



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

**Case Reference** : **MI/LON/00BJ/OCE/2015/0263**

**Property** : **56 Glycena Road London SW11 5TR**

**Applicants** : **Ms D Partington and Dr J Mann**

**Representative** : **Wainwright & Cummins LLP**

**Respondent** : **Mr C P Bromley**

**Representative** : **Not represented**

**Type of Application** : **Application under section 26  
Leasehold Reform, Housing and  
Urban Development Act 1993 (the  
“Act”) for right to acquire the  
freehold of the property where the  
relevant landlord cannot be found.**

**Tribunal Members** : **Judge Pittaway  
Mr W R Shaw FRICS**

**Date of Decision** : **Determination without an oral  
hearing in accordance with  
Regulation 31 The Tribunal  
Procedure (First-tier Tribunal)  
(Property Chamber) Rules 2013**  
**3 May 2016**

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**DECISION**

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## Introduction

1. The respondent is the registered proprietor of the freehold of 56 Glycena Road London SW11 5TR registered at the Land Registry under title number LN69878.
2. Ms D Partington is the registered proprietor of the leasehold first floor flat held under a lease dated 17 May 1985 for a term of 125 years from 25 March 1985 at a ground rent of £50 for the first thirty three years of the term, £75 for the next 33 years and £100 for the remainder of the term.
3. Dr J Mann is the registered proprietor of the leasehold first floor flat held under a lease dated 26 April 1985 for a term of 125 years from 25 March 1985 at a ground rent of £50 for the first thirty three years of the term, £75 for the next 33 years and £100 for the remainder of the term.
4. On 2 June 2015 (the “relevant date”) the applicants applied to the County Court for an Order for the freehold to be jointly vested in both their names.
5. By an Order (No.BooWT655) issued by the Wandsworth County Court dated 17 September 2015 the need to serve a notice pursuant to section 13 of the Act was dispensed with and it was ordered that the freehold interest in the property be transferred to the applicants at a price to be determined by the First-tier Tribunal. It was further ordered that the claim be transferred to the First-tier Tribunal for determination of the terms of the transfer and the price to be paid for the freehold.
6. The applicant provided the tribunal with a copy of the Applicant’s claim in the county court, official copies of the freehold and leasehold interests in the Premises (dated 21 October 2015), copies of the leases of the flats, a sealed copy of the Order of 17 September 2015, a valuation report by Mr T Olden MRICS of Olden Property Consulting dated 9 July 2015 and a draft transfer.
7. At the request of the tribunal the applicants provided the tribunal with a further valuation dated 7 December 2015.
8. The applicant requested that the matter be determined without an oral hearing.
9. The tribunal were unable to determine the matter on 24 February 2016 as they identified mistakes in the valuation and the draft transfer was incomplete. They issued further directions dated 24 February 2016 that these matters be rectified.
10. A further valuation was received from Tom Olden MRICS of Olden Property Consulting Ltd dated 29 February 2016. The tribunal also have before them a draft transfer sent in response to their directions.

## Decision

1. The total premium payable for the transfer of the freehold to the applicants is **fourteen thousand eight hundred and seventy pounds (£14,870)**
2. The TR1 provided to the Tribunal is still not in accordance with the provisions of the Act. The tribunal will approve it provided
  - 2.1 Panel 8 is completed to provide that the consideration is being paid into court; and
  - 2.2 Panel 9 is amended to provide that the transferor transfers with limited title guarantee as required by the Act.

## Reasons for the tribunal's decision

1. The tribunal did not carry out an inspection but relied on the description of the Premises given in paragraphs 8 and 9 of Mr Olsen's report.
2. The relevant valuation date is 2 June 2015.
3. At the relevant date the leases had remaining term of 94.81 years unexpired.
4. The relevant legislation is annexed as the Appendix to this decision.
5. As the leases have more than 80 years to run no marriage value is payable.
6. The respondent landlord has not served any rent demands in statutory form so no arrears of rent is payable, and no sum is therefore payable into Court under section 51 (5) (c) of the Act.
7. The tribunal is prepared to accept that the ground rent be capitalised at 7%.
8. The tribunal agrees with Mr Olsen's use of 5% for the deferment of the reversion, which is in accordance with the decision in *Sportelli*.
9. The tribunal are prepared to accept Mr Olsen's valuation of a long leasehold interest in the ground floor flat of £711,000 and in the first floor flat of £582,000, on the basis of the comparables offered in his valuation.
10. The tribunal is therefore prepared to accept Mr Olsen's Premium valuations of
  - a. £8,073 for the ground floor flat; and
  - b. £6,797 for the first floor flat

(a) the rights and obligations of all parties shall be determined as if the applicants had, at the date of the application, duly given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises to which the application relates; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(6) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a conveyance under section 27(3) and, after it is withdrawn, subsection (5)(a) above shall not apply; but where any step is taken (whether by the applicants or otherwise) for the purpose of giving effect to subsection (5)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a) with the consent of every person who is the owner of any interest the vesting of which is sought by the applicants, or

(b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the applicants in consequence of the tracing of any such person.

(7) Where an order has been made under subsection (2) or (3A) dispensing with the need to give a notice under section 13, or a copy of such a notice, to a particular person with respect to any particular premises, then if—

(a) a notice is subsequently given under that section with respect to those premises, and

(b) in reliance on the order, the notice or a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(8) Where a notice under section 13 contains such a statement in accordance with subsection (7) above, then in determining for the purposes of any provision of this Chapter whether the requirements of section 13 or Part II of Schedule 3 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of the notice or a copy of it to the person referred to in subsection (7) above.

(9) Rules of court shall make provision—

(a) for requiring notice of any application under subsection (3) to be served by the persons making the application on any person who the applicants know or have reason to believe is a relevant landlord; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

## **S 27 Supplementary provisions relating to vesting orders under section 26(1).**

(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 a leasehold valuation tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as 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 underlying 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.

## **SCHEDULE 7                    CONVEYANCE TO NOMINEE PURCHASER ON ENFRANCHISEMENT**

### ***Interpretation***

1            In this Schedule—

(a) "the relevant premises" means, in relation to the conveyance of any interest, the premises in which the interest subsists;

(b) "the freeholder" means, in relation to the conveyance of a freehold interest, the person whose interest is to be conveyed; ]

(c) "other property" means property of which the freehold is not to be acquired by the nominee purchaser under this Chapter; and

(d) "the appropriate time" means, in relation to the conveyance of a freehold interest, the time when the interest is to be conveyed to the nominee purchaser.

### ***General***

2(1)        The conveyance shall not exclude or restrict the general words implied in conveyances under section 62 of the **M1** Law of Property Act 1925, or the all-estate clause implied under section 63 of that Act, unless—

(a) the exclusion or restriction is made for the purpose of preserving or recognising any existing interest of the freeholder in tenant's incumbrances or any existing right or interest of any other person, or

(b) the nominee purchaser consents to the exclusion or restriction.

(2)        The freeholder shall not be bound—

(a) to convey to the nominee purchaser any better title than that which he has or could require to be vested in him, or

(b) to enter into any covenant for title beyond those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee;

and in the absence of agreement to the contrary the freeholder shall be entitled to be indemnified by the nominee purchaser in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(3) In this paragraph "owner's incumbrances" includes any interest directly or indirectly derived out of a lease, and any incumbrance on a lease or any such interest (whether or not the same matter is an incumbrance also on any interest reversionary on the lease); and "incumbrances" has the same meaning as it has for the purposes of section 34 of this Act.