

LEASEHOLD VALUATION TRIBUNAL**REF: LON/00BK/OLR/2011/0831****LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003.****Correction Certificate under Regulation 18(7) of the above Regulations****Re: 11 HARLEY PLACE, LONDON, W1G 8QE**

As Chairman of the Leasehold Valuation Tribunal, which decided the above-mentioned case, I hereby correct the figure of **£352,311** as appearing at paragraph 16 of the Decision, by substituting the correct figure of **£343,786**.

The original figure was the result of an inadvertent application of a modification of 5%, rather than the 4% decided by the Tribunal at paragraph 11 of the Decision.

As a result, the figure of **£1,463, 572** appearing at paragraphs 11 and 16, is also incorrect, and the figure of **£1,480,622**, is hereby substituted in each case.

This error has been replicated in the valuation calculation contained within the Appendix to the Decision, and the attached Appendix is therefore substituted for the original Appendix.

Chairman: S SHAW**Dated: 22nd February 2012**

APPENDIX:

LVT VALUATION 11 HARLEY PLACE LONDON W1

FACTS AGREED:

Valuation date:	01 April 2011
Unexpired term:	47.98, say 48 years;
Ground rent:	£500 per year, doubling every 15 years from 25.03.2014;
Capital value of income for the term:	£19,884;
Deferment rate:	5%;
Value of unimproved freehold leasehold interest:	£1,980,000
Value of freehold with improvements:	£2,000,000

Existing freehold interest agreed between respective valuers as		£19,884
+ agreed f/h reversion	£1,980,000	
PV in 48 years @ 5%	0.0962	190,476
<u>Value of existing freehold interest (as agreed)</u>		<u>210,360</u>

Marriage value:

Value of freehold interest after lease-extension:	£2,366	
+ value of extended leasehold interest:	1,960,200	£1,962,566
<u>Deduct: current f/h interest</u>	£210,360	
+ current l/h interest	1,480,622	£1,690,982
Marriage value		<u>271,584</u>
@ 50% =		135,792
Add diminution in current f/h value	£210,360	
Less future value	2,366	<u>207,994</u>
-		
<u>Price payable for lease-extension</u>		<u>£343,786</u>



DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference: LON/00BK/OLR/2011/0831

Premises: 11, HARLEY PLACE, LONDON W1G 8QE

Applicant: HOWARD DE WALDEN ESTATES LIMITED

Respondent: WOLFHART GUNNAR HAUSER

Appearances: MR MICHAEL PRYOR (of Counsel)
MR GRAHAM WINKLEY (Boodle Hatfield, Solicitors)
MR KEVIN PATRICK RYAN FRCIS (Carter Jonas LLP)
MR CHRIS CARTER-PEGG BSC (Hons) BSC MRICS (Gerald Eve LLP)
For the Applicant

MR C. HEATHER (of Counsel)
MS. KAROLINA TOLGYESI, MRICS (Beckett & Kay, Chartered Surveyors)
MR. CONVISER (Quastel Midgen LLP, Solicitors)
For the Respondent

Date of Application: 2nd August 2011

Date of Directions: 25th August 2011

Date of Hearing: 13th and 14th December 2011

Date of Decision: 23rd January 2012

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr P. Tobin FRICS, MCI Arb

DECISION

Introduction

1. This case involves an application by Howard De Walden Estates Ltd ("the Applicant") in respect of 11, Harley Place, London W1G 8QE ("the Property"). The Applicant is the freeholder of the Property which is the subject of a lease to Wolfhart Gunnar Hauser ("the Respondent") which is dated 6 July 1984. The Property was let to a predecessor in title of the Respondent, for a term of 75 years from 25th March 1984, thus expiring on the 24th March 2059. The unexpired term of the lease is thus 47.98 years which has been treated as 48 years.

2. The application is for a determination by the Tribunal under Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") as to the premium payable for the grant of a new lease under the Act. The application also sought a determination as to the terms of that lease, but these have been agreed. The issue for the Tribunal to determine is that of the appropriate premium to be paid for the grant of the new lease under the terms of the Act.

3. The Applicant was represented by two valuers, namely Mr Carter-Pegg of Gerald Eves who provided a valuation and a view as to the relativity in respect of both the existing and extended leases. Mr Kevin Ryan of Carter Jonas gave evidence as to the relativities but mainly by reference to his

valuation of the existing and extended leases. In this respect Mr Ryan has some commercial experience, which he has accumulated since commencing practice in 1970.

4. The Respondent's expert evidence was from Ms. Karolina Tolgyesi, MRICS who is an associate at the firm Beckett & Kay, Chartered Surveyors. Miss Tolgyesi joined the firm nearly 7 years ago and has been much involved in statutory leasehold enfranchisement claims, an area in which the firm generally specialises.

Matters agreed

5. The matters agreed between the parties are as set out in the Skeleton Argument of Mr Michael Pryor, of counsel for the Applicant. They are:
 - (a) Valuation date: 1st April 2011.
 - (b) Unexpired term of the existing lease: 47.98 years.
 - (c) Term of the proposed new lease: 137.98 years.
 - (d) Passing yearly rent under the £500 doubling every 15 years from 25 February 2014 for the remainder of the term.
 - (e) Capitalised rent: £19,884.
 - (f) Value of the freehold interest with the benefit of tenant's improvement: £2 million.
 - (g) Value of the freehold interest, unimproved: £1,980,000.
 - (h) Deferment rate: 5%.

6. The matters remaining in issue between the parties, and which the Tribunal is required to resolve are as follows:
- (i) The value of the unimproved existing lease; the Applicant argues for £1,433,000 and the Respondent leaseholder contends for £1,548,993.
 - (ii) The value of the extended lease (that is to say 138 years); the Applicant contends for £1,960,250 whilst the Respondent advocates £1,881,000.
 - (iii) Relativity in respect of the existing lease: the Applicant argues for 72.38% whereas the Respondent says this should be 78.23%.
 - (iv) Relativity in respect of the extended lease: the landlord argues for 99% whereas the Respondent says this should be 95%.

The result of these disparities is that the Applicant argued before the Tribunal that the correct premium is £367,600 whereas the Respondent leaseholder calculated this figure on the above data as £270,000. It is proposed to deal with each of the disputed issues in turn, to summarise some of the evidence put forward and to give the Tribunal's view in respect of these issues.

Value of the existing lease

7. The approach of Mr Ryan on behalf of the Applicant can be found at paragraph 4 of his report dated 8 December 2011. Of course the value has to be calculated in the hypothetical "no Act world". He refers to the general practice in the absence of comparable existing lease evidence, which is exclusive of statutory rights, of adopting values based on a relativity graph.

He does however refer to the **Nairile** case which provides that relativity is best established by doing the best one can with such transactional evidence as may be available, together with graphs of relativity. He points out that the Respondent himself purchased the property with just less than 48 years unexpired in the open market at £1,725,000. The purchase was with the benefit of the Notice of Claim. He regards this as the best market evidence available in respect of the existing lease but that it requires adjustment to take out the benefit of the statutory rights. Relying upon his considerable experience in the field, he contends that for leases with an unexpired term of between 41 and 50 years, he would normally adjust by 10% of the market value and a further 5% to reflect the benefit of the Notice of Claim. Mr Ryan did, in addition, have reference to the graphs of relativity referred at paragraph 4.7 of his report. In particular, he compared the corresponding relativities shown for an unexpired term of 48 years, which are 72.4% on the Gerald Eve graph and 79.7% on the Savills enfranchisable graph. Those figures show a differential of 9.16%. He observes that this is very close to the 10% adjustment which he would make for statutory rights in respect of a lease of this unexpired term.

8. However, he observes that these graphs do not show any additional benefit given in circumstances where a property is sold with the benefit of a Notice of Claim. He takes the view that this is properly reflected by a further 5% in addition to the 10% to be applied for the Act rights. He therefore adds 5% to the 9.1%, producing 14.6% as an appropriate overall figure. Both parties are agreed that the appropriate allowance to give for tenant's improvements

is £20,000. Applying this process of adjustment, and cross-referencing with the graph, together with his input from market evidence and experience, Mr Ryan concludes in paragraph 4.10 that he is happy to apply the Gerald Eve relativity of 72.38% to the agreed unimproved freehold value of £1,980,000 which results in an unimproved existing lease value exclusive of statutory rights of £1,433,000.

9. The alternative approach of Ms Tolgyesi on behalf of the Respondent is set out at (coincidentally) paragraph 4 of her report dated 6 December 2011. She also relies on the sale price of £1,725,000 paid by the Respondent himself in May 2011 – which is very close to the valuation date. In respect of the adjustment for the benefit of the Act rights, she refers at paragraph 4.14 of her report to Table 1 in the Lands Tribunal Decision in 38, Cadogan Square. In that case the Tribunal directed that the benefit of the Act is 10.45% at 45 years and 8.3% at 50 years. Adopting a straight line approach, she concludes that the appropriate discount for a length of term as exists in this case would be 9.15%.
10. Miss Tolgyesi disagreed with Mr Ryan about the further adjustment of 5% reflecting the value of the notice served. She told the Tribunal that she did not know if the service of the notice before the sale would increase the price. She said it depended upon the parties and what use they might otherwise have for the money involved. She accepted that it might make some difference but not as much as 5%. The upshot of her adjustments

and not allowing any additional adjustment for the Notice of Claim would produce an existing lease value of £1,548,993.

11. So far as the Tribunal is concerned, the transactional and graph evidence does support an adjustment of 9.16%. As for the value of the notice, the Tribunal accepted the argument of Mr Ryan that generally purchasers do not like to trade certainty for risk. He cogently argued that the risk is that the extended lease value will rise at such a rate as to outpace any returns the buyer might enjoy from using the money alternatively. Returns generally have fallen respectively in respect of alternative investments, and the fact of the notice having been served and having secured the rights does have a value for negotiation purposes. There is no particular science in the figure of 5% given by Mr Ryan and a direct addition of his 5% to the graph relativity indicator does, in the view of the Tribunal, slightly over compensate. The Tribunal would adjust this additional modification to 4%. The result of this is to produce an existing leasehold valuation in the sum of £1,463, 572 as reflected in the calculation appended hereto.

Value of the extended lease

12. Mr Ryan deals with this at paragraph 5 of his report. The unimproved freehold value of the property is agreed at £1,980,000. He sets out how in his experience as an estate agent in the "no Act world", medium term leases were common place and a lease of 138 years would have been considered a very long lease indeed and at the upper end of all leasehold properties available in the market. Freehold properties within the

Applicant's estate are virtually non-existent, mirroring the no Act world, and accordingly long leases were considered the next best thing to freehold. They would be priced by agents at more or less the same figure as if they were freehold. Mr Ryan cannot recall in the past 14 years ever agreeing relativity for a term as long as 138 years at less than 99% of the freehold. He sees no reason to depart from that practice in this case and accordingly, given that the unimproved freehold value is agreed at £1,980,000, he says the extended lease value is 90% of that figure, that is to say £1,960,250.

13. Mr Ryan's evidence is largely supported by Mr Carter-Pegg's references contained within the graphs referred to in his report.

14. Miss Tolgyesi took a different view. At paragraph 3 of her report (as expanded in evidence) she contended that it was obvious that hypothetical purchasers would prefer to buy a freehold rather than a long leasehold interest. She considered that the potential purchaser would pay less for a leasehold than a freehold but *"not by much"*. Although the value of this preference was often put at 98% to 99% in respect of flats, the property here in the lay understanding, rather than technically within the 1967 and 1993 Acts, was a house. With houses, there is indeed a choice between leasehold and freehold and the buyer has an option to buy a freehold elsewhere. She considers therefore that the availability of this *"better option"* throws a bigger difference between the two categories of ownership and makes the differential starker. She felt that it must be more than the differential applied in respect of flats and, in relation to a "house" of this

kind, "*instinct*" told her that the differential must be less than 10%. She felt that 5% "*seems about right*".

15. Once again, the resolution of this difference between the parties is a question of individual impression based on experience, rather the application of any particular scientific formula. The Tribunal takes the view that one factor moves the argument more in favour of the Applicant than the Respondent. This is that both hypothetically, and in the real world, freehold interests are simply not available within the Applicant's estate, and accordingly the hypothetical buyer does not have the kind of choice postulated on behalf of the Respondent. It is true that there are broadly comparable properties in some of the adjoining Central London estates which may be freehold, but often they will not have quite the cachet in terms of location enjoyed by the De Walden estate, and will not be entirely helpful comparables. Whilst recognising the intellectual force of the Respondent's argument, the Tribunal prefers the market experience supporting the Applicant's approach and considers that the relativity as between freehold and the extended lease is indeed 99% as argued for on behalf of the Applicant. This produces an extended lease value of £1,960,200.

Conclusion

16. The upshot of these findings is set out in the valuation contained within the Appendix to this Decision. The Tribunal finds that the existing lease value is £1,463,572 (the applicable relativity being 73.92%). For the reasons indicated, the Tribunal finds that the appropriate relativity to be applied in

respect of the long lease value is 99%, producing a long lease valuation of £1,960,200. The result of these findings is that the price payable for the premium in respect of the new lease is £352,311 as set out in the valuation within the Appendix attached.

Legal Chairman: S. Shaw



Dated: 23rd January 2012

APPENDIX:

LVT VALUATION 11 HARLEY PLACE LONDON W1

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+ agreed f/h reversion	£1,980,000
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	<u>190,476</u>
Value of existing freehold interest (as agreed)	<u>210,360</u>

Marriage value:

Value of freehold interest after lease-extension:	£2,366	
+ value of extended leasehold interest:	<u>1,960,200</u>	£1,962,566
<u>Deduct:</u> current f/h interest	£210,360	
+ current l/h interest	<u>1,463,572</u>	£1,673,932
Marriage value		<u>288,634</u>
@ 50% =		144,317
Add diminution in current f/h value	£210,360	
Less future value	<u>2,366</u>	<u>207,994</u>
Price payable for lease-extension		<u>£352,311</u>

