



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and in
the COUNTY COURT at Clerkenwell
& Shoreditch sitting at 10 Alfred
Place, WC1E 7LR**

Case reference : **LON/00AY/OCE/2021/0165**

County Court Claim No : **HO1EC258**

Property : **59 Appach Road, Brixton, London
SW2 2LE**

Applicants : **(1) Alexandra Helen Patrick and
Steven Palmer Hussey (GFF)
(2) Louisa Caroline Gold (F & SFF
Maisonette)**

Representative : **Mackrell, Solicitors**

Respondent : **Seamus Kennedy**

Representative : **Not represented**

Type of application : **Section 24 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge I Mohabir
Mr Ian Holdsworth BSc MSc FRICS**

Date of decision : **30 November 2021
amended 1 December 2021**

DECISION

Summary of the Tribunal's decision

- (1) The price payable for the freehold interest is **£14,540** to be paid into Court within 14 days of execution of the TR1 by the Tribunal.
- (2) The terms of the draft TR1 are approved subject to the amendment set out in paragraph 21 of this decision.
- (3) The Claimants/Applicants are directed to file an amended form TR1 within 14 days of service of this decision for execution by the Tribunal.
- (4) The Defendant/Respondent do pay the Claimants' reasonable costs to be summarily assessed and set off against the purchase price.

Background

1. This is an application made by the Applicants as the nominee purchasers pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the collective enfranchisement of 59 Appach Road, Brixton, London SW2 2LE ("the property").
2. By a claim form issued on 22 April 2021 under action number HO1EC258 in the County Court at Clerkenwell & Shoreditch the Applicants sought an order under section 26 of the Act vesting the freehold interest of the property in the Applicants on the basis that the Respondent could not be found.
3. By Order of Deputy District Judge Sharkey dated 9 August 2021 the Court recorded that it was satisfied that the Respondent could not be found and vested the freehold interest of the property in the Applicants. It ordered, *inter alia*, that the matter transferred to the Tribunal for a Tribunal Judge to act as a District Judge in the County Court to deal with all necessary matters including the determination of the price to be paid for the freehold interest, the terms of the conveyance and the execution of the same, the payment into court and the cost of the proceedings. In other words, the case was to be treated as what is now known as a 'deployment case' when the Tribunal exercises both jurisdictions.
4. The Tribunal issued Directions, which included a direction that its determination would be based solely on the basis of the documentary evidence filed by the Applicants.
5. The valuation evidence relied on by the Applicant is set out in the report prepared by Mr Stephen R Jones BA (Hons) MRICS, dated 25 October 2021.

Decision

6. The determination in this matter took place on 30 November 2021 and was based solely on the documentary evidence filed by the Applicants.
7. The Tribunal relied on the description of the property internally given in Mr Jones's report and refer to paragraph 5 of that report. The Tribunal did not carry out an inspection.
8. The relevant valuation date is 22 April 2021, being the date of the application to the County Court.
9. The Ground Floor Flat is subject to a lease dated 4th August 1995 and held for a term of 125 years from 29th September 1994. As such, the leasehold interest is due to expire at midnight on 28th September 2119. Therefore, there were approximately 98.42 years unexpired, as at the date of valuation. The lease provides for the payment of a ground rent of £50 per annum for the first 25 years, increasing to £75 per annum (the 'passing rent') for the following 25 years, to £100 per annum for the next 25 years, to £125 per annum for the subsequent 25 years and to £150 per annum for the remainder of the existing term.
10. The Second and Third Floor Flat is subject to a lease dated 11 February 1987 and held for a term of 125 years from 29th September 1985. As such, the leasehold interest is due to expire at midnight on 28 September 2110. Therefore, there were approximately 89.42 years unexpired, as at the date of valuation. The lease provides for the payment of a ground rent of £50 per annum for the first 25 years, increasing to £75 per annum (the 'passing rent') for the following 25 years, to £100 per annum for the next 25 years, to £125 per annum for the subsequent 25 years and to £150 per annum for the remainder of the existing term.
11. The value of the ground rents should be discounted at 6% per annum. We agree with Mr Jones's figure on the basis that this ground rent would be fairly modest and this accords with the Tribunal's own knowledge of market values for this type of investment.
12. We agree with Mr Jones's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.
13. Mr Jones's valuation of the purchase price for the freehold interest was based on his analysis of comparable properties for each of the flats.
14. In respect of the Ground Floor Flat, he relied on the recent sales for Flat A, 75 Appach Road, Brixton SW2, Ground Floor Flat, 45 Dulwich Road, Herne Hill SE24 and Ground Floor Flat, 52 Elm Park, Brixton SW2 to arrive at a share of the freehold value in the sum of £535,000.

15. In respect of the first First and Second Floor Flat, he relied on the recent sales for First & Second Floor Maisonette, 188 Leander Road, Brixton SW2, First & Second Floor Maisonette, 73 Arodene Road, Brixton SW2 and First & Second Floor Maisonette, 100 Arodene Road, Brixton SW2 to arrive at a share of the freehold value in the sum of £565,000.
16. The analysis of the submitted comparable transaction evidence omits any explanation of the method adopted by Mr Jones to deduce his opinion of Market Value for each of the properties. The Tribunal was not provided with any explanation of the adjustments made by the Expert to the comparable sale prices to reflect differences between the subject and comparable properties in terms of size type and location. This omission undermines the reliability of the evidence.
17. Mr Jones made no adjustment to the comparable sale prices for varying lease lengths and tenure of the properties. The Tribunal acknowledge some of the sales evidence is for 999 year term or share of freehold properties, but the sales 100 Arlene Road, Brixton SW2 and 188 Leander Road, Brixton SW2 are of shorter leasehold interests. Good valuation practice requires that such transaction prices be adjusted to reflect the shorter lease lengths. This was not done.
18. The sale of 45 Dulwich Road Herne Hill SE24 in February 2021 is offered by the Expert to support his opinion of value for the ground floor flat. In the absence of guidance on adjustments made to price the Tribunal doubt the usefulness of this evidence given the material differences in location of this property and the subject.
19. The comparable sales offered to support the opinion of value for the First and Second Floor maisonette ranged in price (after adjustment for date of sale) from £643,190 to £567,091, a difference of some £75,000. This significant variation in comparable sale prices is of concern to the Tribunal, particularly given the failure by the Expert to explain how he had deduced the value of £565,000 adopted in his premium calculation.
20. Despite the identified inadequacies of the valuation report the Tribunal has accepted the findings based upon their experience and knowledge of the property market in this location at or around the valuation date.
21. The terms of the draft Transfer (TR1) provided by the Applicant's solicitors are approved save that In addition, paragraph 11 of the Transfer has to contain the following provision:

“The Transferees hereby covenant with the Transferor that it will observe and perform the covenants on the part of the lessor contained or referred to in the leases referred to in the schedule

of notices of leases in the charges register of title number NGL82285 and will indemnify the Transferor from and against all costs, claims and demands arising from any future breach, non-observance or non-performance thereof.”

Name: Judge I Mohabir

Date: 30 November 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).