Lib

Ref: LON/LVT/1690/04

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967 **Housing Act 1980**

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

Applicant:	Mr J Patel, Mrs J Patel, Mr N Patel & Mr G Ravji
Respondent:	St Ermins Property Co Ltd
RE:	16 Minster Road, London, NW2
Date of Tenant's Notice:	27 October 1995
Application to Tribunal dated:	8 January 2004
Heard:	Tuesday 18 May 2004
Appearances:	Mrs J Branscombe FRICS, J Branscombe & Company **for the tenant**
	Mr P Gunby MRICS, B Bailey & Co **for the landlord**

Members of the Leasehold Valuation Tribunal:

Mr A J Andrew LLB **(Chairman)**
Mrs E Flint DMS FRICS IRRV
Mr C White FRICS

Date of Tribunal's decision: 21 June 2004

LON/LVT/1690/04

BACKGROUND

1. This was an application by Jethalal Lalji Patel, Jasuben Jethalal Patel, Nanalal Lalji Patel and Gunvant Ravji for a determination of the price to be paid for the freehold interest in16 Minster Road, London NW2 3RB. The application was made pursuant to Section 21 of the Leasehold Reform Act 1967 ("the Act"). The Respondent freeholder was St Ermin's Property Company Limited.
2. On the 18th June 1993 the Applicants had purchased the interest in a lease dated 11th February 1896 for a term of 99years from 29th September 1894. The purchase price was £14,000. When the lease expired in 1993 the tenancy continued under the provisions of Part I of the Landlord and Tenant Act 1954.
3. The Applicants had served their Notice of Claim as long ago as 27th October 1995. The Tribunal understood however that the claim had been the subject of extensive litigation between the parties which had taken them to the Court of Appeal on two occasions. On 28th November 2003 the Central London County Court had declared that the Applicants were entitled to acquire the freehold interest under the Act and the history of the litigation was not a matter for the Tribunal.
4. The hearing took place during the morning of 18th May 2004. Ms J Branscombe FRICS of J Branscombe & Company represented the Applicants and gave expert evidence on their behalf. Mr P Gunby MRICS of B Bailey & Co represented the Respondent and gave expert evidence on its behalf. Both had submitted proofs of evidence as experts.

INSPECTION

5. On the afternoon of the 18th May 2004 the Tribunal inspected the property. One of the Applicants was present throughout the inspection. The Tribunal subsequently conducted an external inspection of various comparable properties which are referred to later in this decision.

6. The Property is a four storey Victorian semi-detached house of brick/slate construction with a small front garden and larger rear garden. The site is parallel to a railway line but separated from it by five or six similar properties. It lies between the railway line and Shoot Up Hill in an area which is mid-way between Kilburn, West Hampstead and Cricklewood. The inspection, took place on a sunny day when many of the windows were open. During the inspection a number of trains passed along the line and although they could be heard the noise did not strike the Tribunal as being particularly intrusive.

7. The property is dilapidated and there was no evidence of any major work having been carried out for a considerable period of time. The Tribunal noted the cracking to the flank wall which had been referred to at the hearing by Mr Gunby. The Tribunal could not judge whether the cracking was structural but it formed the view that it was of relatively recent origin, almost certainly post dating the valuation date. Elsewhere there was substantial cracking to the interior of the property although this appeared to reflect the general poor state of repair and lack of maintenance.

MATTERS AGREED

8. In preparing their valuations the two valuers were in agreement on the following matters: -

   a. That the valuation date was 27th October 1995 being the date of service of the Notice of Claim.

   b. That the price should be calculated in accordance with Section 9(1) of the Act with the result that any element of marriage value is excluded from the valuation.

   c. That the property should be valued as house rather than as two flats and that it should be assumed that the property had been modernised and was in good condition at the valuation date. Ms Branscombe had initially prepared a valuation which reflected the unmodernised state of the property at the valuation date but before the Tribunal she submitted a revised valuation reflecting the assumptions set out in the previous sentence.

d. That no terms were to be included in the transfer which would materially affect the valuation.

e. That the term having expired before the valuation date, there was no capitalised value in the rent payable under the lease.

f. That the "standing house" approach should be adopted for the purpose of calculating the site value which must then be decapitalised to ascertain the Section 15 rent. Both valuers justified this approach on the basis that the area was fully developed and that there was no comparable evidence of sales of similar vacant sites.

g. That a yield of 7% should be used to value the Section 15 rental income.

h. That the value of the landlord's interest after the expiration of the extended lease should be calculated in preference to capitalising the Section 15 rent in perpetuity. That is the valuers adopted the approach endorsed in the case of Haresign v. St John the Baptist's College, Oxford [(1980) 255 E.G. 711].

i. That a rate of 7% should be used for capitalisation and deferment both in calculating the capitalised value of the section 15 rent and in valuing the landlord's ultimate reversion.

9. The Tribunal was satisfied that the valuation date was correct and that the valuers had identified the correct basis for the valuation. In so far as the valuation itself was concerned although one could always adopt different approaches or different rates those agreed by the valuers were entirely legitimate and the Tribunal saw no reason to disturb them. This left three matters in dispute which are considered below.

DECISION

The value of the property at the valuation date.

10. Valuing any property nearly nine years after the event presents particular problems and the valuers had adopted very different approaches. Ms Branscombe relied entirely on two reports, both prepared on the instructions of the Applicants, which she produced to the Tribunal. The

first was a survey report prepared by N S Hickling BSc ARICS of Copping Joyce. It was dated 5th October 1995 and had been prepared in connection with a Schedule of Dilapidations served on the Applicants on 14th August 1992 and recorded the condition of the property as at 3rd October 1995. The second was a report and valuation prepared by Mr M D L Green, B.Sc. MRICS of the same firm. It was dated 6th June 1997 and valued the property at the valuation date.

11. Mr Green's report recorded that the property was "generally unmodernised": that its decorative condition was "only fair or rather poor" and it listed a number of works that were necessary to put the property in repair. On that basis he had valued the property at £120,00. Ms Branscombe considered that Mr Green's valuation, prepared less than two years after the valuation date, was the best available evidence of the value of the property, in its unmodernised state, at that date. In her revised valuation she considered that the modernisation of the property would have increased its value by £30,000. Thus she valued the property, at the valuation date, at £150,000.

12. The Tribunal had some difficulty with this approach. Mr Green's report provided no explanation for that figure of £120,000 and in particular it cited no comparable evidence which might have supported the valuation. The Tribunal considered that it was probable that the report had been prepared for the Applicants, for use in negotiations with the Respondents. In such circumstances Mr Green would no doubt have allowed some room for manoeuvre in arriving at his valuation. Furthermore he had valued the property in its then existing condition and had not adjusted his valuation to reflect the extent of the disrepair which, on the basis of the Tribunal's inspection, even nine years after the event, must have been considerable. Adjusting for these factors the Tribunal considered that it would be appropriate to increase Mr Green's valuation by about £20,000 to arrive at a valuation of £140,000. To that should be added the increased value resulting from the modernisation of the property: installing modern central heating, bathrooms and kitchens and the like. The Tribunal considered that the modernisation of the property would have increased its value by about £30,000 thus producing a revised standing house valuation of £170,000.

13. At the hearing and having had the benefit of Mr Gunby's report she also considered that her valuation could be substantiated by a different route. Mr Gunby had produced copies of a number of property pages from various local papers published in October and November 1995. Although most of the advertisements were not particularly helpful she drew the Tribunal's attention to an advertisement for a two bedroom first floor flat in Minster Road which was then on the market for £58,950. She estimated that if the property had been converted in to 4 flats then, if the first floor flat was worth £58,950, the total value of all four flats would have been in the region of £222,900.

14. She considered that in 1995 the property, as a house, would have been worth about two-thirds of the sum of the values of the individual flats. Thus if the total value of the four flats were £222,900 the property, as a house, would have been worth about £150,000.

15. This approach struck the Tribunal as inherently unsafe. The valuation was based entirely on one advertisement selected at random. Furthermore the sale price of the particular flat seemed at odds with comparative evidence produced by Mr Gunby indicating that, at the valuation date, two bedroom flats in NW2 were worth between £77,500 and £82,000. Furthermore the fraction of two-thirds appeared somewhat arbitrary. By 1995 the process of gentrification, referred to below, had already commenced and the Tribunal was not convinced that, at that time, the differential between house and flat values would have been as great as that suggested by Ms Branscombe.

16. Mr Gunby had relied heavily on information obtained from local estate agents from whom he had obtained details of flats and houses sold both recently and during the period from 1993 to 1996. He had concluded that there was no reliable evidence of the price of comparable properties sold at the time of the valuation date. His approach was therefore to use comparable evidence to value the property now and then to discount that value to calculate the value at the valuation date. He considered that the current value should be discounted by 200% to arrive at the historical value. He arrived at this figure by a combination of three methods.

17. The house price calculator maintained by HBOS plc (formerly the Halifax Building Society) on its web site suggested that a house in Greater London worth between £75,00 and £85,000 in the last quarter of 1995 would have increased in value by 208.4%.

18. From the information provided by local estate agents he calculated that two bedroom flats, in NW2, worth about £85,000 in October 1995 had increased in value by 194.1% and that one bedroom flats worth about £75,000 in October 1995 had increased by 200%. Thus he concluded that it was reasonable to assume that properties generally had increased in value, since October 1995, by about 200%.

19. On the basis of a mixture of comparable evidence and the views of local estate agents he concluded that if the property were put in repair and modernised it would sell for approximately £600,000. Applying the discount of 200% he arrived at a historical value of £200,000. It is worth recording that Ms Branscombe did not challenge the current valuation of £600,000 and on the basis of the comparable evidence produced by Mr Gunby the Tribunal accepted that it was a realistic current valuation.

20. Mr Gunby's approach rested on two propositions; firstly that there had been a uniform increase in house prices in Greater London and secondly that the increase in house prices in NW2 had been consistent with the increase in flat prices in that area. On the basis of the evidence given to the Tribunal, which confirmed its own knowledge of the area, those propositions were unreliable.

21. Both valuers accepted that the area had undergone a process of gentrification. Certainly if one went back to the 1980's or early 1990's the area was considered unfashionable and somewhat run down. There was no market for houses in single occupation. As houses became vacant they were broken up into flats which were then sold, in the manner indicated by Ms Branscombe. However since the early 1990's, as both the economy and the housing market strengthened, the area had become more fashionable. Young professional people moved into it and the demand for houses, with room to accommodate au pairs and the like, increased. Ms Brannscombe's evidence, which was not contradicted, was that when houses now became vacant they were no longer broken up because they

were worth more as houses than as flats. Indeed houses which had previously been converted into flats were now being reconverted.

22. From this one could draw two conclusions. Firstly that, since the valuation date, the price of houses in the area must have increased at a substantially greater rate than the price of flats and secondly that houses in NW2 must have increased at a greater rate than houses in Greater London generally in the lower £75,000 to £85,000 bracket. The rate of increase is open to conjecture but it seemed to the Tribunal that if house prices in Greater London, in the £75,000 to £85,000 bracket, had risen by 208% then house prices in NW2 were more likely to have risen by about 250%. Applying such a discount to the current valuation of £600,000 one arrives at a figure of approximately £172,500.

23. For the reasons that have been explained the approach of both valuers was somewhat artificial. The most effective method of valuing any property is by reference to relevant comparable evidence. Mr Gundy had concluded that there were no relevant comparable evidence of house prices at the valuation date. That conclusion was not however born out by his own report which gave the sale prices of three houses which were sold at or near the valuation date. The Tribunal conducted an external inspection of all of them.

24. Two of the three properties presented problems. 7 Richborough Road had been substantially extended and it was impossible to ascertain whether the extension pre or post-dated the valuation date. A small house at 60a Menelik Road was wholly different in character. However 27 Somali Road was a reasonable comparable. It had sold in February 1994 for £155,000. It was described as a "three bedroom semi which could be turned into a four bedroom house". Although smaller than the property this was offset by the fact that it was situated on the other side of the railway line and although only a short distance from the property would have been regarded as being in a more desirable area.

25. Mr Gundy's evidence to the Tribunal was that in 1995 property prices were rising at a rate of 4.5%. If one adjusted the sale price of 27 Somali Road to allow for such a rate of house price inflation, between February 1994 and the valuation date, one arrived at a figure of £167,206.

26. Taking into account the adjustments that the Tribunal considered should be made to the valuations of both valuers and the comparable evidence offered by 27 Somali Road, the Tribunal concluded that at the valuation date the standing house value of the property would have been £170,000.

Site value proportion

27. Having established the standing house value one must then take a proportion of that value to arrive at the site value. Ms Branscombe relied heavily on paragraph 8-10 of the fourth edition of Hague which suggested that in higher priced areas of London the proportion was generally in the region of 40% whilst in lower priced areas it was generally in the region of 30%. In 1995 the area was not fashionable and would have been regarded as being towards the bottom end of the market. She had therefore selected a proportion of 33.33% and she had discounted that proportion by 3.33% to reflect the sites proximity to the railway line which she suggested caused noise pollution and had contributed to subsidence in the property. Thus she arrived at a proportion of 30%.

28. Mr Gundy on the other hand contended that a proportion of 40% was appropriate because the property was close to Hampstead and was in a highly sought after area. He also suggested that currently site values in the area were achieving 50% of completed development values although in answer to questions from the Tribunal he could only verify one current example where the proportion had in fact been 42%.

29. The Tribunal considered that there was an element of hindsight in Mr Gundy's evidence, as he himself had accepted. It did not accept his evidence on this issue because it considered that he had not had sufficient regard to the very different circumstances that had applied in 1995. Even now the area could not be compared with Hampstead and in 1995 it was most certainly not a highly regarded area. Furthermore the proportion will, to an extent, reflect the strength of the property market: it tends to rise during periods of sustained economic activity. In 1995 the market was still pulling out of recession indicating that the proportion would have been towards the bottom end of the scale.

30. The Tribunal therefore preferred Ms Branscombe's evidence although it would not make the deduction of 3.33% that she had suggested. It did not consider that there were any inherent problems with the site. On the basis of its inspection it considered that such noise pollution as did exist would be regarded as part and parcel of urban life. Although Ms Branscombe had drawn the Tribunal's attention to cracking in the flank wall she had accepted that she was not competent to identify the cause. The Tribunal preferred Mr Gundy's considered evidence that the cracking was caused by lateral movement in the staircase and was not structural in nature. In any event neither of the reports, relied on by Ms Branscombe, had identified subsidence, indicating that there had been none at the valuation date. Thus the Tribunal considered that a site value proportion of 33.33% was appropriate.

<u>The value of the landlord's ultimate reversion</u>

31. In calculating the value of the ultimate reversion Ms Branscombe had taken a discounted value assuming the property to be unmodernised but in repair. Mr Gundy had taken the standing house value. Ms Branscombe had not justified her decision to take an unmodernised value. It seemed logical, to the Tribunal, to take the standing house value when valuing the landlord's ultimate reversion and it would do so. It was fortified in this conclusion by the fact that the Lands Tribunal had adopted such an approach in the Haresign case.

32. Mr Gundy had discounted the standing house value by 15% to reflect the possibility that, at the end of the extended lease, the property might be occupied by a sitting tenant, by which he meant a tenant protected by the Rent Act 1977. Ms Branscombe had made a deduction of 10% to reflect that risk.

33. The Tribunal was not convinced that it was appropriate to discount the standing house value to reflect the risk of a sitting tenant. It had therefore invited the party's solicitors to submit written representations as to the nature of any tenancy that should be assumed to exist at the end of the extended lease.

34. The Applicant's solicitors had argued that any tenancy that existed at the end of the extended lease would be an assured tenancy. Their reasoning was that, in 1995, at the end of a long lease the tenancy would have been continued by Part I of the Landlord and Tenant Act 1954 and that by the Housing Act 1989 such continuation tenancies had been converted to assured tenancies as from 15th January 1999. The Respondent's solicitors appeared to have drawn a similar conclusion although possibly be a different route.

35. The Tribunal considered that such an approach was flawed. To find the solution one had to have regard to the Act. Under Section 9(1) one has to assume that the original lease has been extended under part I of the Act. That takes one to section 15, which sets out the terms to be granted on an extension, and to section 16 which excludes further rights after the extension. If one has regard to section 16, as it existed at the valuation date, it will found that all forms of statutory protection are to be excluded from the extended lease. The intention appears to have been fairly clear: that after getting one bite of the cherry the tenant would not get a second. In particular sub-section 1B (which was introduced by the Housing and Local Government Act 1989) expressly provides that an extended tenancy should not be an assured tenancy.

36. This particular provision was reversed by the Section 143 of the Commonhold and Leasehold Reform Act 2002 so that sub-section 1B now provides that "Schedule 10 of the Local Government and Housing Act 1989 applies to every tenancy extended under section 14…". However one must have regard to the law as it was at the valuation date and at that time the tenant, under an extended lease, enjoyed no security of tenure when the extended lease came to an end. Thus the landlord's reversion should be valued on a vacant possession basis and no discount should be made to reflect the risk that the property would be occupied by a tenant enjoying any statutory security of tenure. Again the Tribunal was fortified in this conclusion by the fact that the Lands Tribunal made no discount, to reflect the possibility of a sitting tenant, in the Haresign case.

Section 9(4) costs

37. The costs were not in issue at the hearing but Ms Branscombe requested leave to return to the Tribunal if the parties were unable to agree the costs to be paid in accordance with Section 9(4) of the Act. The Tribunal would accede to that request but in doing so it expressed the hope that, if the parties could not reach agreement on the costs to be paid by the Applicants, they would agree to the issue being dealt with by way of written submissions to avoid the expense of a further hearing.

CONCLUSION

38. Accordingly the tribunal determined that the price to be paid for the freehold interest is £60,517 in accordance with the valuation attached to this decision.

CHAIRMAN:.....(A J Andrew)

DATED: 21st June 2004.

16 Minster Road London NW2 **LON/LVT/1690/04**

Premium payable by tenant in accordance with S9(1) Leasehold Reform Act 1967

Lease 99 years from 29/09/1894 @ £9pa expired

Yield 7% agreed
Standing house value £170000
Site value 1/3rd

Capitalisation of modern ground rent

	£	£	£
Standing house value	170,000		
Site value @ 1/3rd	56,667		
Rent @ 7%		3,967	
YP 50 years @ 7%		13.8007	54,747
Reversion to		170000	
PV in 50 years @ 7%		0.03394	5,770
			60,517

Enfranchisement price: £60,517