



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

Case reference : **LON/00BK/OAF/2019/0014**

Property : **25 Blomfield Road, London W9 1AA**

Applicant : **The Church Commissioners for England**

Representative : **Mr Anthony Radevsky of Counsel instructed by Radcliffes Le Brasseur**

Respondent : **Etablissment Enterprises Dupont**

Representative : **Mr Daniel Bromilow of Counsel instructed by RIAA Barker Gillette**

Type of application : **An application for the determination of the premium payable in an enfranchisement claim made under the Leasehold Reform Act 1967**

Tribunal members : **Judge N Hawkes
Mr D Jagger MRICS**

Date and venue of hearing : **10 December 2019 at 10 Alfred Place, London WC1E 7LR with an inspection on 11 December 2019**

Date of decision : **23 January 2020**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the premium payable for the acquisition of the freehold of the Property is £9,373,968.
- (2) The Tribunal determines that the transfer will not provide for the registration against the title to the Property of a restriction preventing the transfer of the Property without the production of a certificate from the Amenity Company.

The application

1. This is an application for the determination of the premium payable and the disputed terms of the transfer in a claim to acquire the freehold of 25 Blomfield Road, London W9 (“the Property”) under the provisions of the Leasehold Reform Act 1967 (“the 1967 Act”).
2. The Applicant is the freehold owner of the Property. The Tribunal has been informed that the Respondent is a Liechtenstein Anstalt which acquired a lease of the Property (“the Lease”) in 1966. The Lease was granted by the Applicant to Lady Susan Lawrence in 1958 for a term of 60 years from 29 September 1958.
3. On 26 September 2018, three days before the date on which the contractual term of the Lease was due to expire, the Respondent served a notice of claim. The Applicant admitted the right to acquire the freehold but, as the parties could not agree on the premium to be paid or on the terms of the transfer, the Applicant applied to the Tribunal for the determination of the outstanding issues pursuant to section 21 of the 1967 Act.
4. The Applicant contends that the premium payable for the acquisition of the freehold of the Property is £9,590,400 and the Respondent contends that the premium payable is £7,665,978.
5. The terms of the transfer have been agreed save that the Respondent contends that the transfer should not provide for the registration against the title to the Property of a restriction preventing the transfer of the Property without the production of a certificate from an Amenity Company (“the Restriction”).
6. The Respondent has sought to acquire the freehold of the Property previously, having served a notice of claim on 15 July 2013. This resulted in an application to the Tribunal by the Applicant in order to determine the premium payable for the freehold of the Property which was heard on 3 and 4 June 2014. On 30 July 2014, the Tribunal determined that the premium then payable was £8,572,004 (“the 2014

Decision”). The acquisition of the freehold by the Respondent following the 2014 Decision did not proceed.

The hearing and inspection

7. A hearing took place on 10 December 2019 at which the Applicant was represented by Mr Anthony Radevsky of Counsel and the Respondent was represented by Mr Daniel Bromilow of Counsel.
8. The Tribunal heard oral expert evidence from Ms Vanda Kelsey MA MRICS on behalf of the Applicant and oral expert evidence from Ms Jenny Branscombe FRICS on behalf of the Respondent.
9. On 11 December 2019, the Tribunal carried out a thorough inspection of the Property (including the attic, the boiler room and the rear garden) in the presence of both experts. The Tribunal also carried out an external inspection of all of the comparable properties which were referred to in oral evidence.
10. The Property is a large, semi-detached, corner house built around the mid-19th century which is situated in the Maida Vale Conservation Area, overlooking the Regent’s Canal. It is stucco-fronted and is arranged over four floors (lower ground floor to second floor) with gardens to the front, side and rear. These gardens contain numerous trees which are subject to tree preservation orders. The interior of the Property is spacious but unmodernised.
11. The freeholder has the right to access private, communal ornamental gardens (“the Communal Gardens”). The Tribunal did not inspect the Communal Gardens but we were able to view parts of these gardens through the upper floor windows of the Property.

The premium

12. The following issues remain in dispute:
 - (i) The freehold value of the Property with vacant possession based on the available comparable sales evidence (Ms Kelsey adopts a rate of £1,800 per sq ft; Ms Branscombe adopts a rate of £1,530 per sq ft).
 - (ii) The value of the right of access to the Communal Gardens (Ms Kelsey applies 2.5% and Ms Branscombe applies 5%).
 - (iii) Whether an adjustment should be made in order to reflect the development potential of the Property, as

proposed by Ms Kelsey. Ms Kelsey has added 100 sq ft to the floor area in order to reflect the development potential of the subject Property.

- (iv) Whether an adjustment should be made in order to reflect the low level of the rear garden, as proposed by Ms Branscombe.
 - (v) Whether an end allowance should be made in order to reflect the uncertainty of buying a property without vacant possession. Ms Branscombe makes a 5% deduction from the vacant possession value and Ms Kelsey does not.
13. The value of the improvements which fall to be disregarded was agreed in the sum of £73,800 during the course of the hearing.

The freehold value of the Property with vacant possession

14. The Tribunal prefers the opinion of Ms Kelsey that it is preferable to use the best available comparable evidence in this case rather than to give all twelve properties which were referred to at the hearing equal weight.
15. The Tribunal finds that 14 Park Place Villas, 26 Warwick Avenue, 22 Warwick Avenue, 24 Blomfield Road, 27 Warwick Avenue, and 56 Blomfield Road are the most relevant comparable properties.
16. The Tribunal has not placed any weight on the evidence relating to 4 Maida Avenue, a mid-terrace red brick building, because it is insufficiently similar in character to the subject Property.
17. The Tribunal has not placed any weight on the evidence relating to 5 and 6 Park Place Villas because the differences in location are too great. Both of these properties overlook a modern block of flats and they are either next to or near to the driveway of a school.
18. Both experts agreed that 30/31 Maida Vale should be excluded from consideration due to complications relating to its title and the Tribunal agrees that this is not a suitable comparable property.
19. The Tribunal has not placed any weight on the evidence relating to 21 Randolph Road because this is a recently built, detached property which differs very considerably in both character and specification from the subject Property.

20. The Tribunal has not placed any weight on the evidence relating to 24 Clifton Gardens, a tall, mid-terrace property, because it differs significantly in both character and location from the subject Property.
21. The Tribunal considers that the evidence concerning the remaining properties should be given equal weight.
22. The Tribunal is of the view that the gross internal floor areas should be considered excluding areas of eaves storage and areas where the height is below 1.5 metres because this is not useable floor space. Whilst there are further adjustments which could be made if more detailed information were available, the Tribunal does not have sufficiently detailed information before it to enable it to do so.
23. Having inspected the Property, the Tribunal is of the view that the boiler area is potentially valuable space because the head height is not restricted and the boiler could be moved or replaced with a much smaller boiler. The Tribunal is also of the view that the fact that the entrance to the Property is located to the side of the building is unlikely to materially affect its value.
24. Having taken into account the evidence of both experts, the Tribunal has made the adjustments set out in the attached schedule and has arrived at an average rate of £1,821 per sq ft which the Tribunal considers should be rounded down to £1,800 per sq ft.

The value of access to the Communal Gardens

25. The Tribunal prefers Ms Kelsey's evidence that a 2.5% adjustment should be applied.

Whether an adjustment should be made to reflect the development potential of the Property

26. The Tribunal prefers Ms Branscombe's expert opinion on this issue and finds that, in light of the fact that comparable properties also have development potential, no adjustment is needed to reflect the development potential of the subject Property.

Whether a reduction should be made to reflect the low level of the rear garden

27. The level of the rear garden of the Property is lower than street level and this garden is north facing. Ms Kelsey gave evidence that, in her opinion, these factors do not warrant making an adjustment because, due to the large size of the garden, its low level does not render it oppressive. She stated that, if anything, the low level of the walled

garden makes it more private. Having viewed the rear garden of the Property, the Tribunal accepts Ms Kelsey's evidence and finds that no adjustment falls to be made.

Whether an end allowance should be made

28. On the issue of whether an end allowance should be made, the Tribunal was referred to *Loder Dyer v Cadogan* [2001] 3 EGLR 149 at [11]-[28], *South v Phillimore Estate* [2001] EWCA Civ 991 at [58] and [76], *Henley v Cohen* [2013] L & TR 28 at [57]-[61] and *Trustees of the Sloane Stanley Estate v Carey-Morgan* [2011] UKUT 415 (LC) (the "Vale Court" case).

29. In *Vale Court*, a discount of 5% was applied to the freehold value to reflect the lack of control during the period of the freeholder's reversion. At paragraph 12.28 of her report, Ms Kelsey states:

"As the freeholder's reversion is only three days in this instance, I do not believe that any allowance should be made here on this account, since I do not believe the lack of control for three days to be material to the freeholder's interest."

30. The Tribunal accepts Ms Kelsey's evidence and we accept Mr Radevsky's submission that *Vale Court* has no application in the present case. The Respondent submits that an end allowance should be made in order to reflect the uncertainty of buying a property without vacant possession.

31. In *Loder Dyer v Cadogan*, the valuation was to be carried out as at April 1997 but the lease had expired in 1995. The Lands Tribunal stated at [26]:

"I do not consider that the hypothetical lessor of the subject property, acting prudently, would conceivably have permitted the appellant to remain in occupation until the valuation date under the terms of the expired lease unless he had been forced to do so by the provisions of the 1967 Act. I therefore find that, in the absence of the 1967 Act, the appellant would have vacated the subject property long before the valuation date. Accordingly, the valuation should be prepared on the assumption of vacant possession."

32. By contrast, in the present case, the Respondent served a notice of claim three days before the date on which the contractual term of the Lease was due to expire.

33. The passage in *Henley v Cohen* to which the Tribunal was referred concerns the reliance upon a wrongful act. In the present case, Mr Bromilow made it clear that his client has no intention of acting

wrongfully and failing to vacate the Property. He states that the end allowance is not made because the tenant will fail to vacate, but rather because the purchaser cannot be sure that they will. It is the uncertainty which is key, not the fact of unlawful conduct.

34. In *South v Phillimore Estate* at [76] it is stated that “*the decision on the vacant possession issue turned in the end on the expert evidence, the Tribunal preferring the evidence of Miss Joyce.*” The Tribunal’s decision on the vacant possession issue was upheld.
35. The Tribunal has carefully considered the expert evidence on the vacant possession issue which it heard in the present case. Ms Kelsey’s primary position was that no end allowance should be made. It was put to Ms Kelsey in cross-examination (i) that in the real world, a purchaser would wait three days until after the end of the lease and would buy with vacant possession, and (ii) that a purchaser would not be willing to pay the same price for a property with a tenant in occupation as they would pay for the same property with vacant possession when it is never possible to guarantee that a tenant will comply with the law.
36. Ms Kelsey accepted that a property with vacant possession is preferable to a property without vacant possession and stated, “*My understanding is that a tenant is not able to profit from their own wrong, hence why I made no adjustment.*” She accepted that, if this understanding is incorrect, an adjustment should be made.
37. Ms Kelsey did not agree the 5% discount proposed by Ms Branscombe. She contended for a more modest adjustment based on the probable time and expense of obtaining vacant possession and taking into account the possibility of recovering mesne profits from the occupier. In cross-examination, Ms Branscombe did not explain the calculation which gave rise to her proposed 5% discount and she agreed Ms Kelsey’s calculation.
38. As explained by Mr Bromilow, the Respondent in the present case is not seeking to rely upon its own wrong. Accordingly, on the oral expert evidence of both experts, an adjustment should be made and Ms Kelsey’s calculation should be adopted.

The premium

39. Applying these findings, the premium payable for the for the acquisition of the freehold of the Property is £9,373,968. The Tribunal’s valuation is annexed to this decision.

The terms of the transfer

40. The only issue between the parties regarding the terms of the transfer concerns a rentcharge deed which is registered against the freehold title and which has its own registered title.
41. The rentcharge deed was entered into by the Applicant and Faldeep Limited, now known as Little Venice Garden Amenity Limited ('the Amenity Company'), and it is dated 2nd March 1982 ("the 1982 Deed").
42. The 1982 Deed allows the freeholder of the Property (together with the neighbouring freehold property owners, including the owners of two of the comparables) access to the Communal Gardens and shares the costs of maintenance between them. It is common ground that it is an estate rentcharge and that the freehold is conveyed subject to it (see subsection 8(4)(b) of the 1967 Act).
43. There is, however, a dispute as to whether the transfer should provide for the registration against the title to the Property of a restriction preventing the transfer of the Property without the production of a certificate from the Amenity Company ("the Restriction").
44. The Applicant states that it is bound to insist upon the inclusion of a clause in the transfer providing for the registration of the Restriction due to a requirement contained in paragraph 6 of a draft Transfer at the Eighth Schedule of the 1982 Deed.
45. By clause 6.1.3 of the 1982 Deed, the Applicant undertook not to transfer any freehold of any transferable properties "*other than by transfers in the form of the Transfer or as near thereto as the circumstances may admit or require*" ("the Covenant"). The Respondent accepts that the Property falls within the definition of a transferable property.
46. The submissions advanced by Mr Bromilow include the following. The Covenant is not an absolute covenant since it is qualified by the words "*or as near thereto as the circumstances may admit or require*". The circumstances might require the form of the transfer to omit the requirement for a restriction altogether, and it is submitted that, in this case, the transfer should contain no provision for the Restriction. The Tribunal was informed that forty-one properties in this scheme have been sold on and that the Restriction has been omitted in ten instances.
47. The rentcharge created by the 1982 Deed does not need to be protected by a restriction. It is an estate in land, registered under title number NGL699595, which is binding on successors in title whether or not there is a restriction in favour of the Amenity Company against the title to the Property. Indeed, the freehold registered in the name of the Applicant which includes the Property has no restriction registered against it.

48. The 1982 Deed was voluntarily entered into by the landlord *after the Lease was granted*. It contains no covenant by Amenity Company to provide a certificate providing that the conditions of the Restriction are met. It is hoped that the Amenity Company would act reasonably but it cannot be assumed that this will be the case.
49. The owner of the Property would, if the Restriction is registered against the title to the Property, be left in a situation in which unreasonable conduct on the part of the Amenity Company could potentially derail a sale or even expose the vendors to a claim for breach of contract if they were unable to complete in time.
50. The owner of the Property could seek to obtain an order for the Restriction to be disapplied under section 41(2)(a) of the Land Registration Act 2002 if the Amenity Company acted unreasonably. However, litigation can potentially be a costly, uncertain and drawn-out process and a sale could be derailed whilst any such proceedings were ongoing. This is a prospect which can be avoided by not providing for the Restriction in the transfer.
51. The Tribunal accepts these submissions and finds that the circumstances require that the transfer will not provide for the registration of the Restriction against the title to the Property.

Name: Judge N Hawkes

Date: 23 January 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

NDIX A
25 Blomfield Road London W9
The Tribunal's Valuation

LON/00BK/OAF/2019/0014

Valuation under Leasehold Reform Act 1967 (as amended)

Components

Date of expiry:	29/09/2018	
Assumed date of possession:	29/03/2019	
Date of valuation	26/09/2018	
Unexpired term	0.01	
GIA	5269	
Rate per sq ft	1800	

Freehold value	£9,484,200	
Less value for improvements	£73,800	
Less costs for possession	£15,000	
Plus mesne profits	£25,200	
Adjusted freehold value	£9,420,600	

Landlords existing interest

Ground rent currently receivable	£80	
Capitalised @ 7% for 0.01 years	0.0079	£1

Reversion to:	£9,420,600	
Deferred 0.50 years @ 2%	0.9901	
£9,327,336		

Marriage Value

Freehold value	£9,420,600	
Less		
Landlord's existing value	£9,327,336	
Marriage Value	£93,264	
Freeholders share @ 50%		£46,632

Premium payable

Freehold interest	£9,327,336	
Plus half marriage value.	£46,632	

Premium payable

£9,373,968

Address	Bedrooms	Floor Area	Date Sold	Valuation	Condition	Net £psf	Index Figure	Time Adj %	Adj £psf	Adjustments	Net £psf
14 Park Place Villas	4	2973	04/11/2019	£4,900,000	Good	£1,648	149.9	4.20%	£1,717	Plot size +5% Location +5% Communal Garden + 2.5% Condition -5% = +7.5%	£1,846
26 Warwick Avenue	5	4634	12/10/2019	£10,250,000	Modernised	£2,212	164.9	-5.28%	£2,095	Location +5% Communal Garden -5% Parking -2.5% Condition -5% Lift -2.5% = -15%	£1,781
22 Warwick Avenue	6	4648	16/06/2017	£10,500,000	Excellent	£2,259	166.3	-6.07%	£2,122	Location +5% Condition -15% = -10%	£1,910
24 Blomfield Road	7	4679	29/09/2016	£12,250,000	Unimproved	£2,618	170.2	-8.23%	£2,403	Communal Garden + 2.5% Detached + 7.5% Wider Front + 5% Plot Size -10% Planning -5% = -25%	£1,802
27 Warwick Avenue	7	4113	05/05/2017	£6,250,000	Unimproved	£1,520	166.2	-6%	£1,428	Location +15% Communal Garden + 2.5% Parking -5%	£1,607

56 Blomfield Road	5	3305	26/05/2017	£6,800,000	Modernised	£2,057	166.2	-6%	£1,934	Garden Size +5% Location +5% Communal Garden +2.5% Condition -10% = 2.5%	£1,982
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Average £1821psf

The floor areas exclude eaves storage and reduced head height below 1.5m in accordance with floor plans attached to agents details