



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

Case Reference : **LON/OOAE/OCE/2015/0223**

Property : **13 Radcliffe Avenue, London NW10
5XU**

Applicants : **Mr D. Fallon and Mr H. McCall (nominee
purchasers)**

Representative : **Hodders Law (solicitors) with valuation
evidence from Mr A. Lester MRICS of AML
Surveyors and Valuation Limited**

Respondent : **Mr M. Tunde Fatinkun and Ms R. Debi
(missing landlords)**

Representative : **None**

Type of Application : **Under section 26 of the Leasehold
Reform, Housing and Urban Development
Act 1993 ('the Act') seeking a
determination of the terms of the transfer
of the freehold and the premium to be
paid in a case where the landlords are
missing.**

Tribunal Members : **Professor James Driscoll (Judge) and Mr
Patrick Casey MRICS (Valuer member)**

**Date and venue of
Hearing** : **There was no hearing. The tribunal met
on 29 September 2015 to consider their
decision on the basis of the bundle of
papers provided by the solicitors for the
applicants and also on the basis of an
inspection of the premises and adjoining
properties undertaken on the same day.**

Date of Decision : **30 September, 2015**

DECISION

Summary of the decision

1. The premium to be paid for the acquisition of the freehold is the sum of £97,040.
2. The terms of the draft transfer of the property into the joint names of the applicants is approved with the exception of paragraph 9 which should refer to 'limited title guarantee' and not 'full title guarantee' as it is currently drafted.
3. This matter is to be referred back to the Willesden County Court (under claim number: A02WI958) for the assessment of the applicant's costs which will be deducted from the premium which is to be paid into court.
4. Once the net amount is paid into Court a District Judge will execute the transfer as amended in accordance with paragraph 2 of this decision.

The application

5. This is an application made on behalf of the two applicants who are respectively the leaseholder of the ground floor and of the first floor flats in the subject premises. The building was originally built as a house and later converted into the two flats both of which are held on long leases which are qualifying leases within the meaning of the Act.
6. The applicants wish to acquire the freehold of the building in accordance with the provisions in Part I of the Act. However, they are unable to give a notice of claim under section 13 of the Act as the owners of the freehold who are the landlords under the leases are missing.
7. Accordingly application was made to the Willesden County Court for an order that service of the claim notice be dispensed with. On 10 August 2015 the Court ordered that service of the notice be dispensed with and that proceedings should be transferred to this tribunal for a determination of the terms of the acquisition. The Court also made provision for the premium once it has been determined (less costs) to be paid into Court. Once paid in a District Judge will execute a transfer as approved by the tribunal.
8. Directions were given by the tribunal on 18 August 2015. These directions made provision for the consideration of the application on the basis of documents to be prepared on behalf of the applicants unless a hearing was

sought. No such application having been made, the tribunal considered the application on 29 September 2015. We considered the bundle of documents prepared by the applicant's solicitors. This bundle included relevant county court papers, Land Registry copies, copies of the leases and other papers. It also included a valuation report prepared by Mr Lester MRICS.

Reasons for our decision

9. Mr Lester correctly identifies the valuation date as the date on which the application was made to the Court. He also correctly outlines the valuation principles relevant to an enfranchisement application by referring in some detail to schedule 6 of the Act.
10. As to the capitalisation of the ground rents that will be lost to the landlords once the transfer of the title has taken place, he proposes that a rate of 8% be applied having regard to small size of the rents. We agree with this submission.
11. Turning to the deferment rate he considers various authorities including the *Sportelli v Cadogan* decision and he concludes that the generic rate of 5% should be applied to the value of the freehold. As none of the exceptional cases applies to this application, we agree with this aspect of his evidence.
12. Turning to relativity in connection with the calculation of marriage value, we are prepared to adopt his recommended relativity of 84% for which he uses one of the graphs of relativity published by the RICS in 2009, although this figure is at the top end of what would be generally considered an acceptable range for leases of non-prime central London flats with these lengths of unexpired terms. As to the freehold vacant possession value of the two flats he relies on a number of comparable sales that is sales of flats in either the same road as the subject property or in streets close by. He sets out details of these properties in appendix F to his report. He makes adjustments to this market evidence to reflect various factors such as the relevant sale date by comparison to the valuation date.
13. We supplemented this evidence by carrying out an external inspection of the subject premises and the buildings containing the flats, the sales of which, Mr Lester relies upon as relevant comparable evidence. We inspected first the subject property and the other two comparable properties sold in Radcliffe Avenue (numbers 9 and 12) and we carried out an external inspection of numbers 17, 19 and 31A in Bramston Road which is but a short walk from the subject property.
14. On the basis of these external inspections we are satisfied that Mr Lester's description is accurate and that the freehold vacant possession values that in his opinion are appropriate as at the valuation date, namely £435,000 for the ground floor flat and £450,000 for the first floor flat are supported by the

evidence of comparable sales that he has provided in his report. Accordingly we adopt his valuation calculation appended in his report as an appendix to this decision.

Summary

15. The premium to be paid is the sum of £97,040 from which the applicants are entitled to deduct their assessed professional costs before paying the net sum into court. Once this payment has been made a District Judge will execute the transfer of the freehold title into the joint names of the two applicants.

James Driscoll and Patrick Casey

Dated: 30 September 2015