



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

**Case Reference** : **LON/00AE/OCE/2022/0039  
P:PAPERREMOTE**

**Property** : **107 Cobbald Road London NW10  
9SL**

**Applicants** : **Colin Michael Arther executor for  
the late Marian Kilmartin (1)  
Peter Kilmartin (2)**

**Representative** : **Y V A Solicitors**

**Respondent** : **Hajra Begum**

**Representative** : **None**

**Type of Application** : **Missing landlord  
S26 and 27 Leasehold Reform,  
Housing and Urban Development  
Act 1993**

**Tribunal Members** : **Evelyn Flint DMS FRICS**

**Date and venue of  
Hearing** : **1 November 2023  
Remote hearing on the papers**

**Date of Decision** : **1 November 2023**

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**DECISION**

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This has been a remote hearing which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing

was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle, the contents of which have been noted. The order made is described below.

### **Decision**

1. The premium payable is £57,635 (fifty seven thousand six hundred and thirty five pounds). The Terms of the New Leases are approved subject to the amendments and the TR1s are amended as set out below. The case is remitted to the Central London County Court under Claim Number F01CL687.

### **Background**

2. This case relates to an application made under section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) for a determination of the price to be paid for the collective enfranchisement of the freehold interest of the subject property, where the landlord is missing. The application was made in the Central London County Court on 29 May 2019. The case was transferred to this Tribunal to determine the terms of the new lease and the price by District Judge Lightman on 24 September 2020.
3. Directions were issued on 8 March 2022. Initially the bundle contained insufficient information upon which the Tribunal could make a determination. Further Directions were issued on 28 October listing eleven matters which required attention before the Tribunal could consider the matter further. The revised bundle was considered on 31 March 2023 when further Directions were issued setting out details which still had not been included in the valuer's report together with amendments which were required to be made to the draft TR1s.
4. The Tribunal has been provided with a report and valuation dated 23 May 2023 prepared by Mr Christopher Stone FRICS of Prickett and Ellis Surveyors. The report included statements confirming that he had complied with the requirements of the rules, protocols and directions of the tribunal and his duty to the Tribunal as an expert witness; the report complied with Royal Institution of Chartered Surveyors Practice Statement: Surveyors Acting as Expert Witnesses.

### **Evidence**

5. The Tribunal considered the valuation report of Mr Stone in which he described the property, provided brief details of his comparables, method of adjusting the sales evidence, reasons for adopting the capitalisation and deferment rates which he had adopted together with his approach to relativity.

6. The property comprises a two storey end terrace former shop and house now converted to two flats. The property is located on the edge of a residential area comprising dwellings of a similar age. However, the subject property is both opposite and adjacent to light industrial premises.
7. The lower flat is self-contained with its own ground floor entrance and comprises three bedrooms, open plan living/kitchen and bathroom/wc. The windows are uPVC double glazed, the flat has gas fired boiler central heating via radiators. The flat was originally demised with a very small garden area within the lightwell however the bathroom appears to have been extended into this area. No further details were available as to when and who carried out these alterations.
8. The upper flat is approached from the side of the property, the bathroom/wc is situated on the ground floor, the remaining three rooms and kitchen being on the first floor. The flat has uPVC double glazed windows and gas fired central heating via radiators.
9. The lower flat is subject to a lease for a term of 99 years from 3 February 1993 at £104 pa for the first 33 years of the term, £208 pa for the next 33 years and £312 pa for the remainder of the term. There were 72.18 years unexpired at the valuation date.
10. The upper flat is subject to a lease for a term of 99 years from 25 March 1984 at £104 pa for the first 33 years, £125 pa for the next 33 years and £150 pa for the remainder of the term. There were 63.82 years unexpired at the valuation date.
11. Mr Stone stated that there were no tenant's improvements to be taken into account in the valuation. He noted that the flats had not been well maintained but that this should not be reflected in the valuation.
12. He adopted a capitalisation rate of 7% based on agreements reached with other chartered surveyors where the ground rent income was modest and a deferment rate of 5% based on the Sportelli decision.
13. He relied on sold prices for four comparables nearby to arrive at the value of the extended leases. He had adjusted the sales prices using with the Land Registry flat and maisonette price index for the London Borough of Brent. He also adjusted the sold prices for access to a garden, size and location/layout.
14. On the basis of the comparables, taking the average price per square foot, he had calculated the value of the extended lease of the lower flat at £340,000 and the upper flat at £225,000.
15. He stated that, as he had not been able to find any sales of short leases similar in length to those at the subject property, he had followed the guidance on the 2019 Upper Tribunal decision in Trustees of The Barry and Peggy High Foundation v Zucconi. He had adopted the percentages

in the Savill's 2015 enfranchisable graph and deducted 6% for Act rights, which produced a relativity of 86.21% for the lower flat and 80.83% for the upper flat. He calculated the short leasehold values as follows: the lower flat £296,045 and the upper flat £183,686.

16. His valuation which was included in the report produced a premium of £57,365 split as follows: lower flat £29,878 and upper flat £27,757.

## **Decision**

17. **Valuation date.** The valuation date is 29 May 2019, the date of service of the claim. The unexpired terms at the valuation date are 72.68 and 63.82 years for the lower and upper flats respectively.
18. **Valuation of the extended leases.** The tribunal accepts the values proposed of £340,000 and £225,000 for the lower and upper flats respectively based on the very limited comparable evidence provided.
19. **Valuation of existing leases.** The tribunal adopts relativities of 86.21% and 80.83% of the freehold value as no market evidence was available.
20. **Capitalisation and Deferment Rate.** The Tribunal accepts the capitalisation rate of 7% and deferment rate of 5%.
21. **Enfranchisement Price.** The Tribunal accepts the valuation in the report and determines the premium to be paid at £57,635 (£29,878 lower flat and £27,757 upper flat).
22. **Terms of the Lease.** The new leases are approved subject to the insertion of the correct premiums.
23. The TR1s should be amended in accordance with the previous Directions: The correct title number for the freehold interest is NGL68005; limited title guarantee should be ticked in panel 9.

Evelyn Flint

2 November 2023

## **RIGHTS OF APPEAL**

1. 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.
2. 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

3. 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.
4. 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.
5. 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.

