



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

Case reference : **LON/00AU/0CE/2016/0069**

Property : **67 Marlborough Road, London N19
4PA**

Applicants : **1. Paul Ludwig Lonseth Meller
2. Samia Fekhar
("the tenants")**

Representative : **Comptons Solicitors LLP**

Respondents : **The Personal Representatives of
John Patrick Reilly ("the landlord")**

Representative : **Streathers, solicitors**

**Dates and Venue of
hearing** : **24 January 2017
10 Alfred Place, London WC1E 7LR**

Tribunal members : **Angus Andrew
Richard Shaw FRICS**

Date of decision : **27 January 2017**

DECISION

Decisions

1. The price to be paid for the freehold interest is £39,197 in accordance with the tenants' valuation a copy of which is attached.
2. If the tenants' want us to determine the terms of the transfer they must by 14 February 2017 send two copies of a draft to the tribunal and one copy to the landlord. If no draft is received by that date the tribunal will close its file subject to any appeal rights.

The application and hearing

3. The application was made under section 31 of the Landlord and Tenant Act 1987 ("the 1987 act") and pursuant to an acquisition order made by District Judge Rand in the Clerkenwell & Shoreditch County Court on 19 February 2016.
4. Paragraph 2 of the order transferred the claim to this tribunal "*for determination of the value of the Freehold Interest*".
5. At the hearing on 24 January 2017 the tenants were represented by Martin Barrett, a solicitor. Andreas Christou MA MIRCS gave expert valuation evidence on the tenants' behalf and he spoke to a comprehensive valuation report contained in the hearing bundle.
6. The landlord did not attend the hearing. A letter from the landlord's solicitors said that there was no money in the estate other than the price to be paid pursuant to this decision and that consequently the landlord would not be represented.

Background

7. The property comprises 2 flats and each tenant is the registered proprietor of one of them. Both leases were granted for terms of 99 years from 25 December 1985 at ground rents of £75 per year rising to £300 per year.
8. From the court documents included in the hearing bundle it is apparent that the acquisition order was made following some 24 years of neglect by John Patrick Reilly and since his death some 11 years ago by his personal representatives.
9. Sections 31 and 33 of the 1987 Act are set out in the annexe to this decision.
10. The effect of section 31(2) is to exclude marriage value from the calculation of the price because the tenants' bid is to be ignored.

Reasons for our decisions

The price to be paid

11. Mr Christou correctly identified the valuation date as 27 November 2015 being the date of the tenants' claim in the county court.
12. He valued the long leasehold interest in the two flats by reference to a basket of nine appropriate comparable sales. He adjusted for time by using the Land Registry Index for Islington and differentiated between ground floor and first floor flat sales. He uplifted by 1% to give a freehold value of £1,020,000. His approach was thorough and consistent with standard practice and we accept it.
13. We agree with Mr Christou's deferment rate of 5% which is consistent with *Earl Cadogan v Sportelli* [2007]. Equally we accept his capitalisation rate of 7% that is within generally accepted parameters having regard to the reserved ground rents and the length of the leases.
14. Consequently we approve and adopt Mr Christou's valuation and we determine the price to be paid for the freehold interest in the property at £39,197. A copy of his valuation is attached to this decision.

The terms of the transfer

15. A draft transfer had been included in the hearing bundle and we suggested to Mr Barrett that certain amendments would be appropriate. In response Mr Barrett said that the transfer had been included in error and that the approval of the transfer was a matter for the County Court. In support of that suggestion Mr Barrett drew our attention to section 33 of the 1987 Act and at the hearing we did not question that approach.
16. However, having considered the legislation in more detail we are satisfied that Mr Barrett suggestion is misplaced. Section 33 relates to acquisition orders where the landlord cannot be found or his identity cannot be ascertained. It is clear that this order was not made under section 33. Not only did the tenants specifically apply for an order under section 31 but if the order had been made under section 33 we would have no jurisdiction to determine the price.
17. Section 33 provides that where the landlord cannot be found the price is to be determined by a surveyor appointed by the Senior President of Tribunals (in fact the Senior President of tribunals has delegated his power of appointment to the President of the Upper Tribunal). In contrast section 31 provides that all the terms of acquisition are to be determined by this tribunal and that would include the transfer terms.
18. We are mindful that the District Judge Rand's order made no mention of the transfer terms. Nevertheless to avoid the possibility of any further

delay we give the tenants the opportunity to apply directly to us to determine the terms of the transfer.

Name: Angus Andrew

Date: 27 January 2017

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).

Appendix of relevant legislation

Sections 31 and 33 of the Landlord and Tenant Act 1987

31 Determination of terms by rent assessment committees.

(1) The tribunal shall have jurisdiction to determine the terms on which the landlord's interest in the premises specified in an acquisition order may be acquired by the nominated person to the extent that those terms have not been determined by agreement between the landlord and either—

- (A) the qualifying tenants in whose favour the order was made, or
- (b) the nominated person;

and (subject to subsection (2)) the tribunal shall determine any such terms on the basis of what appears to them to be fair and reasonable.

(2) Where an application is made under this section for the tribunal to determine the consideration payable for the acquisition of a landlord's interest in any premises, the tribunal shall do so by determining an amount equal to the amount which, in their opinion, that interest might be expected to realise if sold on the open market by a willing seller on the appropriate terms and on the assumption that none of the tenants of the landlord of any premises comprised in those premises was buying or seeking to buy that interest.

(3) In subsection (2) "the appropriate terms" means all of the terms to which the acquisition of the landlord's interest in pursuance of the order is to be subject (whether determined by agreement as mentioned in subsection (1) or on an application under this section) apart from those relating to the consideration payable.

(4) On any application under this section the interests of the qualifying tenants in whose favour the acquisition order was made shall be represented by the nominated person, and accordingly the parties to any such application shall not include those tenants.

(5)

(6) Nothing in this section shall be construed as authorising the tribunal to determine any terms dealing with matters in relation to which provision is made by section 32 or 33.

33 Acquisition order where landlord cannot be found.

(1) Where an acquisition order is made by the court in a case where the landlord cannot be found, or his identity cannot be ascertained, the order shall

provide for the landlord's interest in the premises specified in the order to vest in the nominated person on the following terms, namely—

(a) such terms as to payment as are specified in subsection (2), and

(b) such other terms as the court thinks fit, being terms which, in the opinion of the court, correspond so far as possible to those on which the interest might be expected to be transferred if it were being transferred by the landlord.

(2) The terms as to payment referred to in subsection (1)(a) are terms requiring the payment into court of—

(a) such amount as a surveyor selected by the President of the Lands Tribunal may certify to be in his opinion the amount which the landlord's interest might be expected to realise if sold as mentioned in section 31(2); and

(b) any amounts or estimated amounts remaining due to the landlord from any tenants of his of any premises comprised in the premises in respect of which the order is made, being amounts or estimated amounts determined by the court as being due from those persons under the terms of their leases.

(3) Where any amount or amounts required by virtue of subsection (2) to be paid into court are so paid, the landlord's interest shall, by virtue of this section, vest in the nominated person in accordance with the order.