

41605



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

Case Reference : NAT/LON/00BH/OCE/2017/0299

Property : 33 Wellesley Road,
London E17 8QX

Applicants : (1) KLM Property Ltd
(2) Eastbank Studios Ltd

Representative : Cavendish Legal Group Ltd

Respondent : (1) Stewart Bowles
(2) Karen Cummins

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

Tribunal Members : Mr N Martindale FRICS

Date of Decision : 14 February 2018

DECISION

Decisions of the Tribunal

1. The premium to be paid by the applicants for the freehold interest in 33 Wellesley Road, London E17 8QX, registered at HM Land registry under title number NGL57327 (the "Property") is **£65,384**.
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 the Appendix to this decision.

4. The Property is a two level mid-terrace Edwardian building consisting of two self contained flats. Flat 33 Wellesley Road is the ground floor flat and Flat 33a is the first floor flat.
5. The First Applicant, KLM Property Ltd is the long leaseholder of Flat 33 and holds their interest under the terms of a lease dated 7 September 1974 and registered under title number EGL30964. That lease was granted by the respondent's predecessors Frederick Long and Amelia Long, to Dorothy Apps and Elizabeth Blythe. For 99 years from 25 March 1974. The lease reserves a fixed ground rent of £10 a year. The residual term of the lease is now vested in the first applicant who was registered as the leasehold proprietor on 14 September 2016.
6. The Second Applicant, Eastbank Studios Ltd, is the long leaseholder of Flat 33a and holds their interest under the terms of a lease dated 3 March 1981, registered under title number EGL101580. That lease was granted by the respondent's predecessor in title Gertrude Brown to Raymond Long for a term of 99 years from 24 June 1980. The lease reserves a fixed ground rent of £10 a year. The residual term of the lease is now vested in the second applicant who was registered as the leasehold proprietor on 10 December 2002.
7. The registered freehold proprietors of the Property are the Respondents Stewart Bowles and Karen Cummins, who were registered as such under title number NGL57327 on 19 December 1967.
8. By order made by District Judge Revere on 6 December 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 19 December 2017, in the week commencing 12 February 2018.
11. The Tribunal's jurisdiction is derived from the vesting order made by the court on 5 December 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 15 January 2018 by Christopher Milliken, of Messrs Hilbery Chaplin, 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 broadly 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. According to the Valuation Report, 33 Wellesley Road, consists of two flats: is a compact ground floor flat which has access to the rear

garden. It comprises an entrance hall, one bedroom, living room, kitchen, and bathroom/WC. 33a Wellesley Road is a compact first floor flat and comprises an entrance hall, one 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. No tenants' improvements 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 12 May 2017. The unexpired residue of the leases for Flat 33 is 55.9 years and for Flat 33a is 62.2 years.
23. Mr Milliken's assessment of the market value of both flats is based on evidence of completed sales of four comparable flats during February to May 2017.
24. From this material Mr Milliken draws the conclusion that as at the valuation date, the long lease value, of Flat 33, with the benefit of the rear garden was £325,000 and that of 35a, with the benefit of the loft space, was also £325,000. The Tribunal is satisfied with the relevance and details of the four comparable property sales provided in the Valuation Report and their analysis by the valuer to reach the assessment of virtual freehold vacant possession value for each of the two flats.
25. The Tribunal notes and accepts the 1% adjustment by Mr Milliken in uplifting each of the long lease values to their notional freehold value.
26. Mr Milliken having found no reliable sales of short leasehold flats of otherwise similar flats in the locality, considered all of the RICS published graphs of relativity, but selected the 2009 RICS Greater London and England graphs of relativity and also the Leasehold Valuers 2017 Relativity Graph. He then proceeds to adopt the average figures arising from each for the corresponding unexpired terms in each case. The Tribunal accepts, for Flat 33 of 82.4% and for Flat 33a of 86.8% relativity figures.
27. Mr Milliken duly applies these percentage relativities to each of the virtual freehold values for the respective flats to obtain the value of the current short leasehold interest in each case.
28. 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 Mr

Milliken at 7%, which the Tribunal accepts is robust and appropriate in this case owing to the relatively unchanging and very low ground rents.

29. 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. Mr Milliken also adopts the Sportelli deferment rate of 5% which the Tribunal accepts.
30. The marriage value is to be shared equally between the parties, as required by the Act.
31. The Tribunal accepts the valuation for each part of the property, as produced by Mr Milliken; being £37,672 for lower Flat 33 and £27,712 for upper Flat 33a. The Tribunal has therefore not produced its own valuation.
32. The premium to be paid by the applicants for the freehold interest in the property is therefore **£65,384, (sixty five thousand, three hundred and eighty four pounds)**.

Name: Neil Martindale

Date: 14 February 2018

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.