



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

**Case Reference** : **VG/LON/OOBH/OCE/2016/0098**

**Property** : **109 Leyton Green Road, London  
E10 6DB**

**Applicants** : **Robin David Lyons (1)  
Andrew David Finn (2)**

**Representative** : **Shoosmiths LLP**

**Respondent** : **Nasrin Akhtar**

**Representative** : **None**

**Type of Application** : **Determination of premium payable  
under Schedule 6 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993 – missing  
landlord**

**Tribunal Members** : **Mrs Sonya O’Sullivan – Tribunal  
Judge  
Mr Luis Jarero BSc FRICS – Valuer  
Member**

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

**Date of Decision** : **10 May 2016**

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**DECISION**

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## **Decisions of the tribunal**

1. The tribunal determines that the appropriate sum to be paid into Court for the freehold of the property known as 109 Leyton Green Road, London E10 6DB pursuant to Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £54,546. The further sum of £510 is due to the landlord in respect of amounts confirmed to be due by District Judge Vokes in his order of 29 February 2016 under section 27(5)(b) of the Act.

## **The application**

2. The Applicants who are the qualifying tenants of the two flats at 109 Leyton Green Road, London E10 6DB (the “Property”) 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.
3. The landlord is missing and on 25 February 2016 the Applicants issued a Part 8 Claim in the County Court at Bow under claim number 000Bo610. On 29 February 2016 an order was made by District Judge Vokes under section 26 of the 1993 Act which confirmed that the Court was satisfied that the Applicants were qualifying tenants for the purpose of section 5, were entitled to claim collective enfranchisement of the Property, would not have been precluded by any provision of the 1993 Act and that the landlord of the Property could not be found. It was further ordered that the value of the landlord’s interest be determined by the tribunal in accordance with section 27(5) (a) of the Act.
4. It was further ordered that upon payment of the sums determined the vesting of the landlord’s interest shall take place immediately without the need for further application to the court and without the need for any conveyance. The Applicants’ costs were assessed at £2,954.20, such sum to be paid out from the sums to the Applicants’ solicitors after the payment into Court.
5. The Court also ordered that the tribunal shall determine any further sum due to the landlord under section 27(5)(a) of the Act and confirms that £510 is due from the Applicants under the terms of their leases.
6. This determination is made on the basis of written representations in accordance with the tribunal’s procedure. Directions were issued on 30 March 2016. The paper determination took place on 10 May 2016.
7. The Applicants’ solicitors supplied the tribunal with a hearing bundle that contained copies of the existing lease, Land Registry searches for

the freehold and leasehold titles, relevant documents from the County Court proceedings and a valuation.

8. 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 Mr Robson MA (Oxon) MSc MRICS (see below).
9. The relevant legal provisions are set out in the Appendix to this decision.

### **Tenure**

10. The lease of the lower flat was for a term of 99 years from 1 January 1982. The ground rent payable is £30 per annum for the first 33 years, £60 per annum for the next 33 years and £90 per annum for the last 30 years. The lease has 64.86 years unexpired.
11. The lease of the upper flat was for a term of 99 years from 1 January 1985. The ground rent payable is £50 for the first 33 years, £100 per annum for the next 33 years and £150 per annum for the last 30 years. The lease has 67.86 years unexpired.

### **The tenants' valuation**

12. The tenants rely on a valuation prepared on their behalf by Mr David Robson MA (Oxon) MSc MRICS of Robsons, chartered surveyors. Mr Robson has inspected the Property and has provided photographs, description and a list of comparable transactions and a valuation rationale.
13. He describes the Property as a building containing two conversion flats in a former single dwelling terrace house known as 109 Leyton Green Road. It now comprises 2 flats and he refers to 109 as the lower flat and 109A as the upper flat. The building is described as a two storey terrace built circa 1900, comprising two conversion flats of similar kind, with a main building section and a back addition with later extension at ground level. It is of traditional construction comprising pitched and slated roof main areas brick and rendered external walls, solid and timber floors and double glazed windows.
14. The lower flat comprises a basement used as a music room and ground floor comprising entrance hall, two bedrooms, kitchen, living room and bathroom/wc. Whilst the basement is not included on the lease plan Mr Robson says that the demise includes the foundations and therefore is deemed to include the basement.

15. The upper flat comprises entrance hall and stairs on the ground floor leading to two bedrooms, living room, kitchen and bathroom/wc on the first floor. The lease of the upper floor also includes the roof under the First Schedule.
16. The date of the application to the county court claim was 22 February 2016 and that is the valuation date which has been correctly adopted by Mr Robson.
17. Mr Robson calculates the freehold possession value of the lower flat and upper flat to be £378,750 and £368,650.
18. He confirms that there have been very few sales of two bedroom flats nearby and that of those only a few are direct comparables. He considers the following to be most appropriate;
  - i. 126A Canterbury Road E10 - This is a 2 bedroom flat conversion flat on the ground floor of an end of terrace period building currently under offer at £400,000. It is said to be modern and in good condition benefiting from a basement, share of freehold and 100 year underlying lease. It has a garden to the rear and is on a quieter road but with a smaller second bedroom.
  - ii. 848a Lea Bridge Road E10 - This is a ground floor two bedroom conversion flat with private garden and garage. It is said to be in average condition with a lease in excess of 100 years but located on a busier road. The floor area would indicate a comparable size to the flats. It sold on 5 October 2015 at £345,000. Adjusting to the valuation date a figure of £365,150 is reached.
  - iii. 205 Vicarage Road E10 - This is a two bedroom conversion flat on the first floor of a period terrace building. It is a modern flat in good condition and a lease in excess of 100 years. It has no garden but has superior location. It sold for £367,500 on 24 September 2015. Adjusting to the valuation date a figure of £393,540 is reached.
  - iv. 85 Canterbury Road, E10 - This a 722 sq ft two bedroom conversion flat on the first floor of an end of terrace period building. This sold for £315,000 on 8 September 2015. Modern flat in good condition and a new 99 year lease. It has no garden and a small second bedroom but is located on a quieter road. Adjusting to the valuation date a figure of £337,320 is reached.
19. Mr Robson is of the view that adjustments for the length of the lease and the benefits of the Act are not necessary given the length of the leases in question and the comparables. However to reflect the difference in time between the transaction dates and the relevant date he has had regard to the Land Registry Index data for flats in the

London Borough of Waltham Forest and details the adjustments in his report.

20. As far as the physical elements of the comparables are concerned, 126A Canterbury Road is included given the lack of comparables, it is a slightly smaller flat compared to the flats but benefits from a basement, garden and share of the freehold.
21. 848A Lea Bridge Road benefits from a garden and a garage but is considered to be in a less desirable location.
22. 205 Vicarage Road is said to be the best comparable in terms of size but is located in a quieter residential street with better access to public transport. It has no garden.
23. 85 Canterbury Road is a relatively large first floor flat with no garden and in a comparable location to 205 Vicarage Road. It does have a small second bedroom but the value of the flat is said to appear low when accounting for this. The property was marketed in March 2015 which could be an indication of how quickly the market has changed over the period given 848 Lea Bridge Road and 205 Vicarage Road were marketed in May and August 2015 respectively.
24. He concludes that taking the above into account the long lease value of the lower flat should be £375,000 and the upper flat £365,000. Although he says he would have expected a larger differential in this case £10,000 seems appropriate given that £365,000 of the midpoint of 205 Vicarage Road and 85 Canterbury Road, the two first floor comparables without gardens.
25. He considers that there should be 1% uplift to freehold values to reach a freehold vacant possession value of £378,750 for the lower flat and £368,650 for the upper flat.
26. As far as relativity is concerned he considers the appropriate relativities to be 88.84% and 90.48% for the lower and upper flats respectively. Mr Robson has adjusted for time and then also had regard to the RICS published graphs. The indicated range for a lease with 64.86 years remaining is between 87.86% and 90.97% with the average of all five graphs being 89.23%. The indicated range for a lease with 67.86 years unexpired is 89.72% and 92.14% with an average of all five graphs being 91.17%.

### **The tribunal's decision**

27. The premium payable under Schedule 6 of the 1993 Act is £54,546. The further sum of £510 is due to the landlord in respect of amounts said to be due under section 27(5) (b) of the Act.

### **Reasons for the tribunal's decision**

28. The tribunal carefully considered the contents of Mr Robson's report. The tribunal notes that his firm is a residential firm with offices in Bromley, Balham and Acton providing survey and valuation services in London and the South East of England. We are grateful to Mr Robson for his comprehensive analysis which was of considerable assistance to the tribunal.
29. We considered the analysis provided by Mr Robson of the various comparables and adopt his long lease values for the lower flat and upper flat of £375,000 and £365,000 respectively. We also accept the 1% uplift to freehold values to reach a freehold vacant possession value of £378,750 for the lower flat and £368,650 for the upper flat.
30. As far as relativity is concerned, as Mr Robson himself has commented, using adjusted transaction values can be unreliable given the variations which can occur from month to month when transactions can be only a week apart. However his conclusion on relativity is well reasoned and we accept his figures.
31. Accordingly we accept Mr Robson's valuation and conclude that the price to be paid into court for the freehold of the property is £54,546.
32. The further sum of £510 is due to the landlord in respect of amounts said to be due under section 27(5) (b) of the Act.
33. We note that District Judge Vokes' order of 29 February 2016 orders that upon payment of the appropriate sum the vesting of the landlord's interest shall take place immediately thereon "*without the need for any further application or Order of this Court and without the need for any conveyance*". Section 27(3) of the Act provides as follows:

*"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 the 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.”*

34. The requirement for a conveyance appears to be mandatory and the Applicants may therefore wish to consider making an application for an amendment to the order to provide for the approval of a transfer by the tribunal.
35. The Applicants have included a draft transfer in their bundle. Had we been asked by the Court to approve the form of transfer we would have approved the draft provided save as to the following;
- i) The transferor may only transfer with limited title guarantee; and
  - ii) The transfer must contain a statement that it is executed for the purposes of Chapter 1 of the 1993 Act as required by section 34(5) as follows *“This conveyance (or transfer) is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993”*.

**Name:** S O’Sullivan

**Date:** 10 May 2015

### **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.