



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

Case reference : **LON/00AJ/OCE/2022/0149**

Property : **221 Windmill Road, Ealing, London W5 4DJ**

Applicant : **Eureka Kozue Endo, Nicholas Michael Moffitt, Jasprit Singh Kahai and Belinder Kaur Kahai**

Representative : **Lease Law Limited**

Respondent : **Patrick Walsh**

Representative : **Not represented**

Type of application : **Section 27 of the Leasehold Reform, Housing and Urban Development Act 1993; determination of terms of acquisition on collective enfranchisement**

Tribunal members : **Judge Cohen
Mr M Taylor MRICS**

Date of determination and venue : **18 January 2023 determination on the papers via a video call.**

Date of decision : **23 January 2023x**

DECISION

Summary of the tribunal's decision

- (1) The appropriate premium payable for the collective enfranchisement is **£26,664.**

- (2) The draft transfer is approved subject to the one change referred to below.

Background

1. This is an application made by the applicant qualifying tenants pursuant to section 27 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 221 Windmill Road, Ealing, London W5 4DJ] (the “property”). The title to the property is registered at HM Land Registry under title number NGL 208040. The Respondent is the competent landlord. The Applicants could not find the Respondent to serve him with an initial notice. In such a case, the Act provides for a vesting order to be made.
2. On 9 August 2022, the Applicants issued a claim in the County Court for a vesting order under section 26 of the Act. On 9 November 2022, the County Court made a vesting order, being satisfied as to all relevant matters. These were recited in the County Court’s order of that date. The County Court ordered that the Applicants are entitled to acquire the property on such terms to be determined by this tribunal as if a notice of claim under section 13 of the Act had been given to exercise the right to the collective enfranchisement of the property.
3. The order of the County Court authorises this tribunal to determine the price which would be payable in accordance with schedule 6 of the Act if the property was being acquired pursuant to a notice under section 13 of the Act.
4. On 17 November 2022, the Applicants applied to the tribunal for a determination of the premium and terms of acquisition.
5. As the Respondent cannot be found, the tribunal has received only evidence on behalf of the Applicants and no matters have been agreed.

The issues

6. The following matters were in evidence
 - (a) The subject property is a converted three-storey (ground to second/attic floor levels) end of terrace house which was originally converted into two flats. There is also a rear patio garden and detached garage. One of the flats is on the ground floor and has two bedrooms. This is flat 221. The other flat is a maisonette mainly situated over the first and second floors. This is flat 221A. Originally converted to with 3 bedrooms, this has subsequently been subdivided to create a self-contained one bedroom first floor flat and a first and second floor two-bedroom maisonette;

- (b) The valuation date: 9 August 2022 being the date on which the claim for a vesting order was made:
- (c) Details of the tenants' leasehold interests:
 - (i) Dates of leases: The ground floor flat lease (221) is dated 18 September 1979. The lease of the first and second floor maisonette (221A) is dated 5 December 1966.
 - (ii) Terms of leases: The term of each of the two flat leases is 125 years from 1 January 1979
 - (iii) Ground rents: The leases of both flats reserve the following annual ground rents
 - £70 to 31.12.2029
 - £100 from 01.01.2030 until 31.12.2054
 - £140 from 01.01.2055 until 31.12.2079
 - £175 from 01.01.2080 until 31.12.2104
 - (iv) Unexpired terms at valuation dates: 81.39 years;
- (d) The Applicants' valuer adopted a capitalisation of ground rent: 6% per annum; and
- (e) The Applicants' valuer adopted a deferment rate: 5%.

The hearing

- 7. The tribunal considered its determination on the papers without a hearing.
- 8. The Applicants did not ask the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
- 9. The applicant relied upon the expert report and valuation of Stephen R Jones BA (Hons) MRICS of McDowalls Surveyors Ltd dated 30 November 2022.

The draft transfer

- 10. The Applicants propose to give effect to the collective enfranchisement by a transfer of the Respondent's interest from the Respondent to a nominee purchaser, Windmill Convent Limited. This company will then grant new leases each for a term of 999 years to the respective qualifying tenants.

11. The Applicants produced to the tribunal the form of the transfer from the Respondent to the nominee purchaser. It is at pages 141 to 143 of the hearing bundle. The tribunal approves the form of the transfer save that the company number of the nominee purchaser -14572205 -should appear in box 5.

The freehold purchase price

12. The tribunal must determine the freehold purchase price payable by the Applicants in consideration for the transfer to them of the Respondent's freehold interest.

Reasons for the tribunal's determination

13. The tribunal was assisted by the expert report of Mr Jones. Mr Jones is an RICS registered valuer. In his report, Mr Jones stated that he has dealt with residential valuations since 2002 and has experience in valuing properties in London and the South East. Mr Jones produced six comparable transactions which he analysed in his report. The tribunal accepts the general methodology and content of the report. This is a case in which Mr Jones' evidence is not tested by any expert opinion evidence adduced on behalf of the Respondent. The tribunal have scrutinised Mr Jones report to test his conclusions.
14. At paragraph 12.3 Mr Jones states that he had chosen to rely on the comparables to determine a proposed "share of freehold" value for flat 221 and flat 221A (prior to sub-division) within the property. He concluded that "I have applied a "share of freehold" value of £595,000 to flat 221 and a "share of freehold" value of £585,000 to flat 221A.
15. This is a subjective approach to the evidence which involves Mr Jones making a valuation judgment concerning the value of each flat. Mr Jones did not give a range of values for these shares of freehold assessments. The tribunal does not criticise Mr Jones for adopting this approach but given its subjective nature, the tribunal is entitled to make its own determination based on its assessment of the evidence of Mr Jones.
16. Mr Jones reported that flat 221 had been sold for £485,000 on 30 September 2014 when there were 89.25 years unexpired. Mr Jones used the Land Registry index to adjust the sale price in August 2022 to about £614, 000. Mr Jones' adjusted comparables at 79B South Ealing Road, £608,000 and 114A Darwin Road £624,000 supported this level of value.

17. The tribunal considered that there were advantages of the ground floor having a rear garden and garage but also to the upper flat with, as originally converted, its additional bedroom, taking the view that they balanced each other out to produce the same valuation.
18. Mr Jones noted that he had to disregard tenant's improvements. Therefore, Mr Jones was correct to value 221A without regard to the subdivision. Nevertheless, it seemed to the tribunal that the potential for sub-division might command some value in the relevant market.
19. Standing back and reviewing all the points made and comparable evidence, the tribunal differed from Mr Jones' opinion on share of freehold value. The tribunal finds that the share of freehold to adopt for flat 221 is not £595,000 and for flat 221A is not £585,000. Rather the tribunal finds that this share of freehold should be £615,000 for both flats. The tribunal finds that the adjusted comparables referred to above are more consistent with the level that the Tribunal has found rather than the lower levels as in the opinion of Mr Jones.
20. Taking the same deferment factors, this increased the reversionary value element, for both properties by £405.84 each to £11623.50. Taking the same figures for the term calculation at £1658.58 gives £13282.08 for each. The addition of £100, again as Mr Jones' report, gives a total premium of £26,664.

The tribunal's determination

The premium

21. The tribunal determines the appropriate premium to be **£26,664**. A copy of its valuation calculation is annexed to this decision.

Name: Judge Roger Cohen
Tribunal Member Mark Taylor MRICS **Date:** 23 January 2023

Appendix: Valuation setting out the tribunal's calculations

Valuation for each flat

Diminution in value of ground rent interest

Ground rent - £pa	Diminution	
	70	362.96
	105	924.62

	140	287.3	
	175	83.7	
			1658.58
<i>Loss of freehold reversion</i>			
	Share of freehold	Multiplier	
	615,000	0.0189	11623.50
	<i>Price for one flat</i>		13282.08
	Price for two flats		26564.16
	Additional space		100.00
	Total		26664.16
	But say		£26,664

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).

Tribunal