

4176



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

Case Reference : LON/00AY/OCE/2016/0083

Property : 42 Herne Hill Road, London SE24
OAR

Applicant : Charlotte Katherine Baker (1)
James Anthony McHugh (2)

Representative : Streathers Solicitors LLP

Respondent : Anthony John Kenneth Chapman
(1)
Susan Chapman(2)

Representative : None

Type of Application : Determination of terms of new
lease purchase under section 51 of
the Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal Members : Mrs Sonya O'Sullivan – Tribunal
Judge
Mr Duncan Jagger MRICS – Valuer
Member

**Date and venue of
Paper Determination** : 26 April 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 26 April 2016

DECISION

Decisions of the tribunal

The tribunal determines that the appropriate sum to be paid into Court for the purchase of the freehold interest by the Applicants for 42 Herne Hill Road London SE24 OAR (“the Property”), pursuant to schedule 9(1) of the Leasehold Reform Act 1967 (“the 1967 Act”), is £13,000.

The application

1. The Applicants seek the tribunal’s determination of the price to be paid for and the terms of the transfer of the freehold interest in the Property. The Applicants are the not less than two thirds of the qualifying tenants in the Property and are the participating qualifying tenants.
2. The landlord is missing and on or around 15 October 2015 the Applicant issued a Part 8 Claim in the Lambeth County Court under claim number BO2LB353. On 26 February 2016 an order was made by District Judge Worthington under section 26 of the 1993 Act which confirmed that the Court was satisfied as follows;
 - That the Applicants had taken all reasonable steps to locate the Respondents;
 - It was not reasonably practicable to serve the proceedings or a section 13 notice on the Respondents;
 - The Respondents are the registered freehold proprietors of the freehold in the Premises comprised in the HM Land Registry Title Number LN240514 and the reversioner within the meaning of section 9(1);
 - The First Applicant is the registered proprietor of a lease at Flat 1, 42 Herne Hill Road London SE1 OAR and the qualifying tenant of Flat 1 pursuant to section 5 of the Act;
 - The Second Applicant is the registered proprietor of a lease at Flat 2, 42 Herne Hill Road London SE1 OAR and the qualifying tenant of Flat 2 pursuant to section 5 of the Act;
 - The Applicants are the qualifying tenants of two of the three flats in the Property;
 - On the date of the claim the Property comprises premises to which Chapter 1 of the Act applies and on the date of this claim the Claimants would not have been precluded from giving a valid notice under section 13; and

- The person nominated by the Applicants in whom the freehold should vest pursuant to section 27 of the Act is the First Applicant.
3. It was further ordered that that service of the claim form and notice under section 13 be dispensed with and that in accordance with section 27 of the Act the freehold shall vest in the Applicants on such terms as shall be determined by the First tier tribunal (Property Chamber) with a view to the interests being vested in the Applicants in like manner as if the Claimants had given notice under section 13.
 4. Further it was ordered that on the Applicants then paying into court such sum as determined by the tribunal Rebecca Rinn, a solicitor of Streathers Solicitors, shall be entitled to execute a form of transfer to vest the said freehold in the Applicants, such conveyance to be in a form approved by the tribunal in accordance with section 27(3) of the Act and that the conveyance shall be effective to vest in the Applicants the freehold in the Property under title number LN240514.
 5. This determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Tribunals (Procedure) (England) Regulations 2003. Directions were issued on 10 March 2016. The paper determination took place on 26 April 2016.
 6. The Applicants' solicitors supplied the tribunal with a hearing bundle that contained copies of the existing leases, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings and a valuation.
 7. The tribunal did not consider that an inspection of the Property was necessary given that we had been provided with a photograph of the property and full details of the comparables relied upon and the information provided in the report of Ms Hillier (see below).
 8. The relevant legal provisions are set out in the Appendix to this decision.

Tenure

9. The Property is divided into three flats. The Applicants are the long leaseholders of the ground and first floor flats respectively. Ms Anne Macdonald is the long leaseholder of the second floor flat.

10. The tenants rely on a valuation prepared on their behalf by Kayleigh J Hillier BSc Hons MA MRICS of Kempton Carr Croft, chartered surveyors. Ms Hillier has inspected the Property and has provided a photograph, description and a list of comparable transactions.
11. She describes the Property as a house constructed circa 1900 now divided into three flats. It is described as being constructed over three floors with the appearance of a traditional three storey at the front when viewed from Herne Hill. The site is level and rectangular. The Property has no on-site parking with permit parking on Herne Hill. The ground floor flat benefits from a private garden to the rear which is directly accessed from the kitchen.
12. The ground floor flat comprises 57 sqm and has two bedrooms and a private rear garden. The first floor flat comprises 46 sqm and has two bedrooms. The second floor flat comprises 38 sqm and has one bedroom. The internal flats are said to be well maintained and to a satisfactory standard.

The tenants' valuation

13. The county court claim was issued on 26 February 2016 and that is the valuation date which has been correctly adopted by Ms Hillier. At this point there were 94 years unexpired on all three leases. Ground rents were peppercorn for the duration of all three terms.
14. Ms Hillier provided a table of comparables as well as what she described as a bull's eye view of the comparables. At the time of inspection comparable sales evidence was taken from completed sales between January and August 2015 but regard has since been had to completed sales nearer the date of valuation. The second floor flat was marketed at £339,950 and completed in February 2016 for £344,398.
15. Ms Hillier adopts the sale price of the second floor flat in February 2016 as the basis of her assessment at £344,398. This is the market value which she adopts for the second floor flat.
16. Her table of comparables contains six comparables. She went on to provide information in respect of each by reference to the sale date, number of bedrooms, floor, lease term, floor area, psf, the condition/configuration and whether it has a garden. Having done so she does not analyse them further instead stepping back to adopt a market value of £482,000 for the ground floor flat and £440,000 for the first floor flat.
17. There was no capitalisation of the ground rent income as it was peppercorn.

18. A relativity figure of 100% has been used as the leases have more than 90 years unexpired.
19. The rate of 5% is said to be applicable in respect of the landlord's loss of reversionary interest on the basis of the decision in *Sportelli*.
20. Her assessment of the premium payable under Schedule 9(1) is £13,049.59 which she rounds to £13,000.

The tribunal's decision

21. The premium payable under Schedule 9(1) of the 1967 Act is £13,000.

Reasons for the tribunal's decision

22. The tribunal carefully considered the contents of Ms Hiller's report.
23. We accept the long lease value of £344,398 for the second floor flat.
24. We were not provided with any details for the comparables such as sales particulars. This would have been useful given that Herne Hill Road is a long road containing many varied types of properties. This is reflected in the schedule provided. In addition Ms Hiller has not adjusted the sales prices to the valuation date and has not carried out any real analysis of the comparables preferring rather to stand back. It would have been helpful if she had explained her valuation rationale in more detail.
25. Doing the best we could on the evidence before us we discounted 48 Herne Hill Road as it appeared to us out of kilter with the other comparables and therefore unreliable. The remaining flats were all two beds roomed and ranged between a sales price of £415,000 to £485,500. We accepted Ms Hiller's market value of £440,000 for the first floor flat. In relation to the ground floor flat we accepted Ms Hiller's market value of £482,000 as we noted this was at the top end of the schedule of comparables and properly reflected in our view the fact that the ground floor flat was in good condition and had the benefit of a garden.
26. We agree that there is no capitalisation.
27. We agree that a relativity rate of 100% is appropriate.
28. We accept the rate of 5% in respect of the landlord's reversionary interest.

29. Accordingly we adopt Ms Hiller's valuation and conclude that the price to be paid into court for the freehold of the property is £13,000.
30. We are satisfied with the terms of the transfer as set out in the transfer submitted to us and approve it.

Name: S O'Sullivan

Date: 26 April 2016

Appendix of relevant legislation

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

Section 26

26 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) or (2A) 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.