



Case reference: LON/00AG/OLE/2009/0005

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM
ACT 1967**

Property: 62 Avenue Road, London NW8 6HT

Applicant: The Eyre Estate

Respondents: Pantelis John Hadjipateras and Meta Pitsa Hadjipateras

Date heard: 8 September 2009
(Inspection 23 September 2009)

Appearances: Mark Loveday, counsel, instructed by Pemberton
Greenish, solicitors
J A Martin BSc MRICS, Cluttons, chartered surveyors,
for the applicant

Robert Lamb, counsel, instructed by TLT, solicitors for
the respondents, and by Thomas Eggar, solicitors for
the assignees of the benefit of the notice of claim
Peter Beckett FRICS, Beckett and Kay, chartered
surveyors
for the respondents

Tribunal: Margaret Wilson
W John Reed FRICS

Date of the tribunal's decision:

7 October 2009

Introduction

1. This is an application by the landlord under section 21 of the Leasehold Reform Act 1967 ("the Act") to determine the price for the freehold of 62 Avenue Road, London NW8. This is a substantial detached house, built in the 1930s, on lower ground, ground, and two upper floors, with a gross internal area of 859.09 sq m and a site area of 1098 sq m. It is situated in St John's Wood in what is agreed to be a prestigious location. The house is held on a lease dated 31 December 1935 for a term of 95.25 years from 25 March 1934, expiring on 24 June 2029, at an annual ground rent of £200, fixed throughout the term. At the valuation date, which is 5 March 2009, the unexpired term was 20.3 years.

2. Contracts for the purchase of the unexpired term were exchanged on 9 July 2008 at a price of £9.2 million with an agreed completion date of 9 July 2009. By a supplemental agreement dated 31 July 2009, by which time the notice of claim had been given, the price was varied to £8 million with completion on 16 September 2009.

3. At the hearing on 8 September 2009 the landlord, the Eyre Estate, was represented by Mark Loveday of counsel, instructed by Pemberton Greenish, solicitors, who called J A Martin BSc MRICS of Cluttons, chartered surveyors, to give expert evidence. The respondent tenants, Pantelis John Hadjipateras and Meta Pitsa Hadjipateras, were represented by Robert Lamb of counsel, instructed by TLT, solicitors. Mr Lamb was also instructed by Thomas Eggar, solicitors, for the assignee of the benefit of the notice of claim. Mr Lamb called Peter Beckett FRICS of Beckett and Kay, chartered surveyors, to give expert evidence. On 23 September 2009 we inspected the property in the presence of the respondents' son and daughter.

4. The following matters were agreed:

- i. the open market freehold value of the unimproved property is £11.25 million;
 - ii. the appropriate deferment rate is 4.75%;
 - iii. the appropriate capitalisation rate is 5%;
 - iv. where adjustments for time are required they are to be made on the basis of the Savills PCL North Houses index;
 - v. the terms of transfer.
5. The only issue was the open market value of the 20.3 years leasehold interest.

The issue

The landlord's case

6. For the landlord, Mr Martin said that the relevant Savills' Index showed an increase in values between the valuation date and the date of the supplemental agreement which produced an adjusted open market value of £7.65 million for the leasehold interest at the valuation date. He considered that price to be very high and that the purchaser had significantly overpaid. He also considered that the price paid under the agreement included a very significant element for the benefit of the claim. He accepted, however, that the sale price could not be ignored, although he suggested that it might not have been a true open market transaction because the property had never been formally on the market and there was no information about how the sale prices had been reached. The house had, he said, never been advertised, no sale particulars had been published and there had been no 'for sale' board.

7. Mr Martin referred to a Savills' 2003 Report on Relativities between freehold and leasehold values in the Act world, which showed a relativity to the freehold value of 58% at 20 years unexpired, and said that the application of that relativity to the sale price of £8 million produced a value for the freehold with vacant possession of £13.793 million, which was substantially more than the £11.25 million which had been agreed and confirmed his opinion that the sale price of the leasehold interest had been much too high. He said that if the same relativity was used to work back from the agreed freehold value, it suggested a market value for the leasehold interest of £6.525 million, which he considered to be a more realistic price but which required a further adjustment for present purposes to exclude the value of the tenants' rights under the Act.

8. He referred to the recent sale of the leasehold interest in 73/75 Avenue Road for £10.1 million with an unexpired term of just over 24 years. After adjustments for size and for time he arrived at an equivalent price of £9.25m for what he regarded as a better property on a larger site, providing, he said, further evidence that the sale price of £8 million was too high.

9. He also considered an approach based on the capitalised rental value of the short lease but he acknowledged that so many assumptions and adjustments had to be made that the exercise might not produce a reliable result.

10. He considered that the shortness of the unexpired term suggested that a significant amount of the sale price was attributable to the rights under the Act, and that a further adjustment had also to be made to reflect the benefit of the notice of claim. He believed that these two factors together required a total reduction of 35% from the adjusted sale price of £6.525 million. He said that he regularly dealt with properties in St John's Wood and accepted that he had never previously agreed a reduction as high as 35%

11. In support of such a reduction Mr Martin produced a schedule of four leasehold valuation tribunal decisions where adjustments were made for Act rights of 20%, 22.5% and 25% at 30 years unexpired, and of 15% at 31 and 35.23 years unexpired. He also referred to a decision in respect of 85 Avenue Road where the Lands Tribunal had determined a deduction of 15% for the value of Act rights in respect of a 38 year lease where a notice of claim had been served.

12. He therefore considered that the adjusted market evidence suggested that the value of the leasehold interest without Act rights was between £4.24 million, based on £6.525 million less 35%, and £4.9725 million, based on £7.65 million less 35%. He did not accept that any help was to be derived from Mr Beckett's analysis of two transactions relating to flats in Eaton Square, which was, he said, a unique market. He did not understand or accept Mr Beckett's assertion that the value of Act rights was in any way linked to freehold value.

13. He then turned to settlement evidence. He referred to the Cluttons' analyses of settlements on the Eyre and John Lyons Charity Estates in St John's Wood (excluding all tribunal decisions and cases with onerous ground rents) which suggested a relativity of 44% for a term of 20.3 years unexpired. He also referred to a table of relativities based on settlements with unexpired terms of 0.08 years to 31.71 years which supported a relativity of about 42%.

14. Finally Mr Martin referred to the well-known Beckett and Kay Graph of Graphs which showed that at 20.3 years unexpired the relativities plotted on the graphs ranged from 37% (Beckett and Kay: mortgage dependent) to 58% (Savills 2003 Enfranchiseable). The Gerald Eve 1996 Graph, which is often relied upon by surveyors dealing with Prime Central London properties, suggested a relativity of 42%.

15. Mr Martin said that he had provided four alternative valuations, excluding the rental valuation which he regarded as unreliable. Taking a

mean average of the values produced by the four approaches, he arrived at an unimproved leasehold value of £4,721,875, say £4.722 million, equivalent to a relativity to the freehold value of 41.97%, which would produce an enfranchisement price of £5.455 million.

16. Mr Loveday submitted that the decisions of the Lands Tribunal in *Arrowdell Limited v Coniston Court (Hove) Limited* [LRA/72/2005] and the group of cases decided with *Nailrile Limited v Earl Cadogan and another* [LRA/114/2006] established that market evidence was to be balanced against evidence derived from graphs, and evidence derived from graphs may be preferred to market evidence, even relating to the subject property. He submitted that Mr Martin's approach to the adjustment for Act rights, which was based on a simple percentage, was preferable to Mr Beckett's approach based on a proportion of marriage value, which was rejected in *Nailrile*, and that Mr Beckett's conventional adjustment for Act rights, based on *Nailrile*, was far too low.

The tenants' case

17. Mr Beckett referred to the observations of the Lands Tribunal in *Arrowdell*, quoted with approval in *Nailrile*, that "*in such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity ...*" as an indication that market evidence should take precedence over graphs. He therefore relied primarily on the recent transaction relating to the subject house, and took as his primary evidence the agreement for the sale of the leasehold interest at £8 million, which, he said, was as near as one could possibly get to the open market value of the leasehold interest. Graphs, he said, were only a secondary approach to the determination of relativity.

18. Considering the adjustment to be made for the benefit of Act rights, Mr Beckett referred to the adjustment of 7.5% for such rights made by the Lands Tribunal had in *Nailrile*. He considered that, as was accepted in *Sportelli* in relation to deferment rates, a 20 year term might differ from longer unexpired terms, and that there was good reason to suppose that the benefit of the Act would decline as the unexpired term became shorter, tailing off to next to nothing at very long or very short terms. In his view the benefit of the Act should be related to freehold vacant possession value rather than to the value of the lease. All in all, he considered that the benefit of the Act to the 20 year term was in the order of 7.5% of the price paid for the lease in the open market. Such a deduction produced a value of £7.4 million which he regarded as too high.

19. He acknowledged that his approach to the value of rights under the Act based on 25% of the marriage value had been disapproved by the Lands Tribunal in *Nailrile* and he therefore did not rely on it in the present case, but, as an exercise, based upon Mr Martin's estimate of the marriage value and taking into account the benefit of a delayed payment of part of the purchase price, that method produced a value for the leasehold interest of £7.1833 million, which in his opinion was also somewhat too high.

20. He said that he did not believe in over-reliance upon graphs and that where there was good market evidence, graphs were of small importance by comparison. However, having considered the effect of the graphs he reduced the relativity suggested to him by the market evidence to 60% to produce a current lease value, disregarding Act rights, of £6.75 million. He therefore concluded that the value of the leasehold interest at the valuation date was £6.75m, which produced an enfranchisement price of £4.445 million.

21. Of Mr Martin's evidence, he said that he had never before heard of an adjustment as high as 35% for the benefit of the Act. It was, he said, not merely too high but was demonstrably wrong in principle, and he produced a hypothetical valuation based on a property with a freehold vacant

possession value of £1 million and a relativity of 42.49% (the relativity originally proposed by Mr Martin but revised at the hearing to demonstrate that the price payable for the lease, including a 35% adjustment and the enfranchisement price, significantly exceeded the value of the property with vacant possession. He said that Mr Martin was incorrect to say that a 20 year lease would be unattractive in the absence of the Act, and he referred to the sales in September 2004 and in April 2005 of a "well-matched pair" of flats at 29B and 29C Eaton Square, one held on a 20 year lease without rights to enfranchise and the other held on a 75 year lease with rights under the Act, which suggested a relativity of between 68% and 72%, although he accepted that Eaton Square was a special market in which people would pay very large sums for the prestigious address. He said, however, that in his opinion Avenue Road was a similarly prestigious address. The enfranchisement price of 85 Avenue Road was the subject of a Lands Tribunal decision (LRA/18/1998 and LRA/47/1998) and the Tribunal had applied a discount of 10% for rights under the Act and an additional 5% for the benefit of the tenants' notice where the lease had 38 years unexpired. He said that the Cluttons' Graph of Settlements (Houses) on the Eyre and John Lyon's Charity Estates (excluding tribunal decisions and onerous ground rents) indicated a drop in relativity between 38 and 20 years from about 62% to 42.49%. He said that he would expect the benefit of the Act to be no more than a constant percentage of freehold vacant possession value at best, and more likely a falling percentage. Applying a constant percentage would give a benefit for the Act in this case of between 14.59% and 21.89%, an average of 18.24% which, applied to the purchase price of £8 million, produced adjusted values for the leasehold interest, excluding the value of Act rights, of £6.832 million, £6.248 million and £6.54 million.

22. Mr Lamb submitted that the effect of the law and of the evidence was that the tribunal must do the best it could with the market evidence and that regard must also be had to graphs of relativity. He said that there was nothing wrong with the sale price of £8 million as a starting point and that Mr Martin's method, which was in reality based on graphs, gave the wrong answer.

Decision

23. The valuation difficulty in this case has arisen because the relativity between the price of £8 million agreed for the sale of the leasehold interest, adjusted to £7.65 million at the valuation date, and the agreed value of the freehold interest with vacant possession at £11.25 million does not fit neatly with the relativities shown on the various graphs of relativity. We see no reason on the evidence to doubt that the purchaser of the leasehold interest was part of the open market at the valuation date, and no grounds for suspicion that the price was not genuine. We accept that the time-adjusted agreed sale price of £7.65 million is to be taken to be the open market value of the leasehold interest at the valuation date., and we accept, as, indeed, both valuers accepted, that the market evidence cannot and should not be ignored, and must be given at least as much weight as the relativities suggested by the graphs.

24. In our view Mr Martin's adjustment of 35% for rights under the Act and the benefit of the notice of claim is too extreme an attempt to produce consistency between the market evidence and the graphs. It significantly exceeds any deduction for Act rights which we have ever encountered, and Mr Martin himself accepted that he had never agreed such a deduction. We observe that tribunals have made adjustments of 20%, 22.5% and 25% to the values of leases with 30 years unexpired, and of 15% to the values of leases with 31 and 35.23 years unexpired, and that the Lands Tribunal has adjusted the value of a lease of a house in St John's Wood by 10% where the lease had 38 years unexpired and by 15% where a lease of a house had 38 years unexpired and a tenant's notice to enfranchise had been served. While we accept that other decisions are not evidence, our own view in all the circumstances is that a 35% adjustment is unrealistically high.

25. On the other hand the relativity produced by Mr Beckett's analysis is so far out of line with the settlement evidence recorded on the graphs, of which we regard the graph of Eyre Estate and John Lyon's Charity Settlements (Houses) ("the Eyre Estate Graph"), updated to 9 January 2009, as the most

relevant, that we regard his analysis, too, as unreliable. Neither Mr Martin nor Mr Beckett provided any information as to determinations or settlements where the unexpired term was less than 30 years, and we think that we must accept Mr Lamb's invitation to do the best we can with the material put before us.

26. Both experts were asked during the hearing at what unexpired term the value of the rights under the Act was at its highest level. Mr Martin was non-committal; Mr Beckett said that considered that it would be at between 40 and 50 years. It has been suggested in other cases that the value of Act rights is highest at about 30 years unexpired. It is plain, and was agreed by the experts, that near the end of the lease the value of the rights would be increasingly offset by the shorter deferment period.

27. We are satisfied that the benefit of the valid notice of claim is of significant additional value, particularly when it was given at or near the bottom of the market. In its decision in respect of 85 Avenue Road the Lands Tribunal increased the value of the rights from 10% to 15% where a notice had been served. In the present case we consider that the benefit of the notice has a value of at least 7.5%.

28. The Eyre Estate Graphs suggests a relativity of around 43%. Considering the market evidence in the light of that graph we have come to the conclusion that the total adjustment to be made for the benefit of the rights under the Act and for the benefit of the tenant's notice, is 25%, and on that basis we determine that the value of the leasehold interest at the valuation date, excluding the value of the rights under the Act, and excluding the benefit of the tenants notice, is £5,737,500.

29. Accordingly, we determine that the price to be paid for the freehold is £4,950,000, in accordance with the valuation attached to this decision.

CHAIRMAN.....
 DATE..... 7 October 2009.....

62 Avenue Road, London NW8

Valuation in accordance with sections 9(1A) and 9(1C) of the Leasehold Reform Act 1967 as at 5 March 2009 – the date of the Tenants' Notice of Claim.

A. Value of landlord's interest

Ground rent 5/3/2009 to 24/6/2029	£200 p a	
YP 20.30 yrs @ 5%	<u>12.5732</u>	£2,515
Reversion to freehold with vacant possession	£11,250,000	
PV £1 20.30 yrs @ 4.75%	<u>0.3898</u>	<u>£4,384,772</u>
Value of landlord's freehold interest		£4,387,287

B. Marriage Value

Value of freehold interest with vacant possession		£11,250,000
<u>Less</u>		
Value of freehold interest before enfranchisement	£4,387,287	
Value of leasehold interest before enfranchisement	<u>£5,737,500</u>	<u>£10,124,787</u>
Marriage value		£1,125,213
50% of marriage value		£562,606

C. Price

Value of landlord's freehold interest	£4,387,287
50% share of marriage value	<u>£562,606</u>
	£4,949,893
Say	£4,950,000

