

4314



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

**Case Reference** : LON/00AH/OCE/2015/0326

**Property** : 20 Dagnall Park, Selhurst, London  
SE25 5PL

**Applicants** : Alan Charles Samways (1)  
Michael Ola Adeusi (2)

**Representative** : Allen Barfields Solicitors

**Respondent** : Peter Anthony Hossbach (By his  
trustee in Bankruptcy Michael  
Leslie Reeves (1)  
James Victor Murphy (2)

**Representative** : None

**Type of Application** : Determination of the appropriate  
sum – section 27(3) & (5) Leasehold  
Reform, Housing and Urban  
Development Act 1993

**Tribunal Members** : Judge John Hewitt  
Mr Ian Holdsworth MSc FRICS

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**Date of Decision** : 17 October 2016

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**DECISION**

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## **Decisions of the tribunal**

1. The tribunal determines that:
  - 1.1 If the court determines that the valuation date is 27 March 2015 the appropriate sum for the purposes of section 27(5) of the Act is £21,850;
  - 1.2 If the court determines that the valuation date is 26 January 2016 the appropriate sum for the purposes of section 27(5) of the Act is £24,430; and
  - 1.3 If the parties wish to tribunal to approve the form of the conveyance pursuant to section 27(3) of the Act, they shall comply with the direction at paragraph 31 below.
2. The reasons for our decisions are set out below.

## **Procedural background**

### **The titles**

3. On 22 February 1989 James Victor Murphy and Anthony Hossbach were registered at Land Registry as the proprietors of the freehold interest in the property, 20 Dagnall Park, London SE25 5PL (Title number SGL527236).
4. The Charges register, Schedule of notices of leases, records three leases have been granted and registered out of the freehold interest:
  - LGFF: dated 13 June 1991 for a term of 99 years from 25 December 1990 (Title number SGL548107);
  - GFF: dated 30 March 1992 for a term of 99 years from 25 December 1990 (Title number SGL554429); and
  - FFF: dated 27 March 1992 for a term of 99 years from 25 December 1990 (Title number SGL556640)
5. On 1 August 2003 Alan Charles Samways was registered at Land Registry as proprietor of the LGFF.
6. On 1 June 2000 Spencer Alan Manuel was registered at Land Registry as proprietor of the GFF (20B).
7. On 22 March 2002 Michael Ola Adeusi was registered at Land Registry as proprietor of the FFF (Flat 2).
8. Evidently Peter Anthony Hossbach (Mr Hossbach) is the subject of a bankruptcy order and his trustee in bankruptcy is Michael Leslie Reeves (Mr Reeves), and the whereabouts of James Victor Murphy (Mr Murphy) is unknown.

### **The initial notice**

9. An initial notice (pursuant to section 13 of the Act) dated 27 March 2015 was prepared on behalf of Alan Charles Samways and Michael Ola Adeusi as participating qualifying tenants. It was served on Mr Reeves on behalf of Mr Hossbach. So far as we are aware that notice was not served on Mr Murphy.
10. At page 131 of the hearing file prepared by the applicants there is a counter-notice said to be given pursuant to section 21 of the Act. It is dated 4 June 2015. On the face of the counter-notice it stated it was: *"From Peter Anthony Hossbach care of his Trustee in Bankruptcy Michael Leslie Reeves, 47-49 Duke Street, Darlington, County Durham DL3 7SD (Reversioner)."*

Over page it stated: *"The counter notice is given on behalf of James Victor Murphy."*

It was signed off by solicitors, Freeths LLP, trading as Henmans Freeth, *"On behalf of the Reversioner"*

The counter-notice stated that *"The Reversioner admits that the participating tenants were, on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises."*

### **The court proceedings**

11. On 26 January 2016 the applicants (as Claimants) made an application to the County Court at Croydon (Claim Number: COOCR266). The defendants were Mr Hossbach care of his trustee in bankruptcy, Mr Reeves, and Mr Murphy. The details of the claim were said to be:
  - 11.1 A declaration pursuant to section 25(3) of the Act that the claimants were entitled to exercise the right to collective enfranchisement in relation to the property;
  - 11.2 A declaration pursuant to section 25(1), 26(1), 26(2) and 26(3) of the Act that the claimants were entitled to the right to collective enfranchisement in accordance with proposals contained in the initial notice dated 27 March 2015, or in the alternative a premium agreed between the claimants and Mr Reeves, or in the alternative the court make an order pursuant to section 26(3) appointing any other relevant landlord to be the joint reversioner in the place of Mr Murphy.
12. The court gave directions for the filing of evidence. In a witness statement dated 16 June 2016 made by the applicants' solicitor, Mr Roger Copeland, he said, amongst other matters, that negotiations with Freeths, Mr Reeves' solicitors, an agreement had been arrived at for the transfer of the freehold interest at a price of £16,500. The witness statement sought an order that the court appoint an alternative

landlord to be the joint reversioner in the place of Mr Murphy. Sections 26(2) and (3) provide that the court may make such an order.

13. On 12 July 2016 District Judge Parker sitting at the County Court at Croyden made an order:

*“Adjourned to first open date after the Applicant notifies the Court that there has been a Tribunal ruling, same time estimate.”*

14. Initially the third long lessee, Mr Manuel (20B) was not a participating qualifying tenant. We have been told by the applicants’ solicitors that since the issue of the court proceedings Mr Manuel wishes to participate in the collective enfranchisement. We do not know whether Mr Manuel has yet formally been joined as a party in the court proceedings – his name was not recorded on the order made 12 July and drawn 20 July 2016.

15. Section 27(3) of the Act provides that where a vesting order is made under section 26(1) then upon payment into court of the appropriate sum there shall be executed by such person as the court may designate a conveyance which is in a form approved by the appropriate tribunal.

Section 27(5) of the Act provides that the appropriate sum for the purposes of subsection (3) is such sum as may be determined by the appropriate tribunal. Subsections (a) and (b) of subsection (5) specify what elements are to comprise and make up the appropriate sum.

This tribunal is the appropriate tribunal for the purposes of section 27 of the Act.

16. It is not immediately clear what form of order the court is contemplating making. We infer perhaps a vesting order and that the court required a decision of this tribunal as to the appropriate sum and as to the form of the conveyance.

17. The tribunal has been in correspondence with the solicitors to the applicants and the solicitors to Mr Reeves. Mr Reeves’ solicitors have stated that they do not wish to participate in the proceedings before this tribunal, and both firms of solicitors have requested the tribunal to treat this application as a ‘missing landlord’ application. The tribunal has agreed to do so.

### **The appropriate sum**

#### **The valuation date**

18. First we need address the question of the valuation date. Where an initial notice is given to the reversioner the combined effect of section 1(8) of the Act and paragraph 3 of Part 1 of Schedule 6 to the Act is that the valuation date is the date on which that notice is given.

In a conventional 'missing landlord' case the court will often make a vesting order pursuant to section 26(1) of the Act as if the participating tenants had on the date of the application to the court given a notice under section 13 to exercise the right to collective enfranchisement. That is provided for in section 27(1)(b). Thus often the valuation date will be the date on which the court proceedings were issued.

If, in these proceedings, the court was to make such an order in those terms the valuation date would be 26 January 2016, being the date of the issue of the court proceedings. So that is a potential valuation date.

19. In the present case an initial notice was given, to at least one of the two joint reversioners, on 27 March 2015. That may be another potential valuation date.
20. When dealing with an application under section 26 of the Act it is open to the court to make such orders as it sees fit. Sometimes the court will make a vesting order as if on the date the proceedings were issued an initial notice was given – in which case the valuation date will be the date of issue.

But sometimes the court will give directions for the giving of an initial notice in a certain manner or to a specified address and that compliance with such directions shall be deemed to be the giving of the notice – in which case the valuation date will be the date the initial notice was given, or deemed given.

21. The applicants' solicitors and the expert valuer they instructed are alive to the point and the valuation report filed with the tribunal provides a valuation on both potential dates in this case, namely 27 March 2015 and 26 January 2016. Of course, it is open to the court to determine a different date, but on the materials before us we infer it is more likely than not that the court will determine one or other of those potential dates to be the appropriate valuation date.
22. It was helpful of the valuer to provide the alternative valuations. This tribunal has followed suit and determined the appropriate sum in respect of both dates because we consider it may be helpful to the court to do so. In the context of the application before it, it is for the court, and not this tribunal, to determine the terms of the vesting order it sees fit to make and thus it is for the court to determine what the valuation date should be.

### **The valuation report**

23. We have been provided with a valuation report prepared by Mr Martin Chittenden MRICS. It is dated 21 September 2016. We have gone through the report carefully. It is compliant with rule 19 of the tribunal's rules which concerns expert evidence. We have noted Mr Chittenden's valuation, his methodology and his conclusions. He has adopted good valuation practice in his approach. He has provided evidence of comparable transactions which appear to us to be

reasonable and realistic. His relativity is supported by the graphs he has identified and relied upon and which he has averaged.

24. Save on one point we shall mention shortly; we find that can rely upon the expert evidence of Mr Chittenden with some confidence.
25. The point on which we disagree with Mr Chittenden is his choice of a deferment rate of 5.25%. Whilst the appropriate rate to adopt might be controversial amongst some valuers the Courts and Upper Tribunal have given guidance to this tribunal as to the rate to adopt. The starting point is *Earl Cadogan v Sportelli* [2007] EWCA Civ 1042 which, as regards flats, provided a rate of 5% made up as to:

Risk free rate of 2.25% from which a real growth rate of 2.00% plus a risk premium of 4.75%.

It was made clear that a tribunal should only depart from that rate where there is clear and compelling evidence that any of those elements require adjustment – see *City and Country Properties Limited v Alexander Charles Yeats* [2012] UKUT 227.

In (*Zuckerman and Others v Trustees of Calthorpe Estate* [2009] UKUT 235 (LC) the Upper Tribunal (Lands Chamber) allowed an additional 0.25% to reflect obsolescence and specific potential management problems in relation to the flats which were the subject of that case.

However, in *Alexander Voyvoda v (1) Grosvenor West End Properties, (2) 32 Grosvenor Square Limited* [2013] UKUT 0334 (LC), the Upper Tribunal concluded that in the light of the Supreme Court's judgement in *Daejan v Benson* (relating to s20ZA dispensation) the risk profile that had formed the basis of the Tribunal's decisions in *Zuckerman* and *Yeats* has been changed to such an extent that, although there is still an element of risk associated with the s.20 consultation requirements, the level of risk is adequately covered by the uplift of 0.25% in the deferment rate for flats which was established in *Sportelli*. The Tribunal thus concluded that there is no longer any basis for making a *Zuckerman* addition.

26. In paragraph 5.10 of his report Mr Chittenden observes that the subject property is an ageing property, to a dated standard in terms of such matters as insulation and damp proofing and due to physical deterioration and likelihood of escalating management problems and so he has added an additional 0.25% to the standard rate of 5.00%.
27. The experience and expertise of the members of this tribunal is that the subject property is no different from many, many properties in suburban London. No evidence, let alone compelling evidence has been produced by Mr Chittenden that any of the three elements identified in *Sportelli* require adjustment. In so far as Mr Chittenden may have relied upon *Zuckerman* to support an adjustment of 0.25% he has not

supported it with specific evidence as regards the subject property. Even if such evidence was available the guidance given in *Voyvoda* is that there is no longer any basis for making a *Zuckerman* addition.

28. For these reasons we reject Mr Chittenden's addition of an additional 0.25% on the deferment rate. In all other respects we accept the expert evidence of Mr Chittenden. We have therefore prepared valuations based on that evidence but adopting a deferment rate of 5.00%. These valuations are annexed to this decision.
29. We have not been informed of any lawful or compliant demands for ground rent and/or service charges that have been made of any of the long lessees by or on behalf of the respondent. Thus we find that there are no amounts or estimated amounts presently payable to the respondent within the meaning of section 27(5)(b) of the Act.
30. Accordingly, we have determined that:

If the valuation date is date is 27 March 2015 the appropriate sum is £21,850; and

If the valuation date is 26 January 2016 the appropriate sum is £24,430.

#### **The form of the conveyance**

31. The court has not expressly order the tribunal to settle the form of the conveyance required to give effect to any vesting order it may make.

It is implicit that where the court makes a vesting order the conveyance shall be in a form approved by this tribunal.

The form of the conveyance will usually be a form TR1

Accordingly, the tribunal is willing to settle a form TR1 on the assumption that the court will require an approved conveyance at some point. Thus, if the applicants wish the tribunal to do so now, the applicants shall by **5pm 31 October 2016** file with the tribunal by a draft of the form TR1 for which they contend and which has been approved by or on behalf of Mr Reeves.

The parties may wish to note that if this is not done now and the applicants wish to pursue acquisition of the freehold interest, they will have to make a fresh application to the tribunal at some future time, and possibly obtain a further order from the court.

Judge John Hewitt  
17 October 2016