



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

Case Reference : **LON/00AJ/OCE/2023/0037**

Property : **13 Holly Park Road, Hanwell,
London W7 1LA**

Applicant : **Jennifer Brenda Jones (No13)
Alison Zita Marlow (13A)**

Representative : **Glanvilles LLP: Jonathan Tawse**

Respondent : **Robert Edwin Roberts**

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 (Valuer Chair)**

**Date of Paper
Determination** : **3rd May 2023**

Date of Decision : **3rd May 2023**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into Court for the freehold interest in **13 Holly Park Road, Hanwell, London W7 1LA** (‘the property’), pursuant to sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 (‘the 1993 Act’), is **£14,035** (Fourteen thousand and thirty five pounds)

1. This has been a paper decision which has been consented to by the applicant. The documents that were referred to are in a bundle which extends to 292 pages prepared by the applicant, which included a valuation report and the Tribunal’s directions. The contents of which we have recorded. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicant, in accordance with previous directions.

The application

1. On 25th August 2022, Glanvilles LLP, the solicitors for the Applicant, issued a Part 8 Claim in Uxbridge 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.
2. On 8th March 2023 the Deputy District Judge Nabi sitting in the County Court at Brentford made an amended order under Claim no JOOUB797 in the following terms:
3. *1. The Claimants shall be granted a Vesting Order of the freehold interest in 13 Holly Park Road, Hanwell, London W7 1LA, Title Number: NGL463724, pursuant to Section 26(1) of the Leasehold Reform Housing and Urban Development Act 1993. 2. These proceedings be transferred to the First Tier Property Tribunal (Property Chamber) for determination of the following matters (a) The terms of acquisition with Section 27(1)(b) of the Act (b) The form of transfer (a draft which is annexed hereto) pursuant to Section 34 and Schedule 7 of the Act and Section 27(3) of the Act. 3 The appropriate sum (less any costs awarded to the Claimants as set out in paragraph 4 below) is paid into Court pursuant to PD56 of the Civil Procedure Rules once the premium is determined by the First Tier Tribunal (Property Chamber) pursuant to Schedule 6 of the Act and paragraph 2 above. 4 The Claimants be awarded their costs summarily assessed at £4217.60. The Claimants are entitled to*

deduct this sum of costs from the appropriate sum set out in paragraph 3 above. 5 The sum of any costs awarded against the Defendant pursuant to paragraph 4 above to be deducted from the appropriate sum to be paid into Court pursuant to paragraph 3 above.

4. The applicants' representatives were unable to locate Robert Edwin Roberts.
5. In accordance with the vesting order the application was submitted to the First-tier Tribunal, Property Chamber and directions were issued on 6th March 2023. These provided that the case would proceed to a paper determination.
6. The paper determination took place on 3rd May 2023.
7. 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 two leases and the proposed TR1 and an Expert Witness valuation report prepared by Mr Martin Geoghegan Ross MRICS dated 14th April 2023.
8. The relevant legal provisions are set out in the appendix to this decision.

The background

9. The two leasehold interests in the flats are now registered in names of the applicants by virtue of a transfer for the ground and first floor flats made on 10th August 1999 and 7TH November 2012 under Title No NGL511733. The freehold of the building has been registered in the name of the respondents under title number NGL63724 since the 12th April 1990.
10. The properties are ground and first floor flats 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 (13 Holly Park Road) has one bedroom, living room, kitchen and bathroom with a floor area of approximately 49m². The property has the benefit of a private rear garden. The first floor flat (13A Holly Park Road) also comprises one bedroom, living room, kitchen, bathroom. The floor area has been calculated at 52m². The demise includes the roof space and therefore has the benefit of a potential loft conversion. It is assumed the flats have not been subject to any significant internal alterations.

11. **The issues**

12. 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.

13. The Tribunal is required to consider the form of Transfer pursuant to Section 34 and Schedule 7 of the Act and Section 27(3) of the Act.

14. The Tribunal did not consider that an inspection of the two flats was necessary under current circumstances, nor would it have been proportionate to the issues in dispute.

15. 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.

16. We determine that the premium payable under the 1993 Act is **£14,035** (Fourteen thousand and thirty five pence) and this is the appropriate sum to be paid into Court under section 27(1). Namely £7130 for No 13 and £6905 for 13A. Our reasons are set out as follows.

17. In his report, Mr Geoghegan valued the premium at £14,035 (£7130 for No 13 and £6905 for 13A) This was based on Freehold values of £404,040 and £388,889 (Long lease values £400,000 and £385,000), a capitalisation rate of 7%, and a deferment rate of 5%. Mr Geoghegan correctly used the 25th August 2022 as the valuation date. However, the precise date of the Claim form is the 4th March 2022.

18. At that date, the two leases had unexpired terms of 86.33 years. The Tribunal agrees, in view of the fact that the lease has an unexpired term of greater than 80 years marriage value is deemed not to exist.

19. Having carefully scrutinized the valuation report, including the comparable evidence, the Tribunal agrees the deferment rate of 5% The applied capitulation rate of 7% is also considered appropriate in order to calculate the loss of future ground rent.

20. The Tribunal considered the two schedule of comparable evidence provided in the report. The first schedule in respect of No 13, comprised five comparable properties in the locality, each one bedroom ground floor flats, marionettes'. The second schedule for No 13A provided three comparables, each of which are one bedroom first floor

flats. The schedules provide: floor areas, description, sale price, indexation based upon house price index for Ealing and valuation adjustments. All in all, the comparable schedules are very comprehensive and provide a concise valuation methodology.

21. The Tribunal therefore agrees with the two long lease values of £400,000 and £385,000 respectively in order to calculate the FHVP value. The Tribunal commends Mr Geoghegan on his Valuation Report and rarely does it see the level of detail in such cases.

22. There was no evidence of any ground rent or service charge arrears for the two 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 **£14,035** in accordance with Appendix A valuation reports.

Terms of the Transfer

23. 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: 3rd May 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

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

Section 26,27.

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) 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.

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

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.

