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

Case Reference : LON/00BH/OCE/2017/0159

Property : 32 Station Road,
London E17 8AA

Applicants : (1) Adheel Shahzad
(2) Neil Young and Miyong-Melanie
Rathe

Representative : Streathers Solicitors LLP

Respondent : William Alan Bates

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

Tribunal Members : N Martindale FRICS

Date of Decision : 15 August 2017

DECISION

Decisions of the Tribunal

1. The premium to be paid by the applicants for the freehold interest in 32 Station Road, London E17 8AA, registered at HM Land registry under title number EGL163584 the "Property") is **£40,800**.
2. The Tribunal approves the terms of transfer in Form TR1 provided with the application.

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 Appendix 2 to this decision.
4. The Property is a two level mid-terrace Victorian building, formerly a house converted into two self contained flats, one on each level, ground floor No32a and first floor No32.
5. The applicant, Adheel Shahzad is the leaseholder of ground floor flat 32a Station Road and holds their interest under the terms of a lease dated 20 December 1986 registered under title number EGL169272. That lease was granted by the respondent William Alan Bales, to Circle Services Limited for a term of 99 years from 20 December 1985. The lease currently reserves a ground rent of £50 pa for the first 33 years, £75 pa for the next 33 years, £100pa for the remainder. The residual term of the lease is now vested in the first applicant who was registered as the leasehold proprietor on 5 January 2010.
6. The second applicants, Neil Young and Miyong-Melanie Rathe, the long leaseholders of first floor flat 32 holds their interest under the terms of a lease dated 20 December 1985, registered under title number EGL 174267. That lease was granted by the respondent William Alan Bales, to Richard Paul Green for a term of 99 years from 20 December 1985. The lease makes the same provision for a rising stepped rent. The lease is now vested in the second applicants who were registered as the leasehold proprietors on 23 January 2003.
7. The registered freehold proprietor of the Property is the Respondent, William Alan Bates, who was registered as such under title number EGL163589 on 8 October 1985.
8. By order made by District Judge Pigram on 29 June 2017, 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.
9. 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).

10. The Tribunal considered the issue on the papers submitted by the applicants, without a hearing, in accordance with directions issued on 3 April 2017, in the week commencing 15 May 2017.
11. The Tribunal's jurisdiction is derived from the vesting order made by the court on 21 March 2017 in which the court dispensed with service of a notice under section 13 of the Act.

The statutory basis of valuation

12. 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.
13. 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.
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.

The evidence before the Tribunal

16. The applicants have provided a valuation report dated 20 July 2017 by Tim Henson BSc MRICS, of Clarke Hillyer Ltd, Chartered Surveyors ("the Valuation Report"). The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within his own knowledge that he believes them to be true and includes a statement of compliance confirming that he understands his duty to this tribunal.
17. Having considered the contents of the Valuation Report and the opinions expressed in that report the Tribunal is satisfied that the method adopted is appropriate to determine the enfranchisement price for the Property. The Tribunal accepts the description of the property and its location as stated in the Valuation Report.

18. 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

19. 32 Station Road, a former ground floor shop and non-self contained upper parts dating from the 1900's was converted in the 1908's into two flats. Currently: No.32a is a compact ground floor flat which has access to the rear garden. It comprises an entrance hall, one bedroom, one box/bedroom, living room, kitchen, and bathroom/WC. No.32 is a larger first floor flat and comprises an entrance hall, bedroom, living room, kitchen and bathroom/WC.
20. Entry to the two flats is via a shared ground floor entrance door and small front garden.
21. It is stated in the Valuation Report that both flats have its own gas-fired boiler providing hot water and central heating. No tenants' improvements the additional value of which should be excluded, are mentioned in the Valuation Report.
22. The valuation date prescribed by section 27(1) of the Act is the date of the applicants' application to the court namely 1 December 2016. The unexpired residue of the leases for both flats is approximately 68.05 years.
23. From this material the valuer draws the conclusion that as at the valuation date, the long lease value, of Flat 32a, was £338,000 and that of 32, was £300,000. The Tribunal is are satisfied with the relevance and details of the four completed comparable property sales as evidence of long leasehold values, provided in the Valuation Report and of the further one of a short leasehold comparable property to support relativity. The Tribunal accepts the valuer's devaluations, adjustments and application to the property.
24. The Tribunal notes and accepts the 1% adjustment made by the valur in uplifting each of the long lease values to their notional freehold value.
25. The valuer having considered all of the RICS published graphs of relativity for areas outside of PCL, and finds their average percentage of relativity for the unexpired lease period as 91.29%. The valuer's adoption of this figure is accepted by the Tribunal. The valuer duly applies this percentage relativity to each of the virtual freehold values for the respective flats.
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 low ground rents.

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 the parties, as required by the Act.
29. The Tribunal accepts the valuation for each part of the property, as produced by Mr Henson and in particular his final opinion of value of £40,800 for the whole as expressed in his report. The Tribunal has therefore not produced its own valuation.
30. The premium to be paid by the applicants for the freehold interest in the property is therefore **£40,800**.

Name: Neil Martindale

Date: 15 August 2017

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.