to the conversion of the main house there was a garage adjacent to and abutting the house. This appears to have been developed into a single storey property with a larger footprint than the garage and since 2009 has been known as 79C Charlemont Road. In December 2009 a long lease was granted of 79C Charlemont Road including the gardens immediately in front of and behind the building. This lease refers to 79C as a flat, there is no dispute that the lease plan shows a single

storey building. However, at some stage 79C has been developed into a two storey house.

24. On 15 October 2019 District Judge Swan sitting at the Clerkenwell and Shoreditch County Court ordered that the previous orders be discharged and that the application relates to part of the freehold land which comprises the two flats and the appurtenant property and parts used in common but not the part comprising the building known as Flat C 79 Charlemont Road E6 HD. He transferred the application to the tribunal for a determination of the terms of the conveyance and the price to be paid in respect of the premises as defined in the Order.
25. Further Directions were issued on 27 November 2019.
26. Ms Stone submitted a revised valuation report.
27. She referred to sales of five flats in Charlemont Road to support her opinion of the value of the extended lease of 79a at £220,000 and of 79b at £250,000. She produced a valuation with a premium of £3,906 for 79a and £4,303 for 79b.

Decision

14. **Valuation date.** The valuation date is 12 April 2018, being the date of the application to the County Court.
15. **Freehold values.** Based on the information available on the comparable sales evidence the Tribunal accepts the valuation provided by Ms Stone.
16. **Capitalisation Rate.** The Tribunal agrees that 7% is the appropriate capitalisation rate for the ground rents. The Tribunal has not seen any evidence to indicate that there is any reason to depart from the generic deferment rate for flats of 5%. The case referred to was not provided and the excerpt was so short that the reason for the departure, which would have been based on the facts of that case, was not apparent.
17. **Enfranchisement Price.** The Tribunal determines the premium at £8,209 (Eight thousand two hundred and nine pounds), as per the valuation in the bundle.
18. **Terms of the Transfer.** The TR1 is approved providing Box 10 is amended to show limited title guarantee.

Evelyn Flint
Chairman

29 January 2020

ANNEX 1 - 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.

Leasehold Reform Housing and Urban Development Act 1993
Section 3 Premises to which this Chapter applies

(1) Subject to section 4, this Chapter applies to any premises if—

(a) they consist of a self-contained building or part of a building . . .

(b) they contain two or more flats held by qualifying tenants; and

(c) the total number of flats held by such tenants is not less than two thirds of the total number of flats contained in the premises.

(2) For the purposes of this section a building is a self-contained building if it is structurally detached, and a part of a building is a self-contained part of a building if—

(a) it constitutes a vertical division of the building and the structure of the building is such that that part could be redeveloped independently of the remainder of the building; and

(b) the relevant services provided for occupiers of that part either—

(i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or

(ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building;

and for this purpose “relevant services” means services provided by means of pipes, cables or other fixed installations.

