



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

Case Reference : **CAM/00KF/OCE/2021/0028**

Property : **52 & 52a St Ann's Road, Southend
on Sea, Essex SS2 5AU**

Applicants : **(1) Martin Hopson & Richard
Hopson (No.52 FF leaseholders)
(2) Richard Hopson (No.52A GF
leaseholder)**

Representative : **Tolhurst Fisher LLP**

Respondent : **Elaine May**

Type of Application : **Determination of terms of
leasehold enfranchisement
(missing landlord)**

Tribunal Members : **Mr N Martindale BSc MSc FRICS**

Date of Decision : **14 March 2022**

DECISION

Decision

1. The premium to be paid by the applicants for the freehold interest in 52 and 52A St Ann's Road SS2 5AU, registered at HM Land registry under title number EX177008 (the "Property") is **£14,045 (Fourteen thousand and forty five pounds)**
2. The Tribunal did not receive a draft form TR1 with the application. The Court reserved execution of the transfer to a District Judge.

Introduction

3. This is an application made under Section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of acquisition of the freehold interest in the Property. The relevant legal provisions are set out in the Appendix to this decision.
4. The Property is a two level semi-detached late Victorian building consisting of two self contained flats converted from the former house. Flat 52 St Ann’s Road is the first floor flat (upper) and Flat 52A is the ground floor flat (lower).
5. The First applicant, Martin Hopson has an interest in the lease of first floor flat No.52 (HMLR title 310064). The Second applicant also has a share of the lease of No.52 and is sole leaseholder of ground floor flat No.52A (HMLR title EX 310100).
6. Flat No.52 is held on a long lease dated 15 March 1985 for 99 years from 29 September 1984 originally between Brian Donnelly and Ugo Rossi (landlords) and Anthony Wager (tenant) on set rising rents.
7. Flat No.52A is held on a long lease dated 26 March 1984 for 199 years from 25 December 1984 from the same landlords, and Gerald Marrison (tenant) also on set rising rents.
8. The landlord for both leasehold flats is now freeholder (HMLR title EX177008) Elaine May whose whereabouts cannot be traced.
9. By an order made District Judge Callaghan dated 8 November 2021, and on the court being satisfied that the respondent could not be found, the respondent’s interest in the subject Property was vested in the applicants in accordance with section 26 of the Act.
10. It was further ordered that service by the applicants of a notice under section 13 of the Act was dispensed with and that the proceedings were to be transferred to this Tribunal for a determination of the terms of the transfer of the respondents’ interest to the applicants (including but not limited to the price). The Tribunal’s jurisdiction is derived from the vesting order.

Statutory basis of valuation

11. Schedule 6 to the Act provides that the price to be paid by the nominee purchaser, in this case the applicants, for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.

12. The value of the freehold interest is the amount which, at the valuation date, that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.
13. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.
14. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

15. The applicants have provided a valuation report with an AVD of 2 March 2021 by Colin Horton BSc AssocRICS, of Hortons Valuers Ltd. ("the Report"). The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within their own knowledge that he believes them to be true and includes a statement of compliance confirming that they understands their duty to this Tribunal.
16. Having considered the contents of the Report, although the valuation calculations showed some minor errors, adopting incorrect capital values in calculating the marriage value in the section - 'Loss on Reversion' for Flat 52A, these were self cancelling and made no material difference to the final figure of the premium. The Tribunal also found the valuation calculations very hard to read as the author had adopted an unnecessarily small typeface. Otherwise the Tribunal was broadly satisfied with the opinions expressed in the Report and was content that the methods adopted were appropriate to determine the enfranchisement price for the Property. The Tribunal accepts the description of the Property and its location as stated in the Report.
17. A photograph of the exterior of the Property was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

18. According to the Report, the Property consisted of two self contained flats. A ground floor flat No.52A which has access to their portion of the rear garden. It comprised a small shared front entrance hall, an internal hallway, a front living room, a rear bedroom, through kitchen

to a small laundry room and bathroom WC and basin beyond. A first floor flat No.52 the same shared front hallway, stairs off to the first floor flat and internal landing leading to; front living room, rear bedroom, kitchen and a bathroom, WC and basin beyond. Access to its portion of the rear garden was via the shared external side pedestrian access.

19. No tenants' improvements are mentioned in the Report to either flat for which an allowance is to be made in the value of either, in the Report. Both are described as in average condition.
20. The unexpired residue of the lease for Flat 52 is approximately 62.6 years and for Flat 52A it is said to be 162.9 years as it started 3 months later on 25 December 1984.
21. The valuer's assessment of the market value of both flats is based on evidence of completed sales of three comparable flats during 2021.
22. From this material the valuer draws the conclusion that as at the valuation date, the long lease value, of both flats are the same, unimproved at £140,000. The Tribunal is satisfied with the relevance and details of the three comparable property sales provided in the Report and their analysis by the valuer to reach the assessment of virtual freehold vacant possession value for each of the two flats.
23. The Tribunal notes and accepts the 1% adjustment by the valuer in marking down the freehold values and reaching their long lease values from the notional freehold value.
24. The valuer having found no reliable sales of short leasehold flats of otherwise similar flats in the locality for the shorter lease ground floor flat, considered all of the RICS published graphs of relativity, and selected the 'Greater London Average of the Graphs' which produced a relativity of 87.68% contained within the RICS Greater London and England graphs. The valuer also refers to the decisions in passing of *Trustees of Sloane Stanley Estate v Munday* and of *Lagesse Aaron v Welcome Trust Ltd UKUT* and of *Trustees of Barry & Peggy High Foundation v Zucconi & Anor UKUT*. The Tribunal accepts, the 87.68% relativity proposed. The first floor lease is considered to already have a long leasehold, being well over 100 years unexpired and it remains at 100%.
25. The valuer duly applies these percentage relativities to each of the virtual freehold value for the respective flats to obtain the value of the current leasehold interest in each case.
26. The diminution in the value of the landlord's interest in the tenants' flats is represented first by the capitalised value of the grounds rent

receivable under their leases. That income stream is capitalised by the valuer at 7%, which the Tribunal accepts is robust and appropriate in this case owing to the relatively unchanging and relatively low ground rents. The Report cites *Nicholson v Goff* [2007] in support.

27. Next, the effect of enfranchisement will deprive the landlord of the freehold reversion of the Property. The present value of the reversion is determined by applying a deferment rate to the freehold value of both flats. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005. The valuer also adopts the Sportelli deferment rate of 5% which the Tribunal accepts.
28. The marriage value is to be shared equally between landlord and tenant, as required by the Act for both flats, though owing to the long unexpired term for flat No.52A, there is in effect no marriage value to be shared.
29. The valuer's final valuations for each part of the property to be acquired are as follows: No.52 £12,152. No.52A £1,893. The valuer places no value on the 'compensation' for loss by the freeholder of the final reversion. The valuer considers that neither flat has development potential and no additional value therefore. The Tribunal accepts both points.
30. The Tribunal accepts the valuations for each flat and the submission that no value should be ascribed for additional compensation. As the valuations for each flat are accepted, the Tribunal has not prepared its own valuations.
31. The premium to be paid by the applicants for the freehold interest in the Property is therefore **£14,045 (Fourteen thousand and forty five pounds)**.

Name: N. Martindale FRICS Date: 14 March 2022

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement] 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 [RTE company], 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 the RTE company] 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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement], 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 [RTE company], 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 RTE company], 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 [a RTE company which satisfies the requirement in section 13(2)(b) wishes to make a claim to exercise the right to collective enfranchisement], 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 [RTE company], 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 [RTE company] would not have been precluded by any provision of this Chapter from giving a valid notice under section 13 with respect to those premises[a

nd that the RTE company has given notice of the application to each person who is the qualifying tenant of a flat contained in those premises].

(5) Before making any such order the court may require the applicants [RTE company] 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 [RTE company] had, at the date of the application, duly given notice under section 13 of their [its] 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 [RTE company] 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 [RTE company], 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 [RTE company] 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 [RTE company on any person who it knows or has] 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.