UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2010] UKUT 192 (LC)
LRA/7/2009

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – house – price – condition – improvements – risk of tenant claiming Assured Tenancy- statutory assumptions – appeal allowed in part – Price determined at £152,788 - Leasehold Reform Act 1967 section 9(1), Housing Act 1988 section 14(2)(b) and Landlord and Tenant Act 1954 Pt 1

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL OF THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE NORTHERN RENT ASSESSMENT PANEL

BETWEEN **SILLVOTE LIMITED** **Appellant**

and

LIVERPOOL CITY COUNCIL **Respondent**

Re: 55 Rodney Street, Liverpool, L1 9ER

Before: P R Francis FRICS

Sitting at: Employment Tribunal Service, 1st Floor, Cunard Building, Water Street, Liverpool L3 1TS
on
27 April 2010

Richard Bradley, instructed by Connell Associates, solicitors of Liverpool for the Appellant
Edward Austin, of Goode & Austin, solicitors of Shrewsbury, for the Respondent

The following cases are referred to in this decision:

Bass Holdings Ltd v Grosvenor West End Properties [2008] UKHL 5
Vignaud v Keepers and Governors of the Free Grammar School of John Lyon [1996] 2 EGLR 179
Lloyd-Jones v Church Commissioners for England [1982] 1 EGLR 209
Shalson v Keepers and Governors of the Free Grammar School of John Lyon [2004] 1 AC 802

DECISION

Introduction

1. This is an appeal from a decision of the Leasehold Valuation Tribunal of the Residential Property Service, Northern Rent Assessment Panel, dated 2 October 2008 which determined the price payable for the freehold of 55 Rodney Street, Liverpool (the appeal property) at £292,500 under section 9(1) of the Leasehold Reform Act 1967 (the 1967 Act). Permission to appeal, noting that the grounds stated by the appellant raised several issues of law and valuation principles, was granted by the LVT on 9 December 2008.

2. The appellant is the tenant of the appeal property, who holds it under the terms of a lease dated 22 June 1922 for a term of 99 years from 2 November 1918 (11.2 years remaining at the valuation date) at a ground rent of one peppercorn (if demanded). The respondent landlord, Liverpool City Council, is the successor in title to the original landlord, Liverpool Corporation.

3. Mr Richard Bradley of counsel appeared for the appellant, and called Mr Anthony John Connell, a director of Sillvote Ltd, who gave evidence of fact and Mr Andrew Stanley Hamlett-Orme of Orme Associates, surveyors of Liverpool, who gave expert valuation evidence. Mr Edward Austin, a consultant locum solicitor, appeared for the respondent and called Mr Kenneth Kentucky Kayayobile Kasambara BSc MRICS, a surveyor with Mouchel/Liverpool 2020 Limited who gave expert valuation evidence. I carried out an accompanied inspection of the appeal premises, together with an external inspection of the relevant comparables and the surrounding area immediately after the hearing.

The appeal property

4. 55 Rodney Street is a mid-terrace 4 storey Georgian building constructed of brick under pitched, slated roofs together with brick built outriggers to the rear at ground, first and second floors, some of which are flat roofed. It is located at the southern end of Rodney Street, in a Conservation Area on the edge of the City's Georgian Quarter, close to the Anglican Cathedral and about 1 mile from the City centre. Originally constructed as a private house with stables at the rear (those having since been severed), the property, together with most others in the vicinity, has been converted in part to commercial use and is now described as mixed use comprising 2,455 sq ft (228 sq m) offices (used principally as medical consulting rooms) together with three residential flats extending in all to 921 sq ft (85 sq m), giving a net internal floor area of 3,379 sq ft (313 sq m). There is a small yard area behind. At the valuation date, the property was sublet to 6 tenants at a gross rent of £30,834 pa. There is no dispute that the appellant is entitled to enfranchise as, despite a substantial part of the property being in commercial use, it was a property "designed … for living in" when it was first built (see *Bass Holdings Ltd v Grosvenor West End Properties* [2008] UKHL 5).

The LVT decision

5. In determining a price of £292,500, the LVT dismissed Sillvote's argument (in proposing a price of £59,000) that an allowance should be made for disrepair, there should be a deduction of £101,174 for tenant's improvements, and that there should be a 10% discount to reflect the risk that the tenant would claim an assured tenancy under the Local Government and Housing Act 1989. The LVT accepted the basis of Liverpool City Council's arguments on those issues (the respondent had proposed a price of £336,000), but found on the evidence that a market rent of £32,540 should be applied to the valuation (after deducting 22.5% management costs), and that the capitalisation rate should be determined at 7%. A copy of the LVT's valuation is at Appendix 1.

Appellant's case

6. In its notice of appeal the appellant said that the LVT had erred in failing to take into account either the physical condition of the property or tenants' improvements, that a 10% discount for risk should have been applied, and that it should have taken the actual rents received into account rather than the market rental value. In any event, it had not properly taken into consideration the comparable evidence adduced.

7. In its statement of case, the appellant maintained that the correct price to be applied was £120,210 rather than the £59,000 that had been sought before the LVT. However, due to a mathematical error that was revised to £122,854 before me. The capitalisation rate that the LVT applied at 7% was accepted. In his original valuation, Mr Hamlett-Orme had estimated the unencumbered freehold value of the property at £265,000, but this was revised to £350,000 to take into account subsequently agreed floor areas, the comparables, the fact that only a percentage of the cost of repair was now claimed and the now agreed capitalisation and deferment rates.

8. Mr Connell produced a brief witness statement outlining the background to his purchase of the long leasehold interest in 1986, and the works that had been undertaken subsequently, the majority of which he considered to be tenant's improvements. These included the provision of individual kitchens and bathrooms to each of the flats (they formerly had shared cooking and bathing/wc facilities), the installation of gas and electric heating and extensive modernisation to the basement to provide further offices, including lowering the floor to give adequate head-height, and tanking the walls. Repairs to the structure were also undertaken, including re-pointing, replacement of guttering, eradication of dry rot, roof repairs, replacement of some windows and re-wiring.

9. As to the council's argument that improvements should be ignored because they were unauthorised, Mr Connell said that although he had never sought consent, they would have been aware through the Building Regulation process that he had had to go through, and also he had had meetings with council officials regarding drainage works. He confirmed that the

council had never threatened proceedings, or contacted him in any other way regarding the works that had been done.

10. Mr Hamlett-Orme is a surveyor who has practised in Liverpool for 8 years, specialising in commercial agency and landlord and tenant matters. In respect of the first issue (the property's condition), he said that the LVT's statement that it would not take into account the alleged disrepair or costs of rectification because, under the lease, the tenant was obliged to keep it in good repair was wrong. They should have applied the statutory valuation assumption at section 9(1A)(c) of the 1967 Act which states that is to be assumed that the tenant has no liability to carry out repairs, maintenance or redecoration under the terms of the tenancy or Part 1 of the Landlord and Tenant Act 1954. He said that, according to *Hague on Leasehold Enfranchisement*, 4th Edition (2003) at para 9.29 (see now 5th Edition (2009), para 9.35): "the [first limb of the] assumption leads inevitably to the conclusion that a tenant who at the date of his Notice of Tenant's Claim has let his house fall into disrepair will pay a lower price than if he had complied with his repairing obligations; and the worse the tenant's breach of his repairing covenant, the cheaper his freehold will be." Evidence had been provided to the LVT of the substantial wants of repair that were required, and had the statutory assumption been taken into account, the estimated rental value and the capital value that they came to would have been significantly less.

11. Mr Hamlett-Orme produced a costed schedule of repairs that had been obtained from Mr Brian Earl FRICS, senior partner of Edge Earl, Chartered Quantity Surveyors of Widnes, which estimated the total cost of works of reparation required at the valuation date to be in the region of £243,749. He accepted in cross-examination that Mr Earl was not a building surveyor, that he had not had access to the whole of the premises, that his report did not state from which source his estimated figures had been derived and appeared to be reliant to some extent upon the earlier report of a Mr Jackson of Architectonic that had been relied upon before the LVT. In any event, Mr Earl's figure was not being precisely relied upon in the valuation as, Mr Hamlett-Orme said, he had allowed £100,000 which was the figure he thought a prospective purchaser would deduct from his bid to reflect the repairs required, as the value would only be reduced by a proportion of the total estimated cost of repair.

12. Turning to the second issue, tenant's improvements, he said the LVT had refused to disregard them when valuing both the estimated rental value and the capital value of the building. At paragraph 14 of the decision they said that the applicant had been unable to produce any evidence of landlord's consent having been obtained, and disagreed with the argument that improvements had become authorised because the landlord could not bring proceedings by virtue of the Limitation Act 1980, or could not unreasonably withhold consent by virtue of s.19(2) of the Landlord and Tenant Act 1927.

13. Once again, Mr Hamlett-Orme said, they had failed to follow the statutory provisions under the 1967 Act. Section 9(1A)(d) requires the assumption that "the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense." He

said that the lease prohibits the creation of new buildings or the making of structural alterations in the following terms:

> "And will not without the consent of the Corporation and according only to the plans (showing the distance of the buildings to be erected from the adjoining buildings) elevations and sections to be first submitted to and approved by the Corporation erect or build or cause or suffer to be erected or built on the said piece of land or any part thereof any building whatsoever or any addition to any existing building on the demised premises nor make, cause or suffer any structural alterations to the said messuage or dwellinghouse and workshop or any other building for the time being on the said premises or any of them or in any way alter the height or elevation thereof or put out any windows in any part of the said messuage or dwelling house and workshop."

Some of the improvements that had been made were internal (heating and provision of bathrooms), and such works would not constitute a breach of that covenant. As to the conversion of the basement from storage to office use, although it was admitted that formal approval had not been sought, those works were essentially approved by consultation with the council's officers principally in connection with the drainage works that were required. The extension works that increased the size of the ground floor offices and the first floor flat were carried out between the 1950s and 1982, and Mr Hamlett-Orme said, there was no reason to believe they were undertaken without landlord's consent. All of these improvement works added some £101,174 to the value of the property.

14. However, as to the extensions he had referred to, he admitted in cross-examination that there was no evidence to support his contention that they were (other than the small bathroom extension at first floor) new-build as additions, and that it was apparent from the plans that the LVT had referred to that they did, in fact, appear to be replacement structures. Nevertheless his evidence indicated that one of those re-constructed areas had been used to provide bathroom and wc facilities to the ground floor flat.

15. He referred again to *Hague* at para 9.30 (see now 5th Edition (2009) para 9.36) which says "It is considered immaterial that an improvement was made either in breach of covenant or otherwise without the consent of the landlord if the landlord has waived the breach. However, if the landlord has a right of action in respect of the breach, then the works cannot have increased the value of the house where the landlord can forfeit or require reinstatement." He said it was hard to see from that comment when the tenant's improvements would increase the value of the freehold under the 1967 Act and not be disregarded.

16. Regarding the third issue, the proposed 10% reduction in value to reflect the risk of the tenant claiming an assured tenancy, Mr Hamlett-Orme said that he was at a loss to understand how the LVT had concluded that "the applicant produced no legal basis for introducing this into the valuation, and the Tribunal decided that it should be ignored", and they should have explained their reasoning. He said that pursuant to section 9(1A)(b) of the 1967 Act it was to be assumed that the tenant had the right to remain in possession at the termination of the tenancy under the relevant Act of Parliament. The relevant Act (see *Vignaud v Keepers and Governors of the Free Grammar School of John Lyon* [1996] 2 EGLR 179) was the Housing

Act 1988 and the Assured Tenancy afforded to the tenant would provide security of tenure at a market rent payable annually. Under section 14(2)(b) of that Act the market rent disregarded "any increase in value of the dwellinghouse attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant." Because of the significant value attributable to the tenant's improvements in this case, there was a risk that the tenant would seek to exercise his rights in 11.2 years. He would be enjoying a profit rent that he would wish to retain and protect. This was a risk that must be taken into account, and in his view an arbitrary 10% reduction to the freehold value was appropriate.

17. It was submitted that the tenant could also seek to negotiate a new long tenancy, and were he to do so the possibility of him exercising his rights under what was Part 1 of the Landlord and Tenant Act 1954, and is now under Schedule 10 to the Local Government and Housing Act 1989, would be a factor to which the parties must have regard in negotiating terms. This was a market factor that had long been recognised by the Tribunal - see *Lloyd-Jones v Church Commissioners for England* [1982] 1 EGLR 209.

18. As to the valuation (attached at Appendix 2), Mr Hamlett-Orme said that the LVT's assessment of rental value was excessive as it assumed that the passing rents had been increased to market value. However, that assumed that the requisite section 25 notices had been served under the 1954 Act and took no account of the fact that there may well be disputes and protracted negotiations, or the costs involved, especially if applications had to be made to the county court for interim rents. He did not agree that if the passing rents, which the freeholder considered were well below market rents, had to be assumed, the landlord would effectively be paying for the tenant's inertia. The rents actually received were £30,834 pa at the valuation date which, after deduction of management costs (agreed at 22.5%) became £23,896 pa, significantly less than the £32,540 that acquiring authority was proposing.

19. Mr Hamlett-Orme derived his assessment of the £350,000 capital value from two principal comparables: 56 and 24 Rodney Street. Both were in better condition, and had sold in 2005 for prices that equated to £144 per sq ft. Applying that rate to the subject property gave a value of £488,000; deducting £100,000 for disrepair gave a value of £388,000 which, with a further 10% deduction for risk, rounded to £350,000. In cross-examination, he was referred to the later sale of 24 Rodney Street, at £470,000 in August 2006, but said the purchaser had been forced into a ransom situation by having to vacate existing premises by a certain date. That price was not, therefore, a true reflection of market value. That property had also been very substantially renovated and was in "peak" condition. In addition to considering comparables, he said that he had prepared an investment valuation based on rental values at between £9 and £10 per sq ft, sourced from the 2005 Valuation Lists. He did not accept that those were out of date, being those applicable in the market when the re-valuation exercise was carried out by the VOA in 2003, and in any event, was of the view that there had been little movement in rental values between 2003 and 2006.

20. Finally, Mr Hamlett-Orme provided details of a number of surrenders and lease renewals that had occurred, which he said supported his assessment of the price to be paid for the freehold.

Respondent's case

21. Mr Kasambara has 17 years commercial and residential experience as a chartered surveyor in Liverpool having been employed by Liverpool City Council between 1994 and 2005, and subsequently with Mouchel/Liverpool 20/20. His valuation is at Appendix 3, and shows his opinion as to the value of the unencumbered freehold interest at £628,885, as against Mr Orme's figure of £350,000. He assessed the rental value of the offices at £25,288 pa (£10.35 per sq ft overall) based upon comparable rental information, together with the three flats at £7,800 pa each, bringing the total estimated rental value to £48,688 pa. After deducting 22.5% management costs this became £37,333 pa. He produced summary VOA valuations (undertaken in 2003 for the 2005 Rating List) for properties in Rodney Street showing values ranging from £13.28 psf for ground floor offices, through £10 - £11 for first floor and around £8 for second floor. He had also considered rentals achieved on lettings of ground floor office accommodation which ranged from £11 to £14.22 psf.

22. He said that the tenant had not reviewed the rents "for ages" and further that the appellant's estimate of rental values was far too low at between £9 and £10 per sq ft. His own figure, on an overall per sq ft basis, amounted to £14.41 per sq ft which, he said, more accurately reflected what the market would pay. However, he did accept that that analysis included the residential areas, and that there was evidence (19 Rodney Street) that the rent there was £10.43 per sq ft with parking included. Any argument regarding costs that the tenant would incur, or difficulties he might encounter in increasing rents was, it was submitted, irrelevant because these should be covered in the management costs that had been agreed. As the residential parts were on assured tenancies, and the business areas appeared to be unprotected or periodic, there would be no great hardship or delay obtaining possession, and re-letting at higher figures if increases could not be agreed.

23. As to Mr Hamlett-Orme's reliance on the sale of 56 Rodney Street, he accepted how the breakdown of that price equated to a figure of £488,000 for the appeal property, but said it was the extra £100,000 or so that had been deducted for condition that he disagreed with. In his view the condition of the two buildings at the relevant date was not that dissimilar. The sale was also 10 months before the valuation date, and at the time the market was extremely buoyant. Mr Kasambara also accepted the appellant's analysis of the first sale of 24 Rodney Street, but said that the later sale, which was closer to the valuation date, was the most relevant and demonstrated the considerable upward movement in the market. He did not accept the argument that that sale was at an artificially high price due to a ransom situation, and argued that it was an open market sale between a willing seller and buyer. That sale, he said, supported his figure of £628,000 for the freehold.

24. It was the respondent's case that no allowance should be made for disrepair (as found by the LVT) as the lease was on a full repairing and insuring basis. By the appellant's own admission it had not maintained the property in good and tenantable repair which entitled the respondent, if it so chose, to serve a notice under section 146 of the Law of Property Act 1925. The statutory assumption upon which the appellant was relying was directory rather than mandatory, and would only therefore apply in the absence of express repairing covenants.

25. It was submitted that any other interpretation would mean that the tenant could profit from its own breach of covenant, which would be manifestly unjust. Mr Austin referred to the obiter comments of HH Judge Rich QC in *Vignaud* where he said:

> "by reason of para (c) of the subsection, the Tribunal is required to make the wholly inequitable assumption that at the valuation date the tenant has no liability to carry out repairs under either her tenancy or the provisions of the Landlord and Tenant Act 1954, so the price at which she is entitled to purchase is reduced by any breaches of covenant to repair."

Whilst the value of dilapidations was not in issue in that case, and it concerned whether the value of improvements could be taken into account, Judge Rich's comments regarding the iniquity were accurate.

26. Furthermore, Mr Earl's report included over £100,000 worth of provisional sums without any evidence to support the need for them, and there was no information on the basis of his figures for any of the alleged wants of repair. Also, he was not called to give evidence before this Tribunal. The fact that the landlord appeared to have no difficulty in finding tenants, Mr Austin said, suggested that the issue of the property's condition was not relevant in any case.

27. In *Shalson v Keepers and Governors of the Free Grammar School of John Lyon* [2004] 1 AC 802, Lord Bingham said, at para 3:

> To the extent of the increase attributable to those works the price payable for the house is diminished. The fairness of this provision is obvious. It would not be fair if the tenant were obliged to pay an enhanced price to the extent that such enhancement was attributable to works done by him or his predecessors in title (probably voluntarily) at their own expense: the tenant would in effect be paying twice. It would not be fair if the owner received a price inflated as a result works done by the tenant or his predecessors in title (probably voluntarily) at their own expense: the owner would be reaping an adventitious gain as a result of works which he would have no right to require."

It was submitted that the inverse also applies: it is equally unfair for the landlord to suffer a loss because of the tenant's breach of its obligation to repair. It cannot have been Parliament's intention to impose such draconian results.

28. Mr Kasambara accepted in cross-examination that Mr Orme's approach to the question of repair, in that he had assumed only a proportion of the estimated cost, was reasonable in principle, but it was his view that, apart from the legal issue of the statutory assumptions, many of the items listed were either not repairs or were not necessary.

29. On the question of improvements, Mr Kasambara said he had made no specific allowance for them. He did not consider that any of the items listed by the appellant were, in fact, improvements. The basement conversion "still looked like storage", and although he described that area as offices in his valuation, he valued it at £5.57 per sq ft, which was just over one-third of the figure he attributed to the principal ground floor officers (£14.88 psf) with

£4.18psf for the kitchen/store. He said that the majority of the extensions were replacements and the small extension to provide a first floor bathroom was something that the tenant would have been obliged to do. It was submitted that no evidence had been advanced to indicate the difference in value of the property with and without improvements, and that it was fundamental for the tenant to prove that increase in value, if any: see *Shalson*, paras 19 and 21 and the comment of HH Judge Rich in *Vignaud* where he said, at 179:

> "In my judgment, a tenant wishing to prove that works have been carried out under the lease should either produce such licence or explain its absence."

As the lease prohibits alterations without the landlord's consent, and such consent has neither been sought nor received, they should be ignored.

30. Mr Kasambara also made no deduction for risk, and said he was of the view that not only had the appellant adduced no evidence to support his arbitrary 10% reduction, but as 11.2 years remained on the lease such an allowance was inappropriate. He said that it would be a different matter if there were only a few months remaining on the lease. It was submitted that whether or not such a deduction should be made is a matter for evidence, based upon the facts of each case, and is not a convention. No such evidence had been provided and the appellant's opinion was entirely unsupported.

Conclusions

31. So far as is material to this appeal, section 9(1A) of the 1967 Act provides:

> "… the price payable for a house and premises … shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:-
>
> (a) …that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold;
>
> (b) …that at the end of the tenancy the tenant has the right to remain in possession of the house and premises;
>
> (c) …that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or part 1 of the Landlord and Tenant Act 1954;
>
> (d) …that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;"

32. Looking firstly at the condition of the property, the LVT said, at para 15:

> "The applicant acknowledged that repairs were required to the property. The Tribunal noted that the Lease required the Tenant to keep the property in good repair and for the purposes of its valuation no account was taken of any actual disrepair to the Property nor the cost of carrying out those repairs."

In my judgment, the LVT was wrong to effectively dismiss the applicant's argument that a proportion of the cost of putting the property into repair should be taken into account in deriving the value of the premises. Whilst it was perfectly understandable for the council to argue that it would be totally iniquitous if the tenant were to be able to profit (by paying a lower price) as a result of its failure to adhere to the terms of the lease, and to refer the passage in *Vignaud*, the fact remains that, under section 9(1A)(c) that is precisely what the Tribunal must do.

33. However, were it not for Mr Hamlett-Orme's "concession" in claiming only £100,000 rather than the £243,000 alleged cost of required repairs, I would have found considerable difficulty in determining an appropriate figure. In my view, little weight can be attached to the schedule of repairs that had been produced by Mr Earl, and which was appended to his report. Not only was the schedule produced following a recent partial inspection of the property (whereas an earlier report of a Mr Jackson had been before the LVT), there was nothing within it that indicated what, if any, allowance had been made to backdate prices to the valuation date, or indeed, from whence he obtained the figures upon which he relied. He was also not called, and could not therefore be cross-examined upon his report. Furthermore, there was no evidence of the basis upon which he had been instructed (Mr Hamlett-Orme admitting that his instructions had been verbal), and Mr Earl is a quantity surveyor rather than a building surveyor. Although Mr Hamlett-Orme's allowance of £100,000 seemed to me to be entirely arbitrary, with no formal 'before and after' valuation exercise having been undertaken by either valuer, I am inclined to accept it.

34. Turning to improvements, the LVT said, at paras 13 and 14:

> "13. The applicant alleged that a number of improvements had been carried out by the tenant since the Lease was granted. However, the Tenant was unable to produce evidence of consent from the Landlord to the making of these improvements which therefore, at first sight, appeared to be in breach of the Lease. The Applicant argued that the improvements had become authorized because the Landlord would be unable to successfully bring proceedings for breach of covenant by virtue of the Limitation Act 1980. It was further argued that the Landlord could not unreasonably withhold consent to them by virtue of section 19(2) of the Landlord and Tenant Act 1927.
>
> 14. The Tribunal decided that unauthorised improvements do not automatically become authorised as a result of any action for breach of covenant by the Landlord being statute barred. They remain unauthorised. The Tribunal further noted that the plan on the lease and the modern plan of the Property do not vary significantly and that therefore they did not take into account any alleged improvements made by the tenant during the term of the lease."

35. Looking at the reality of the situation, it is clear that the majority of the extensions that Mr Hamlett-Orme referred to were, in fact, replacement structures (apart from the small bathroom extension at first floor) and could not therefore be deemed improvements. The conversion of the basement storage into offices is, in my judgment, an improvement, and I do not agree with Mr Kasambara's conclusion that the area "still looked like storage". These works would have increased the value of the property when they were undertaken, but not to the extent that Mr Hamlett-Orme suggests. In his valuation, he applied £10 psf to this area, with £5 psf to the kitchen/store. This was the same rate he applied to the ground floor rear office (which he described as an extension) and I can see no justification for taking the same rates. Mr Kasambara applied approximately 1/3 of his opinion of the ground floor value, but I think this is too low. In my view £7.50 psf is a more appropriate figure, with £5 for the kitchen/store. Allowing Mr Hamlett-Orme's adjustment for the before value of that area, and capitalising the resulting rental value figure of £4,053 (£3,141 net) at 7%: £44,853, less £8,496 being original unimproved rental value, gives £36,357 rather than the £49,328 he was claiming.

36. The provision of bathrooms to the individual flats, and the installation of central heating and domestic hot water systems would also constitute improvements, as would the conversion of part of the attic space to provide a bathroom for the upper flat. However, Mr Hamlett-Orme's calculations of increased rental and capital values are based, at least in part, on allegedly extended areas which are now agreed to be replacements. I do not therefore accept the additional £15,209 value attributed to what was described as a ground floor office extension, but do accept the additional values attributed to the flat improvements that he described (set out in appendix 4 to his report). In conclusion, therefore, I am satisfied that the value of the tenants improvements is:

Conversion of basement		£3,141 @ 7%	
	Less	£1,019 @ 12%	£36,357
Conversion of pt GF to bathrooms		£1,240 @ 7%	£17,707
Bathroom extension to first floor flat		£ 223 @ 7%	£ 3,184
Central heating			£ 5,400
Loft conversion providing bathroom to upper flat			£10,346
Total value of improvements			£72,994
			Say £73,000.

37. In determining the question of whether or not the value of those improvements should be disregarded, I turn now to the statutory assumption in section 19(1A)(d) which requires that three conditions have to be satisfied. As Lord Millett put it in *Shalson* ([2004] 1 AC 802 at para 31):

> "In order to lead to a diminution in the price the works must (i) consist of an 'improvement' (ii) be carried out by the tenant or a predecessor in title at his expense

and (iii) increase the value of the house and premises at the relevant time. Nothing more is required."

38. I have concluded that the works described above constituted improvements, am satisfied that they were carried out by the tenant (or its predecessors in title) at its expense, and increased the value of the premises at the relevant time. There is nothing in the provision that suggests that improvements are to be left out of account where, as in the present case, there was a covenant requiring the landlord's consent, such consent was not obtained, and any right of the landlord to take action for breach of covenant has expired. Nor is there any obvious justification for leaving them out of account, this in effect giving the value of them to the landlord. I therefore make an allowance of £73,000 for tenant's improvements in the Tribunal's valuation, and take the rental value of them (per Mr Hamlett'Orme's figures – see para 36) at £5,623 pa..

39. Regarding the appellant's proposed deduction of 10% for the risk that the tenant might exercise its right to remain in occupation (section 9(1A)(b)), the LVT said that the applicant produced no legal basis for introducing it into the valuation, and ignored it. Mr Bradley referred to *Vignaud* where a 10% allowance had been made, but in that case there was only 10 months remaining on the lease, and furthermore, the respondent's expert valuer had been prepared to accept it. In this case, there was in excess of 11 years remaining. The appellant said that it must be assumed that the lessee would exercise its right and take an assured tenancy under the Act. But, that is not, in fact, the case. That there is a right is not the question, but it is whether, as a matter of evidence, there is a likelihood that the lessee will exercise that right. As the respondent said in its opening skeleton, it as a valuation matter, and not one of convention. The applicant's figure of 10% was, as it admitted, entirely arbitrary, and no evidence was produced as to value at term, or of the appellant's actual intentions. Also, as I have found, the value of improvements is somewhat less than had been suggested. On that basis, I am satisfied that whilst the LVT should perhaps have referred to the relevant provision, the applicant's case has not been made out on the evidence, and I must therefore reject it.

40. Having dealt with the three principal grounds of appeal, I now turn to the question of value. Mr Kasambara valued the commercial element at £111 per sq m (10.35 psf) whereas the LVT adopted £130 per sq m (£12.07 psf) which was more than was being sought by the landlord. However, the main difference lay in the estimated value of the residential flats. The LVT concluded that they were worth £1,025 per calendar month (£12,300 pa) before deductions for management costs whereas Mr Kasambara put them at £23,400 pa. Mr Hamlett-Orme did not take issue with the LVT's opinion, and he had obtained a letter of opinion from Mr Nigel French of Sutton Kersh at £12,000 pa for the three flats. In the light of the evidence, I am satisfied that Mr Kasambara's opinion of the residential values was seriously overstated, and that his overall assessment of the rental value for the building could not be supported. I adopt the LVT's figures.

41. The LVT's rental values for the commercial element were based upon its view, on the evidence it had received, of market rates, rather than upon the actual rent roll in the premises. I accept the respondent's arguments that this was the correct way to proceed in that otherwise

the tenant would be profiting from its own inertia. In the round, therefore, I can see no reason to conclude that the LVT's figures were incorrect or that it had adopted questionable valuation principles on that aspect. In the light of my findings that the LVT was, however, wrong on the first two issues, the Tribunal's valuation incorporating an allowance of £100,000 for repairs, and £73,000 in respect of improvements, is attached at Appendix 4.

42. The appeal is therefore allowed in part, and the price is determined at £152,788.

DATED 14 June 2010

P R Francis FRICS

LEASEHOLD ENFRANCHISEMENT VALUATION
55 RODNEY STREET, LIVERPOOL

LANDLORD'S INTEREST (LIVERPOOL CITY COUNCIL)

TERM			
Ground Rent	Peppercorn		
YP 11.2 Years 6%	7.9886		£0
REVERSION			
Market Rent	£32,540		
YP in perpetuity @ 7%			
Deferred 11.2 years	6.875842		£223,740

LESSEES INTEREST (SILLVOTE LTD)

TERM			
Profit Rent	£32,540		
YP 8.25% and 3.5%			
adjusted for tax at 23.5%	5.5607		£180,945

VACANT POSSESSION VALUE

Market Rent	£32,540		
YP in perpetuity @ 6%	16.6667	£542,334	
		SAY	£542,500

MARRIAGE VALUE

Vacant Possession Value		£542,334	
LESS			
Landlord's Interest PLUS	£223,740		
Tenants Interest	£180,945	£404,685	
Marriage Value		£137,649	

APPORTIONMENT OF MARRIAGE VALUE

Take 50% as appropriate share	£68,825		
Value of the Landlord's Interest			

for Enfranchisement purposes	£223,740		
Value as above plus share of marriage value	£68,825	£292,500	
		SAY	£292,500
Value of Tenant's Interest for Enfranchisement purposes	£180,945		
Value as above plus share of marriage value	£68,825	£249,770	
		SAY	£250,000
		TOTAL	£542,500

NOTES

MARKET RENTAL VALUE
FOR THE PURPOSES OF ENFRANCHISEMENT

	Area in m^2	Price pm^2	Rental Value
Offices	228.37	£130	£29,688
Flats – Rental per calendar month			
Ground Floor	£400		
First Floor	£325		
Second Floor	£300		
Monthly Total	£1,025		
Yearly Total	£12,300		£12,300
			£41,988
Deduct for management, insurance and repairs 22.5%			£9,447
			£32,541
		SAY	£32,540

APPELLANT'S VALUATION
55 RODNEY STREET, LIVERPOOL, L1 9ER

Details

Lease dated:	02 June 1922
Commencement Date:	02 Nov 1918
Term:	99 years from 02 Nov 1918
Rent:	Peppercorn
Approx Term Remaining:	11.2 years (as at 21 Aug 2006)

Floor Areas

	Sq ft	m^2
Commercial	2455	228
Residential	924	86
Total	3379	314

Tenancy Details

See attached tenancy schedule as at 21 Aug 2006 (Appendix 1)

Ground Rent:	£	£
Current Ground Rent	Peppercorn	0
LCC Present Interest:		
Unencumbered Freehold Value:	350000	
Less Tenant improvements:	101174	
Less 10% for risk of tenant claiming Part I of the 1954 Act rights	35000	
PV of £1 in 11.2 years @ 7.0%	x 0.46871	100222
Marriage Value:		
Unencumbered Freehold Value (less Tenants improvements)	248826	
Less (1) Value of freeholders interest (apart from marriage value)	100222	
Less (2) Value of Tenants interest (apart from marriage value)	103339	
Gain of Marriage of Interests	45265	
Freeholders share at 50%		22632
Grand Total		**122854**

FREEHOLDER'S VALUATION

Valuation Date: 21 August 2006
Lease Expiry Date: 2 November 2017
Unexpired Term: 11.2 yrs

RENTAL VALUATION

Rent Passing 2006:	£30,834 PA			
Market Rent 2006:				
Basement: offices	42.11m^2 @ £ 60.00/m^2 =	£2,527	pa	
Kitchen/store	12.08m^2 @ £ 45.00/ m^2 =	£544		
Ground floor: offices	57.48m^2 @ £160.00/m^2 =	£9,197		
First floor: offices	49.73m^2 @ £130.00/m^2 =	£6,465		
Second floor: offices	65.55m^2 @ £100.00/m^2 =	£6,555		
3 flats @ £7,800 pa each	=	£23,400		
Gross MR		£48,688	PA	
Less say 22.50% RIM		£10,955		
NET MR		**£37,733**	**PA**	

LCC's Existing Interest:

Ground Rent	£0.00		
YP 11.2 yrs @ 6%	7.9886		£0.00
Reversion to	£37,733 pa		
YP in perp at 7% def 11.2 yrs	6,6958		£252,653
			£252,653

Lessees Existing Interest:

Profit Rent = £37,733 - £0.00 =		£37,733	pa
YP 11.2 yrs @ 8.25% & 3.5% (23.5p)		5.5607	**£209,822**

Vacant Possession:

	£37,733 pa	
YP in perp at 6%	16.6667	£628,885

Marriage Value

= £628,885 – (£252,653 + £209,822)
= £628,885 - £462,475
= £166,410
LCC Share @ 50% = £83,205

LCC Premium = £252,653 + £83,205 = £335,858 say **£336,000**

LRA/7/2009

APPENDIX 4

LANDS TRIBUNAL VALUATION @ 21 August 2006

55 RODNEY STREET LIVERPOOL L1 9ER

FREEHOLDER'S CURRENT INTEREST				
Rental Value			£ 19,917 pa (see note 1)	
YP in perp @ 7% deferred 11.2 years			6.69582	
				£133,361
LESSEE'S CURRENT INTEREST				
Profit rent			£19,917	
YP 8% (see note 2) + 3.5% + 23.5p			5.6391	
				£112,314
UNENCUMBERED FREEHOLD VALUE				
Market rent, in disrepair and unimproved			£19,917	
YP in perp @ 7%			14.2857	
				£284,529
MARRIAGE VALUE				
Unencumbered freehold value			£284,529	
Less	Value of freeholder's interest	£133,361		
	Value of lessee's interest	£112,314		
				£ 38,854

50% marriage value = £19,427

PRICE: £133,361 + £19,427 = **£152,788**

Note 1:	Market rent per LVT			£32,540
	Less: value of repairs (£100,000 capitalised at 7%)		£7,000	
	value of improvements		£5,623	
				£12,623
				£19,917
	Rental value in disrepair and unimproved			

Note 2 8% YP is Lands Tribunal determination – LVT and freeholder 8.25%, Lessee 7.5%. No evidence presented at hearing.