



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

Case Reference : **DD/LON/00AZ/OCE/2019/0021**

Property : **57 Amersham Road,
London SE14 6QQ**

Applicants : **Rajinder Singh Sohi
Surinder Kaur Sohi
Angela Hutchinson-Okotie
David Lindo**

Representative : **YVA Solicitors LLP**

Respondents : **Colin Reed & Ian Burke**

Type of Application : **Section 26 Leasehold Reform,
Housing and Urban Development
Act 1993**

Tribunal Member : **Anthea Rawlence MRICS (Valuer
Chair)**

Date of Determination : **26 March 2018**

Date of Decision : **24 April 2019**

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DECISION

Decision

1. The Applicants are to pay the sum of £0.00 to acquire the freehold of 57 Amersham Road, London S14 6QQ.

Application and Background

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2. This is an application by Rajinder, Singh Sohi, Surinder Kaur Sohi, Angela Hutchinson-Okotie and David Lindo (“the Applicants”) for the determination of the premium to be paid and other terms of acquisition if any for the freehold reversion of 57 Amersham Road, London SE14 6QQ (“the Property”), pursuant to Section 26(1) of the Leasehold Reform and Urban Development Act 1993 (“the 1993 Act”). YVA Solicitors LLP represents the Applicants in the application.
3. The Respondents to the application are Colin Reed and Ian Burke registered freehold proprietors of the Property. The Applicants have been unable to service notice under Section 13 of the Act as the freeholders cannot be found.
4. On 16.04.18 a claim was made to Lambeth County Court under section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 for a Vesting Order.
5. On 24 September 2018 the Applicants were instructed by Court to make further attempts to find Freeholders.
6. 6 December 2018 the vesting order was made, and the Applicants were informed that they may make an application to the First-tier tribunal (Property Chamber) for determination of interests to be acquired together with sums payable under section 27(5) of the Act.
7. On 22 January 2019 an application was made to the Tribunal for a determination of the premium.
8. The Tribunal issued directions on 29 January 2019 with supplementary directions dated 21 March 2019.
9. Submissions were made by the Applicants on 21 February 2019 with a further valuation reported provided on 5 April 2019.
10. The Applications did not request a hearing.

The Property

11. The Tribunal did not inspect the Property but notes from the valuation report that it is a three storey terraced property of brick and tile construction. There is no off-street parking.

12. The Property has been converted into three self-contained flats after an extension was built on the rear.

Title

13. The Leases for the three flats were granted 13 August 2007 being 125 years from 1 January 2007.
Ground rent payable:
£150 pa first 25 years
£300 next 25 years
£600 for remainder of term
Lessor to insure the building and keep structure and exterior in good and tenable repair and decorative condition.
Lessee to pay service charge so that Lessor can carry out obligations in 5th schedule for each Lease
14. Applicants Rajinder Singh Sohi and Surinder Kaur Sohi are leaseholders of Flat A and bought the property at auction 25 August 2010.
David Lindon leaseholder of Flat B bought the property 10 September 2007.
Angela Hutchinson-Okotie leaseholder of Flat C bought the property 18 July 2016.
15. The purchase of Flat C led to planning issues being identified at the property (see below).

The Law

16. Schedule 6 of the 1993 Act establishes the method for the acquisition of a residential freehold reversion. Paragraph 2 of Schedule 6 of the 1993 Act provides as follows:

“(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of-

- (a) the value of the freeholder’s interest in the premises as determined in accordance with paragraph 3,*
- (b) the freeholder’s share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the freeholder under paragraph 5.*

(2) Where the amount arrived at in accordance with sub-paragraph (1) is a negative amount the price payable by the nominee purchaser shall be nil

17. Paragraph 3 of Schedule 6 provides:

- (1) *Subject to the provisions of this paragraph, the value of the freeholders' interest in the specified premises is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions-*
- (a) *on the assumption that the vendor is selling for an estate in fee simple-*
 - (1) *subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but*
 - (2) *subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;*
 - (b) *on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant*
 - (c) *on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and*
 - (d) *on the assumption that (subject to paragraphs (a) and (b) the vendor is selling with and subject to the rights and burdens with and and subject to which the conveyance to the nominee purchase of the freehold's interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7.*
- (1A) *a person falls within this sub-paragraph if he is-*
- (a) *a nominee purchaser, or*
 - (b) *a tenant of premises contained in the specified premises, or*
 - (ba) *an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or*
 - (c) *an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).*
- (2) *It is hereby declared that the fact sub-paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the valuation date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub-paragraph*
- (3) *In determining that amount there shall be made such deduction (if any) in any respect of any defect in title as on a sale of the interest on the open market might be expected to be allowed between a willing seller and a willing buyer.*
- (4) *Where a lease of any flat or other unit in the specified premises is to be granted to the freeholder in accordance with section 36 and*

Schedule 9, the value of his interest in those premises at the valuation date so far as relating to that flat or other unit shall be taken to be the difference as at that date between-
(a) the value of his freehold interest in it, and
(b) the value of his interest in it under that lease, assuming it to have been granted to him at that date;
and each of those values shall, so far as is appropriate, be determined in like manner as the value of the freeholder's interest in the whole of the specified premises is determined for the purposes of paragraph 2(1)(a).

(5) The value of the freeholder's interest in the specified premises shall not be increased by reason of-

(a) any transaction which-

(i) is entered into or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before this date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by a qualifying tenant of a flat contained in the specified premises: or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

(6) Sub-paragraph (5) shall not have the effect of preventing an increase in value of the freeholder's interest in the specified premises in a case where the increase is attributable to any such leasehold interest with a negative value as mentioned in paragraph 14 (2).

18. Paragraph 4 provides-

(1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent of that amount.

(2) (Subject to sub-paragraph 2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of there being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value-

(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

2(A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to

his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

Planning History

19. In April 2004 a Certificate of Lawful Development was issued in respect of an extension the rear of the property.
20. Planning consent for the alteration and conversion of the Property into three self-contained flats was refused on 12 August 2004.
21. Works were, however, carried out an Enforcement notice was issued dated 8 October 2006 which took effect on 4 December 2006. The notice specified that the use of all three flats should cease and reinstatement works should take place to restore the use to a single family dwelling house. No mention was made of the rear extension.
22. The leaseholder of Flat C requested a copy of the Enforcement Notice in 2016 and on 9 November 2016 a retrospective planning application was made for change of use to three flats. This was refused on 4 January 2017 and an appeal dismissed on 8 June 2017. No (further) action by the Council has taken place to date.

Submissions

23. The Applicants provided a valuation report dated 21 December 2018 and carried out by Andrew Cohen MRICS of Talbot Surveying Services Ltd.
24. The valuation report set out in Appendix H the appropriate premium to be paid. No reference as made to any planning history on the property.
25. Following supplementary directions, the Applicants provided an amended valuation report dated 5 April 2019 showing that planning issues had affected his original valuation of the premium. He provided evidence of single dwelling properties in the area and stated that the value would be significantly less than the aggregate value of the three flats.
26. The valuer pointed out the costs involved in re-instating the building to its original use which could leave to a shortfall of £500,000 for the owner of the freehold interest.
27. His opinion of the value of the freehold interest subject to the planning issues was nil.

Determination

28. The Tribunal initially considered the effect of the planning history of the building. The Enforcement Notice was issued on 8 October 2006 and is on-going. The planning application in 2017 was refused on appeal and the Tribunal agrees with the valuer that the Local Planning Authority is unlikely ever to grant consent for the works.
29. Comparable evidence was provided both for flats and single dwelling houses. The value of the house is stated to be £800,00 which is considerably less than the aggregate value of the flats at £1,150,000.
30. The Tribunal notes the works associated with the enforcement Notice but does not believe that the rear extension is required to be demolished. However, there are still significant works to be carried out as detailed in the Enforcement Notice.
31. The Tribunal finds that the planning issues significantly affect the value of the property such that no reasonable and prudent purchaser would pay for the purchase of the freehold interest.
32. The Tribunal determines the premium to be paid to be £0.
33. The Tribunal has reviewed the transfer document and is satisfied that the provisions contained therein are appropriate.

Appeal Provisions

34. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence MRICS
Valuer Chair

