



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

Case Reference : MI/LON/00BE/OCE/2015/0155

Property : 159 Upland Road, Camberwell, London SE22
0DF

Applicant : (1) Kiwi Estates Limited
(2) Herbert Roy Henry
(3) Chere Jane Henry
(4) 159 Upland Road Limited

(the “Applicants”)

Representative : WT Law LLP, solicitors

Respondent : Muriel May Townsend (the “Respondent”)

Representative : N/A

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

Tribunal : 1. Mr A Vance, Tribunal Judge
2. Mr Neil Martindale, FRICS

Date of Hearing : Paper hearing on 14 July 2015

Date of Decision : 14 July 2015

DECISION

Decisions of the tribunal

1. The Tribunal determines that the premium payable by the Applicants in respect of the purchase of the freehold 159 Upland Road, Camberwell, London SE22 0DF is £52,320.00. The reasons for the Tribunal’s decision are set out below.
2. The Tribunal approves the draft proposed transfer in form TR1 which has been submitted by the Applicants save that reference to “full title guarantee” should be replaced with “limited title guarantee”.

Background

3. Numbers appearing below in square brackets refer to pages in the hearing bundle provided by the Applicants.
4. On 20 March 2015, by order of District Judge Desai [61], sitting at Lambeth County Court, the Court ordered that, pursuant to Section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") the freehold interest in 159 Upland Road, Camberwell, London SE22 0DF ("the Property") registered at HMLR under Title No.156304 vest in the Fourth Applicant on such terms as may be determined by this Tribunal pursuant to Section 27(1)(b) of the Act. We are required to determine those terms.

Details of Leases

5. The Respondent missing landlord is the lessor of the Property. She was registered as freehold proprietor on 17 May 1982.
6. The First Applicant is the lessee of the ground floor flat at the Property registered at HMLR under Title SGL436484 [16]. Its lease is dated 14 June 1985 and was granted for a term of 99 years from 25 December 1984 at a ground rent of £50 per annum, rising to £100 after 33 years, and then £150 for the final 33 years of the term. Its leasehold interest was registered on 1 May 2014.
7. The Second and Third Applicants are the lessees of the flat on the first and second floor levels of the Property registered at HMLR under Title SGL336440 [33]. Their lease is dated 11 December 1981 and was also granted for a term of 99 years from 25 December 1980 at a ground rent of £50 per annum, rising to £100 after 33 years, and then £150 for the final 33 years of the term. Their leasehold interest was registered on 18 February 1982.
8. There are no intermediate interests.

Valuation date

9. The valuation date prescribed by section 27(1) of the Act is the date of the Applicant's application to the Court which the Tribunal is informed was 27 October 2015.
10. The unexpired term of both flats as at the valuation date are therefore 69.16 years in respect of the ground floor flat and 65.16 years in respect of the upper floor flat.

Inspection

11. The Applicants did not request that the Tribunal inspect the Property and the Tribunal did not consider it necessary or proportionate to do so.

The Law

12. Schedule 6 to the Act (the "Schedule") 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.
13. Paragraph 3 of the Schedule provides that 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 and on the assumption that any increase in value of the flat attributable to an improvement carried out at his/her own expense by a tenant or by any predecessor in title is to be disregarded.
14. 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.
15. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.
16. Paragraph 6 provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

The evidence before the Tribunal

17. The evidence before the Tribunal comprised the valuation report of Mr Wilson Dunsin, FRICS of Dunsin Chartered Surveyors dated 12 June 2015. Mr Dunsin's report is supported by a Statement of Truth confirming that insofar as the facts stated in his report are within his own knowledge that they are true and by a statement of compliance confirming that he understands his duty as an expert witness. A copy of his valuation is annexed to this decision at Appendix 1.
18. Having considered the contents of Mr Dunsin's report and the opinions he expresses, the Tribunal is satisfied that the method he has adopted is appropriate to determine the enfranchisement price for the Property. The Tribunal accepts his description of the property and its location

Valuation

19. Mr Dunsin states that he inspected the Property on 27 April 2015. He describes the Property as situated in an established residential locality amongst properties of similar age and type of construction. It is a three storey semi-detached house, built circa 1900, and later converted into two flats. Internal and external photographs and location plans for both flats are attached to his report.
20. He describes the ground floor flat as comprising a hall, lounge, bedroom, bathroom/WC and kitchen. The approximate floor area is stated as being 614 sq ft.

21. He describes the upper floor flat as having a ground floor entrance hall, with stairs to a first floor landing. At first floor level there is a lounge, kitchen, bedroom and bathroom/WC. On the second floor, there is a second bedroom. The approximate floor area is stated as being 775 sq ft.
22. Mr Dunsin states that externally the Property is in a poor and run down condition and that it is in need of refurbishment and maintenance works. He states that internally the flats are in a basic and dated condition and are in need of modernisation, improvement and refurbishment works. He states that there are no tenant improvements to be disregarded as part of his valuation exercise.
23. An assessment of virtual freehold vacant possession value of the Property ("FHVP") as at the valuation date is required in order to value the Respondent's reversionary interest.
24. Mr Dunsin's assessment of the value of the FHVP is based on transactions relating to the completed sales of comparable flats within the local area of the Property. He provides information concerning the sales of three ground floor one-bedroom flats and three two-bedroom upper floor flats. Marketing particulars for each of the comparables are attached to his valuation.
25. Mr Dunsin states that he has adjusted the sale prices of these comparable properties, to factor in the passage of time from the valuation date, by using the Land Registry House Price Index for London Borough of Southwark in which the Property is located. However, details of these adjustments do not appear in his report.
26. He concluded that his first three comparables support a freehold value of £350,000 for the ground floor flat and that the remaining three comparables support a freehold value of £420,000 for the upper floor flat.
27. Although the Tribunal would have preferred that Mr Dunsin provide details of the adjustments for time made to the sale prices of his comparables the Tribunal is satisfied that his report is impartial and objective and that his choice of comparables is appropriate. In the Tribunal's view, his suggested valuations of the two flats are not out of line with the sale prices achieved for the comparable properties, all of which sold quite close to the valuation date. The Tribunal is also satisfied that his choice of comparables are in the vicinity of the Property and that they are similar in type to the subject flats. The Tribunal therefore adopts these figures for the FHVP of each flat.
28. Mr Dunsin arrived at his valuation of the unexpired residue of the current leases, by adjusting the extended lease values of £350,000 and £420,000 by a figure arrived at by averaging five graphs of relativity. These were the Beckett & Kay, South East London, Nesbitt & Co, Austin Gray and Andrew Pridell Associates graphs. The average relativity figure was 92.01% in respect of the ground floor flat and 89.43% for the upper flat. The Tribunal accepts that approach as legitimate in principle, given the lack of transactional evidence of sales with similar unexpired lease terms.
29. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the

lease which will be extinguished on enfranchisement. That income stream is capitalised by Mr Dunsin at 7%, which the Tribunal accepts is appropriate in this case.

30. Next, the effect of enfranchisement will be to deprive the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the FHVP of each flat. 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*. Mr Dunsin applies a deferment rate of 5% which the Tribunal accepts.
31. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholders and the landlord before enfranchisement; and (on the other) the aggregate value after enfranchisement. It is to be shared equally between the parties, as required by the Act and had has been calculated by Mr Dunsin at £14,648 in respect of the ground floor flat and £25,430 in respect of the upper floor flat
32. The premium payable by the Applicants is therefore **£52,320** as per Mr Dunsin's valuation.

TR1

33. The Tribunal is satisfied that the draft proposed transfer in form TR1, submitted by the Applicants, is appropriate except that reference to "full title guarantee" should be replaced with "limited title guarantee".

Appendix 1

Valuation of Mr M Dunsin FRICS

159 Upland Road, London SE22 0DF

Appendix 12 – Calculation of the premium

COLLECTIVE ENFRANCHISEMENT VALUATION

in accordance with the Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

159 Upland Road, London, SE22 0DF

Valuation date: 27th October 2014

Capitalisation Rate: 7.00%

Deferment Rate: 5.00%

1. Value of Freeholder's interest in Ground Floor Flat

Lease Expiry date: 24th December 2083

Unexpired Term: 69.16 years.

Relativity: 92.01%

Ground Rent Periods:	i	ii	iii
Terms (Years):	3.16	33	33
Rent (per annum):	£50	£100	£150

Freehold Vacant Possession Value: £350,000

Existing Lease Vacant Possession Value (in the 'No Act' World): £322,035

i. Ground rent

Period i			50		
YP for	3.16 years @	7.00%	2,7499	137	
Period ii			100		
YP for	33.00 years @	7.00%	12,7538		
Deferred	3.16 years @	7.00%	0.8075	1,030	
Period iii			150		
YP for	33.00 years @	7.00%	12,7538		
Deferred	36.16 years @	7.00%	0.0866	166	1,333

ii. Reversion to Freehold

Reversion to Freehold Value			350,000		
Deferred	69.16 years @	5.00%	0.03424	11,984	13,317

iii. Marriage Value

Reversion to Freehold Value:				350,000	
Less: Value of Freeholder's Interest:			13,317		
Value of Existing Lease:			322,035	335,352	

Marriage Value

Freeholder's share of Marriage Value @ 50%				14,648	7,324
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Premium for Ground Floor Flat

20,641

2. Value of Freeholder's interest in Upper Floor Flat

Lease Expiry date: 24th December 2079

Unexpired Term: 65.16 years.

Relativity: 89.43%

Ground Rent Periods:	i	ii
Terms (Years):	32.16	33
Rent (per annum):	£100	£150

Freehold Vacant Possession Value: £420,000

Existing Lease Vacant Possession Value (in the 'No Act' World): £375,606

i. Ground rent

Period i			100		
YP for	32.16 years @	7.00%	12,6642	1,266	
Period ii			150		
YP for	33.00 years @	7.00%	12,7538		
Deferred	32.16 years @	7.00%	0.1135	217	1,484

ii. Reversion to Freehold

Reversion to Freehold Value			420,000		
Deferred	65.16 years @	5.00%	0.04162	17,481	18,964

iii. Marriage Value

Reversion to Freehold Value:				420,000	
Less: Value of Freeholder's Interest:			18,964		
Value of Existing Leases:			375,606	394,570	

Marriage Value

Freeholder's share of Marriage Value @ 50%				25,430	12,715
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Premium for Upper Floor Flat

31,679

3. Compensation

N/A

4. Total Premium Payable for Freehold

£52,320