



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

Case Reference : **LON/00AP/OCE/2022/0152**

Property : **Flats A and B Westbury
Avenue Wood Green London
N22 6RX**

Applicants : **Charlotte Gage
Marcia Brophy**

Representative : **Connor Raine: Tolhurst Fisher
LLP**

Respondent : **Paul Richards**

Representative : **None**

Type of Application : **Leasehold Enfranchisement:
Missing Landlord s26 27
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Mr D Jagger MRICS**

**Date of Paper
Determination** : **25th January 2023**

Date of Decision : **25th January 2023**

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the freehold interest in **Flats A and B 159 Westbury Avenue Wood Green London N22 6RX** (‘the property), pursuant to sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’), is **£90,850 (Flat A £46,500 Flat B £44,350)** (Ninety thousand eight hundred and fifty pounds)

1. This has been a paper decision which has been consented to by the applicants. The documents that were referred to, are in a bundle which extends to 149 pages prepared by the applicants, plus the Tribunal’s directions.. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicants, in accordance with previous directions

2. The application

1. On 26th April 2022, Tolhurst Fisher, the solicitors for the Applicants, issued a Part 8 Claim in Edmonton County Court seeking a vesting order under section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the Act’). This is therefore the date of valuation and we shall return to this matter later in this decision. On 30th July 2022 the Deputy District Judge Oliver made an order in the following terms:

2. *I. There be a Vesting Order under Section 26 of the Leasehold Reform Housing and Urban Development Act 1993 (The Act) providing for the freehold interest currently held by the Defendant in the property 159 Westbury Avenue Wood Green London N22 6RX (the premises), being registered at HM Land Registry under Title No MX235519, to be vested in the First and Second Claimants on such terms as may be determined by the First Tier Tribunal to be appropriate with a view to the Defendant’s interest in the Premises being vested in the First and Second Claimants as if the Claimants had, at the date of their application, given notice under Section 13 of the Act of their claim to exercise their right to collective enfranchisement in respect of the Premises. 2. The Claimants' shall forthwith pursue an application to the First Tier Tribunal for determination of the terms in accordance with paragraph 1 above. 3. Upon receipt of the decision of the First Tier Tribunal, the Claimants shall pay into Court the premium determined by the First Tier Tribunal less £2118.32 being the costs summarily assessed pursuant to paragraph 5 below. Upon the making of the payment into court, the Claimants shall provide the court with appropriate transfer in the Form TR1 which shall be executed by a District Judge of this court on behalf of the Defendant in accordance with the provisions of the Act.4 Liberty to apply.5 The*

Defendant shall pay the Claimants costs of this application summarily assessed in the sum of £2118.32.

3. The applicants' representatives were unable to locate Paul Richards
4. In accordance with the vesting order the application was submitted to the First-tier Tribunal, Property Chamber and directions were issued on 28th November 2022. These provided that the case would proceed to a paper determination. The applicants have not objected to this or requested an oral hearing.
5. The paper determination took place on 25th January 2023.
6. In accordance with the directions, the applicants' solicitors supplied the Tribunal with a well prepared and helpful bundle that contained copies of relevant documents from the County Court proceedings, various title documents, the existing and proposed lease and an Expert Witness valuation report prepared by Mr Mike Stapleton FRICS dated 9th January 2023.
7. The relevant legal provisions are set out in the appendix to this decision.

The background

8. The leasehold interest in the two flats is registered in names of each applicant by virtue of a transfer for the ground and first floor flat made on 10th June 2004 under Title No NGL503229 and the 28th February 2007 Title No EGL299167. The freehold of the building has been registered in the name of the respondent under title number MX235519 since the 21st March 1990.
9. The properties are ground and first floor converted flat which form part of a Victorian terrace property located in an established residential area converted to form two self contained flats approached via a communal hallway. The ground floor flat has one bedroom (50m²) the first floor flat has two bedrooms (53m²) It is assumed the flats have not been subject to any significant internal alterations.

The issues

11. The Tribunal is required to determine the premium to be paid for the extended lease in accordance with the 1993 Act and the appropriate sum to be paid into Court pursuant to section 27(1)-(7) of the Act.
12. The Tribunal is required to consider the proposed terms of the lease .

13. The Tribunal did not consider that an inspection of the flats was necessary under current circumstances, nor would it have been proportionate to the issues in dispute.
14. Having studied the various documents in the applicant's bundle, the Tribunal has made the determination set out below.

The sum to be paid into court

15. We determine that the premium payable under the 1993 Act is **£90,850 (Flat A £46,500 Flat B £44,350)** (Ninety thousand eight hundred and fifty pounds and this is the appropriate sum to be paid into Court under section 27(1). Our reasons are set out as follows.
16. In his report, Mr Stapleton valued the premium at the above sum. This was based on extended lease values £347,002 (flat A) and £368,625 (flat B), a capitalisation rate of 6%, and a deferment rate of 5%. Mr Stapleton used the 26th April 2022 as the valuation date, being the date of the Claim form. Each of these matters are agreed by the Tribunal.
17. At that date, each lease had a unexpired term of 60.91 years and 63.91 years.
18. In view of the fact, each lease has an unexpired term less than 80 years marriage value is deemed to exist. In his report Mr Stapleton uses the graphs and the "Zuconi" case forms the basis for determining relativity which has been calculated at 78.91 and 80.9 respectively. The Tribunal, is of the opinion this is now an incorrect basis to calculate relativity. Following the case "Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonva the more recent approach to calculate the issue of relativity is to use the average of the Savills and Gerald Eve 2016 unenfranchiseable graphs which indicate relativities of 78.98% and 80.96. Although the valuers approach is incorrect, the differences are minimal and do not have a significant affect on the two valuations.
19. The Tribunal examined the six comparables provided in the report, each of which were conversion of Victorian properties to form flats. Five of the comparables had two bedrooms and the one remaining comparable, 52 Salisbury Road was a one bedroom ground floor flat. The comparables were subject to indexation for any time lapse in comparison with the valuation date. It would good practice on behalf of the Valuer to to prepare a schedule which makes valuation adjustments in order to provide a precise methodology. Such adjustments would take into account location, internal specification, onsite parking, private garden. No such schedule was provided by Mr Stapleton, however, despite these minor misgivings, based upon the comparable

evidence the Tribunal agrees with the two long lease valuations of £347,002 and £368,625.

20. There was no evidence of any ground rent or service charge arrears for the Flats. In the absence of such evidence, the Tribunal determines that no additional sums are payable under the 1993 Act. It follows that the appropriate sum to be paid into Court is **£90,850 less £2118.32**
21. Having carefully scrutinised the valuation report, including the comparable evidence, the Tribunal agrees the capitalisation rate.

Terms of the Transfer

22. We have considered the Transfer of the whole registered title incorporating the TR1. We are satisfied that the terms should be approved as drafted.

Name: Mr Duncan Jagger

Date: 25th January 2023

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.

Appendix of relevant legislation

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Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 50 (1)-(3)

- (1) Where –
 - (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
 - (b) the landlord cannot be found or his identity cannot be ascertainedthe court may, on the application of the tenant, make a vesting order under this subsection.

- (2) Where –
 - (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
 - (b) paragraph (b) of that subsection does not apply, but
 - (c) a copy of a notice of that claim cannot be given in accordance with Part 1 of Schedule II to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,the court may on an application of the tenant, make an order dispensing with the need to give a copy of such a notice that that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied –

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

Section 51

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by the appropriate tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, as the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

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- (2) If the appropriate tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was

made.

- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease 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 section 56(1) and section 57 (as that section applies, in accordance with subsections (7) and (8) below;
and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by the appropriate tribunal of any question as to which the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of –
 - (a) such amount as may be determined by the appropriate tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a tribunal as being, as the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court or the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5) (a) and (b).
- (7) Subject to subsection (8), the following provisions, namely – (a) sections 57 to 59, and
(b) section 61 and Schedule 14,

shall, so far as capable of applying to a lease granted in accordance with this section, apply to such lease as they apply to a lease granted under section 56, and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section

- (a) section 57 shall have effect as if –
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

- (b) section 58 shall have effect as if –
 - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
 - (ii) subsections (6)(a) and (7) were omitted.