

2659



**LONDON RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AN/OCE/2013/0068 (TW)**

**DECISION of the LEASEHOLD VALUATION TRIBUNAL on an application to determine the premium payable on the transfer of the freehold to the Applicants pursuant to Section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (Missing Landlord)**

**Property:** 23 and 23A Collingbourne Road, Shepherds Bush, Hammersmith, London W12 0JG

**Applicants:** Mr C. Mather & Mrs A. Mather (23 Collingbourne Rd)  
Ms K. Nippierd and Ms A. Nippierd (23A Collingbourne Rd)  
(Leaseholders)

**Represented by:** Housing and Property Law Partnership; Solicitors

**Respondent:** Ms Shirley Withers (Missing Landlord)

**Represented by:** No appearance

**Date of Determination:** 29<sup>th</sup> May 2013

**Date of Decision:** 11th June 2013

**Tribunal:** Mr L. W. G. Robson LLB (Hons)  
Mrs E. Flint DMS FRICS IRRV

**Preliminary**

1. This case relates to an application made under section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) for a determination of the price to be paid for a freehold house converted into two flats, where the landlord is missing. The application

was made in the Central London County Court on 9<sup>th</sup> January 2013 (Claim No 3CL00020). The case was transferred to this Tribunal for assessment of the value of the freehold reversion and determination of the terms of the acquisition pursuant to an Order of District Judge Lightman dated 25<sup>th</sup> February 2013 vesting the freehold interest in the property in the Applicants.

2. Extracts of the relevant legislation are set out in Appendix 1 below.
3. Pursuant to Directions issued by the Tribunal on 17<sup>th</sup> April the Tribunal considered the matter on 29<sup>th</sup> May 2013.
4. The Applicants instructed Mr Nigel Smith BSc FRICS ACI Arb of Albright Surveyors Ltd to prepare a report and valuation relating to the freehold acquisition. He described himself as acting as an independent valuer owing his primary duty to the Court.

### **Evidence**

5. The Tribunal considered the (revised) Report and Valuation of Mr Smith dated 2<sup>nd</sup> May 2013. It was in a satisfactory form and contained the necessary statement of truth and declaration of independence as required by his professional body and in accordance with CPR Practice Direction 35 relating to Experts and Assessors.
6. Mr Smith inspected the property on 25<sup>th</sup> April 2013. His valuation date was as at 9<sup>th</sup> January 2013, being the deemed date of the application to the County Court. His valuation is attached as Appendix 2 below.
7. The property was described as a brick built mid terrace late Victorian residential building in an area of similar properties, originally on two floors under a pitched slate roof comprising two purpose built maisonettes with separate entrances. The ground floor flat had two bedrooms. The upper flat had been considerably extended into the roof space after the grant of the lease from a 2 ½ bedroom unit to a three bedroom unit with an ensuite shower and a roof terrace. The rear garden was shared between the two flats, with the upper flat having a staircase into the garden from first floor level. Both leases were dated 17<sup>th</sup> January 1979 for a term of 99 years from 24<sup>th</sup> June 1978. There was provision in the leases for the landlord to maintain the structure and exterior at the joint cost of the lessees. The gross internal area of the lower flat (No. 23) was 67.96 sq m or 731 sq ft, and the upper flat was 71.86 sq m or 773 sq ft plus the roof space (22.68sq m or 244 sq ft) and roof terrace (15.90 sq m or 171 sq ft). The ground floor flat was in relatively poor condition, but the upper flat had been refurbished to a high standard.
8. Mr Smith relied upon the following comparable evidence:

14B Collingbourne Road – a 1<sup>st</sup>/2<sup>nd</sup> floor maisonette refurbished to a high standard with GIA of 720 sq ft and sold on a new lease recently for £450,000; producing a rate of £625 per sq ft.

14 Collingbourne Road – an extended 2 1/2 bedroom ground floor flat with shared rear garden sold recently with a GIA of 1,000 sq ft on a new 125 year lease for £495,000, producing a rate of £495 sq ft.

19 Etherden Road W12 – a 2 bedroom unit on 1<sup>st</sup>/2<sup>nd</sup> floors (with open plan loft reception) sold recently with a GIA of 1,073 sq ft for £565,000, producing a rate of £526 per sq ft.

27A Collingbourne Road – a three bedroom maisonette constructed on ground first and second floors with a roof terrace with a GIA of 1,227 sq ft sold recently for £495,000, producing a rate of £403 sq ft.

9. Mr Smith had decided to use a figure of £400 per sq ft to include a share of the freehold in relation to both properties, producing a figure of £292,400 for No. 23 and £329,600 for No 23A. he considered compensation was appropriate for unauthorised use of the roof space (which was not demised by the lease). He referred to 4 LVT cases on this issue;
- LON/00AG/OCE/2008/0178 – 21 Campayne Gdns NW6 valuing the roof space at £6,000,  
LON/AG/OCE/2009/0106 – 56 Leghorn Rd, NW10 valuing the roof space at £3,000,  
LON/ENF/1336/2004 – 38 Selborne Rd, Ilford, Essex determining that there should be no increase for unauthorised conversion of the roof space, and  
LON/OOBJ/OCE/2011/0033 – 117 Tranmere Rd, SW18 valuing the development potential of the roof space at £1,000.

Mr Smith conceded that valuation of the compensation was particularly difficult. In his view, the value in this case was £2,500, particularly as the leaseholder had had to pay the cost of renewing the roof over the kitchen and make good the front roof slope due to the absentee landlord.

### **Decision**

10. Using its own knowledge and experience, the Tribunal considered Mr Smith's valuation. The Tribunal agreed with the following elements which it considered to be within the usually accepted ranges for such a property:

* Term remaining	-	64.5 years
* Term rate	-	7%
* Deferment rate	-	5%
* Relativity	-	89%
* Landlord's share of Marriage value	-	50%

11. The Tribunal did not accept the following elements:

- \* Freehold Values
- \* Current Leasehold Values
- \* Compensation (23A)

The Tribunal considered that the figure of £400 per square foot adopted by Mr Smith did not adequately reflect his comparable evidence. The lowest comparable figure he had found was £403 per sq ft, for a 2/3 bedroom house in single occupation. However the Tribunal preferred the evidence of 14B Collingbourne Road, which was closer in size and accommodation to both subject properties. Also Mr Smith's figure for compensation suggested that the leaseholder had carried out repairs which would normally have been done at the cost of the landlord, but in fact the Lease obliged the lessee to pay for such work. In addition, all but one of the compensation cases relied upon by Mr Smith considered hope value where no work had been done, but in this case the work had been completed to a satisfactory standard. The only case which considered an unauthorised conversion already carried out, related to a very substandard conversion which appeared to add little or no value to the property. In this case the conversion clearly added value, and the lack of consent required by the Lease would give the landlord an improved bargaining position. While the Tribunal agreed with the difficulty of valuing compensation in this case, its knowledge and experience suggested a rather larger figure than the one adopted by Mr Smith.

12. The Tribunal was mindful of its duty to the missing landlord, and applying its own knowledge and experience made its valuation as set out in Appendix 3, summarised here as follows:

Ground Floor Flat (23)

A.	Freeholder's interest:	£438,000
B.	Existing Lease	£390,000
C.	Marriage Value (50%)	£14,408
D.	Enfranchisement Price	£33,592

First Floor Flat (23A)

A.	Freeholder's interest:	£498,000
B.	Existing Lease	£439,500
C.	Marriage Value	£16,454
D.	Enfranchisement Price	£48,046

Compensation (23A)	£10,000
--------------------	---------

Total Enfranchisement Price – Say £81,638

13. The Tribunal thus assessed the price of the freehold (to which any arrears or other sums due to the missing landlord under the leases should be added) at £81,638.

14. In the bundle, the Applicants offered a completed Form TR1 as the proposed terms of Transfer without comment. The Tribunal noted certain matters below which require amendment:

Box 6 - the full and correct correspondence addresses for the respective Transferees should be inserted.

Box 8 – delete standard wording and insert “ The Transferees have paid into Court the sum of £81,638 pursuant to the Court Order dated 25<sup>th</sup> February 2013”

Box 9 – Delete “x” in the box denoting a sale with full title guarantee and insert “x” in the box denoting a sale with limited guarantee

Box 12 – Delete standard wording and insert “Signed as a Deed by [ ] as a duly authorised officer of the Court”.

15. This case is now referred back to the Central London County Court to effect the Vesting Order.

Chairman: Mr L. W. G. Robson LLB (Hons)  
Signed: Lancelot Robson  
Dated: 11th June 1013

## **APPENDIX 1**

### **Leasehold Reform, Housing and Urban Development Act 1993**

#### **Section 26**

(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 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)....

The court may, on the application of the qualifying tenants in question, 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 virtue of section 1(1) or 1(2)(a) or section 2(1), or

(ii) .....

As the case may be.

#### **Section 27**

- (1) A vesting order under section 26(1) is an order providing for the vesting of any such interests as are referred to in paragraph (i) or (ii) of that provision-
  - (a) in such person or persons as may be appointed for the purpose by the applicants for the order, and
  - (b) on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the interests being vested in that person or those persons in like manner (so far as the circumstances permit) as if the applicants had, at the date of their application, given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises with respect to which the order is made.
  
- (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 26(1), the order shall have effect in relation to interests which are less extensive than those specified in the application on which the order was made.
  
- (3) Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which-
  - (a) is in a form approved by the leasehold valuation tribunal, and
  - (b) contains such provisions as may be so approved for the purpose of giving effect so far as is possible to the requirements of section 34 and Schedule 7;and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.
  
- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the interests to be conveyed by any such conveyance, or as to the rights with or subject to which they are to be conveyed, it shall be assumed (unless the contrary is shown) that any person whose interests are to be conveyed ("the transferor") has no interest in property other than those interests and, for the purpose of excepting them from the conveyance, any minerals under the property in question.
  
- (5) The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of-
  - (a) such amount as may be determined by a leasehold valuation tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and
  - (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).
  
- (6) where any interest is vested in any person or persons in accordance with this section, the payment into court of the appropriate sum in respect of that interest shall be taken to have satisfied any claims against the applicants for the vesting order under

section 26(1), their personal representatives or assigns in respect of the price payable under this Chapter for the acquisition of that interest.

(7) Where any interest is so vested in any person or persons, section 32(5) shall apply in relation to his or their acquisition of that interest as it applies in relation to the acquisition of any interest by a nominee purchaser.

## **APPENDIX 2**

Applicant's Valuation - See attached valuation

## **APPENDIX 3**

Tribunal's Valuation – See attached valuation

## APPENDIX 2

23 & 23A COLLINGBOURNE ROAD, LONDON, W12 0JG  
Nigel Smith BSc FRICS ACI Arb  
LVT REFERENCE NUMBER: TW/LON/00AN/OCE/2013/0068

15.2 The following relativities are produced when looking at leases with approximately 64.5 years remaining.

1. Beckett and Kay	-	89%
2. South East Leasehold	-	91%
3. Nesbitt & Co	-	88%
4. Austin Grey	-	89%
5. Andrew Prindell	-	89%

15.3 On the basis that I have no direct comparable evidence for 64.5 year leases within this area, I feel that it is appropriate to take an average from the above graphs. This produces a relativity of approximately 89% which I have applied to the valuation of the subject property.

### 16 VALUATION

Valuation as at 9<sup>th</sup> January 2013 for the collective enfranchisement of **23 and 23A Collingbourne Road, London, W12 0JG.**

#### 16.2 23 Collingbourne Road

Term Remaining	-	64.5 years
Term Rate	-	7%
Deferment Rate	-	5%
Relativity	-	89%
Long Lease & Share of Freehold Value	-	£292,400
Current Lease Value	-	£260,236
Compensation	-	Nil
Improvements	-	Nil

#### Term

Ground Rent	-	25
Years Purchase for 64.5 years @ 7%	-	<u>14.10375</u>
		352.59

#### Reversion

Reversion to	-	292,400
Present value of £1 in 64.5 Years @ 5%	-	<u>0.042995</u>
		12,571.74
		12,924.33

Say: 12,924



Marriage Value Calculation

Extended Interests

Value of lessee's interests - 292,400

Less

Existing Interests

Value of lessee's interest - 260,236

Value of landlord's interest - 12,924

273.160

Difference in marriage value

19,240

50% share

9,620

Sub total

**£22,544.00**

16.2 23A Collingbourne Road

Term Remaining - 64.5 years

Term Rate - 7%

Deferment Rate - 5%

Relativity - 89%

Long Lease & Share of

Freehold Value - £329,600

Current Lease Value - £293,344

Compensation - £2,500

Improvements - Taken into account within the rate per sq ft applied

Term

Ground Rent - 25

Years Purchase for 64.5 years @ 7%

14.10375

352.59

Reversion

Reversion to	-	329,600	
Present value of £1 in 64.5 Years @ 5%	-	<u>0.042995</u>	
			14,171.15
			14,523.74
			Say: 14,524

Marriage Value Calculation

Extended Interests

Value of lessee's interests - 329,600

Less

Existing Interests

Value of lessee's interest - 293,544

Value of landlord's interest - 14,524

307,868

Difference in marriage value 21,732

50% share 10,866

Sub total **£25,390.00**

+ Compensation £ 2,500.00

£27,890.00

**Total premium payable £50,434.00**

# APPENDIX 3

23 and 23A Coillingbourne Road London W12 0JG  
 Valuation date 9 January 2013  
 Leases for 99 years from 24 June 1978 at £25 pa

No. 23

Landlord's current interest

Ground rent	£25	
YP 64.5 years at 7%	14.10375	£353
Reversion to freehold	£438,000	
x PV for 64.5 yrs at 5%	0.042995	<u>£18,832</u>
Value of landlord's present interest		£19,184

Marriage Value

Lessees proposed interest		£438,000
Less		
Landlord's present interest	£19,184.40	
Lessee's existing lease	£390,000	<u>£409,184</u>
Marriage value		£28,816
50% share		<u>£14,408</u>
		£33,592

No. 23A

Landlord's current interest

Ground rent	£25	
YP 64.5 years at 7%	14.10375	£353
Reversion to freehold	£494,000	
x PV for 64.5 yrs at 5%	0.042995	<u>£21,240</u>
Value of landlord's present interest		£21,592

Marriage Value

Lessees proposed interest		£494,000
Less		
Landlord's present interest	£21,592.12	
Lessee's existing lease	£439,500	<u>£461,092</u>
Marriage value		£32,908
50% share		<u>£16,454</u>
Compensation		£38,046
		<u>£10,000</u>
		<u>£48,046</u>
Total Premium payable		<u>£81,638</u>