



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

Case reference : **LON/00BB/OCE/2023/0066**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **68 Bartle Avenue, East Ham, London E6
3AJ**

Applicants : **Catrin Elizabeth Harray and Paul Gary
Brotherton**

Representative : **Streathers Solicitors LLP (Rebecca
Rinn)**

Respondent : **Mohammad Riaz**

Representative : **Missing Landlord**

Type of application : **Section 26 Leasehold Reform, Housing
and Urban Development Act 1993**

**Tribunal
member(s)** : **Judge Pittaway
Mr M J F Donaldson FRICS**

Date of decision : **12 July 2023**

DECISION

Description of hearing

This has been a determination by remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined in a on paper. The documents that the Tribunal were referred to are in a bundle of 476 pages, which included the Vesting Order, a valuation by Mr D Grove MRICS dated 13 June 2023 (110 pages) and the draft Transfer, the contents of which have been noted.

Determination

The tribunal accepts Mr Grove's valuation of the premium at **sixty-five thousand three hundred and fifty three pounds (£65,353)**

Background

1. This is an application made by the applicant qualifying tenants pursuant to section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the **Act**") for a determination of the premium to be paid for the collective enfranchisement of 68 Bartle Avenue, East Ham London E6 3JA (the "**property**") where the Landlord cannot be found.
2. Catrin Elizabeth Harray is the leaseholder of the ground floor flat at the property under a lease dated 20 April 1990 for a term of 99 years from 25 March 1989 and Paul Gary Brotherton is the leaseholder of first floor flat under a lease dated 5 March 1989 for a term of 99 years from 25 March 1989.
3. By an Order of the Clerkenwell and Shoreditch County Court (Claim Number J03EC878) dated 4 May 2023 the requirement to serve notice under section 13 of the Act, was dispensed with and the Wandsworth County Court ordered that the freehold shall be vested in the applicants on such terms as may be determined by the tribunal.
4. On 10 May 2023, the applicants applied to the tribunal for a determination of the premium and terms of acquisition.

The issues

5. In the absence of the Landlord there are no matters agreed.
6. The valuation report prepared by Mr Daniel Grove, a RICS registered Valuer dealt with the following matters
 - (a) The subject property is an end of terrace building arranged over two floors, believed to have been constructed circa 1900 and later converted into two flats.

The ground floor flat (described in the report as Flat A) comprises two bedrooms, living room, kitchen and bathroom/WC providing a measured Gross Internal Area of 49.65 sqm. The demise includes the entirety of the rear garden.

The first floor flat (described in the report as Flat B) comprises two bedrooms, ensuite shower room to main bedroom, open plan living room/kitchen and bathroom/WC, providing a measured Gross Internal Floor Area of 58.59 sqm. The demise includes the roof and roof structure.

- (b) No adjustments are sought for tenants' improvements.
 - (c) The valuation date adopted by Mr Grove is 14 October 2022, being the date upon which the applicants' claim was issued by the County Court of Clerkenwell & Shoreditch.
 - (d) Details of the tenants' leasehold interests:
 - (i) Dates of leases: both flats are leased for 99 years commencing on 25 March 1989
 - (ii) Ground rents: the ground rent payable under each of the leases is £60 p.a. without review.
 - (iii) Unexpired terms at valuation dates: 65.44 years;
7. The issues before the tribunal to determine are
- (a) Capitalisation rate
 - (b) Virtual freehold value
 - (c) Deferment rate
 - (d) Marriage value and relativity
 - (e) Other considerations
 - (f) The premium payable
 - (g) The form of the transfer

The hearing

- 8. The case was dealt with on the papers on 12 July 2023 with the documents referred to above provided by the applicants' solicitor.
- 9. The tribunal was not asked to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 10. The applicants relied upon the expert report and valuation of Mr D Grove MRICS dated 13 June 2023.

Capitalisation rate

11. Mr Grove submitted that the appropriate capitalisation rate for this form of investment, where the rent is fixed with no reviews, would typically be capitalised at 7%.

The tribunal's determination

12. The tribunal accepts a capitalisation rate of 7%.

Reasons for the tribunal's determination

13. The tribunal notes that this rate is the norm in many cases and in the absence of any specific evidence to show that this should be varied in this case the tribunal adopt this rate.

Freehold vacant possession value

14. Mr Grove relied on comparable evidence provided by named local estate agents and various on line systems and data bases. Where he used data from before or after the valuation date he has had reference to the HMLR House Price Index to reflect adjustments over time. He submitted that this index does not necessarily reflect market nuances and that his preference is to prefer comparable evidence from relatively close to the valuation date.

Mr Grove used three specific comparables for Flat A, 51 Hockley Avenue, 3a Charlemont Road and 58 Ernard Avenue, all one-bedroom ground floor flats with private rear gardens, together with such other evidence as was available to him to value Flat A at £295,000.

Mr Grove use similarly used three specific comparables for Flat B, 64a Streatfield Avenue, 62a Victoria Avenue and 53a Caulfield Road, two of which benefit from gardens, unlike Flat B, to value Flat B at £285,000.

Mr Grove stated that he had calculated these figures by adjusting upwards from his extended leasehold values by 1% to allow for conversion from long leasehold to freehold value.

The tribunal's determination

15. The tribunal accepts the freehold vacant possession value of £580,750 adopted by Mr Grove in his valuation calculation and his extended lease value of £575,000.

Reasons for the included the tribunal's determination

16. The tribunal accepts that the evidence provided supports the freehold values for the property submitted by Mr Grove.

17. The tribunal notes that the comparables used by Mr Grove all consist of one-bedroom flats but accepts that this was a reasonable approach given that both the flats at the property were originally one bedroom flats.
18. It is not clear from Mr Grove's report whether the values he gives for each flat is the extended leasehold value or the freehold vacant possession value. From his actual valuation it appears that the above figures are the freehold values (although there is a discrepancy of £750) and then reduced them by 1% to achieve a combined leasehold value of £575,000. The tribunal find that the discrepancy is not sufficient to merit adjusting Mr Grove's valuation.

Deferment rate

19. Mr Grove has adopted the deferment rate approved in Sportelli of 5%.

The tribunal's determination

20. The tribunal determines that 5% is appropriate as the deferment rate.

Reasons for the tribunal's determination

21. The tribunal sees no reason to depart from the Sportelli rate.

Relativity & Marriage Value

22. Mr Grove stated that he had had regard to the most recent Upper Tribunal decisions in which relativity had been addressed, listing the authorities to which he had regard in his report.
23. Mr Grove had looked for evidence of recent comparable sales of similar properties with short leases but had found none. In the absence of market evidence he relied on the average of the Savills and Gerald Eve 2016 graphs, which with an unexpired lease term of 65.44 years produced a relativity rate of 81.89%. This produced a combined existing lease value of £475,576.

The tribunal's determination

24. The tribunal accept Mr Grove's combined existing leasehold value of £475,576.

Reasons for the tribunal's decision

25. The tribunal agree with Mr Grove that marriage value and relativity are relevant to the valuation as the unexpired terms of the leases is less than 80 years, paragraph 4 Schedule 13 of the Act.
26. In the absence of any short lease comparables the tribunal accept Mr Groves use of the average of the Savills and Gerald Eve 2016 graphs.

Other considerations

27. Mr Grove did not consider any compensation should be allowed for loss or damage to the freeholder.
28. Mr Grove did not consider there was any development marriage value (the merger of the two flats)
29. Mr Grove considered that the 'common use areas' (namely the communal garden at the front of the property) held little value, and suggested a value of £100 for this, but did not reflect it in his valuation.

The tribunal's determination

30. The tribunal accepts Mr Grove's approach in relation to these matters.

Reasons for the tribunal's decision

31. The tribunal have no reason to depart from the valuation of Mr Grove on the evidence before it.

The premium

32. The tribunal accepts Mr Grove's valuation of the premium at **sixty-five thousand three hundred and fifty three pounds (£65,353)**

The Transfer

33. The draft TR1 submitted by the applicants' solicitor is approved subject to the following

In **panel 8 (Consideration)** delete remove the cross from the first box and place a cross in the third box and insert,

‘The sum of **fifty-eight thousand five hundred and fourteen pounds** (£58,514) has been paid into Court pursuant to an order made under section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (being the £65,353 premium determined by the Tribunal less the costs of £6,839 assessed by the Court).’

In **panel 12 (Execution)** delete the current sealing block for the Court and instead state,

‘Signed as a Deed by [*insert name*] the officer of the Court nominated to execute this Deed on behalf of Mohammad Riaz in accordance with the Order of the Court dated 4 May 2023’.

Name: Judge Pittaway

Date: 12 July 2023