

LON/ENF/2116/06

**LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY
TRIBUNAL SERVICE**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR AN
APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993**

APPLICANT: Sherwood Road No 66 Ltd

Represented by: Buy your Freehold

RESPONDENT: David Kevin Barry (Missing)

PREMISES: 66 Sherwood Road, South Harrow, Middx HA2 8AR

Date of Court Order: 9 November 2006

Application Date: 20 November 2006

Hearing Date: Wednesday 24 January 2007

Members of the Leasehold Valuation Tribunal:

Mr I Mohabir LLB(Hons)

Mrs H C Bowers BSc(Econ) MSc MRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/NL/2116/06

**IN THE MATTER OF SECTION 26 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

**AND IN THE MATTER OF 66 SHERWOOD ROAD, SOUTH HARROW,
MIDDX, HA2 8AR**

BETWEEN:

SHERWOOD ROAD No. 66 LIMITED

Applicant

-and-

DAVID KEVIN BARRY

Respondent

THE TRIBUNAL'S DECISION

Background

1. This application is made by the Applicant, as nominee purchaser, pursuant to s.26 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to collectively enfranchise and acquire the freehold interest in the property known as 66 Sherwood, South Harrow, Middlesex, HA2 8AR ("the subject property"). The application is made on the basis that the Respondent landlord cannot be found.

2. By a Part 8 Claim Form issued on 16 October 2006, the Applicant applied to the Willesden County Court, pursuant to s.26(1) of the Act, seeking an order vesting the freehold interest in the Applicant company on the basis that the Respondent could not be found. On 9 November 2006, District Judge Dabezies granted an order declaring that the participating tenants were entitled to collectively enfranchise through the Applicant and vesting the freehold interest in it. The matter was then transferred to the Leasehold Valuation Tribunal so that the purchase price for the freehold interest could be determined.
3. The subject property is comprised of two maisonettes located on the ground and first floors respectively. The lower maisonette is subject to a lease dated 25 April 1983 for a term of 99 years from 25 December 1982 at an annual ground rent of £30 for the first 33 years, £90 for the next 33 years and £150 for the remainder of the term. The upper maisonette is subject to a lease granted on 27 May 1983 on the same terms.

Inspection

4. The Tribunal externally inspected the subject property on 23 January 2007. It is a two storey inner terrace house of rendered brick and tiled roof construction and appears to date from the early part of the twentieth century. The Tribunal also externally inspected the property located at 55A Sherwood Road, which was offered as a comparable property by the Applicant's valuer.

Decision

5. The Tribunal's determination is based solely on the documentary evidence before it. There was no hearing and no oral evidence was heard. The Applicant's valuation evidence was contained in a report dated 4 January 2007 prepared by Mr Tim O'Keeffe, the Managing Director of Buy Your Freehold Ltd. In his report, Mr O'Keeffe states that he does not hold any formal qualification in property matters nor is he a member of RICS. Nevertheless, he claims to have some expertise in this matter.
6. The matters to be valued by the Tribunal pursuant to Schedule 6 of the Act are:
 - (a) the long lease values.
 - (b) the capitalisation rate.
 - (c) the deferment rate.
 - (d) relativity.
7. The unexpired term of the leases, as at the valuation date of 9 October 2006, was 75.21 years.

(a) Long Lease Value

8. The value proposed by Mr O'Keeffe was £150,000 for the ground floor maisonette and £140,000 for the first floor maisonette, providing a total value of £290,000. Although Mr O'Keeffe provided a lot of comparable evidence, he failed to provide any significant detail in relation to those properties. However,

taking this information together with the Tribunal's own expert knowledge and experience, it determined that his capital values for the long lease interest were reasonable and should be adopted in this instance.

(b) Capitalisation Rate

9. Mr Stone proposed a figure of 9% on the basis that this was the figure determined by five earlier LVT decisions from 2002-2006. However, the Tribunal considered that reliance on the decisions of other LVT's, whilst persuasive, was not conclusive evidence on this issue. This evidence has to be treated with some caution because this Tribunal does not know what evidence was adduced in those cases and arguments advanced.
10. Again, using its own expert knowledge and experience, the Tribunal considered that a rate of 8.5% was appropriate in this matter. In making this finding, the Tribunal had regard to the relatively small level of rent, fixed level of rent increases allowed under the lease and the administration costs involved in the collection of the ground rent.

(c) Deferment Rate

11. Mr Stone proposed a deferment rate of 6% on the basis that this case concerns an absentee landlord and that a potential investor would require some adjustment for the possibility of the freeholder appearing at a point in the future and demanding

past ground rent or costs pursuant to the leases or claiming the price paid was too low.

12. The Tribunal did not accept Mr O'Keeffe's arguments for two reasons. Firstly, the Tribunal was satisfied that the possibility of the Respondent appearing at some future was sufficiently remote as to be discounted in this instance. The Applicant had conducted extensive enquiries as to the whereabouts of the Respondent and had satisfied the Court that it should make a vesting order. The Court would not have made such an order unless it was satisfied that the Respondent could not be located and that sufficient attempts had been made to do so. In any event, the recent Lands Tribunal decision in *Earl Cadogan Estates v Sportelli* (LRA/50/200) does not allow the Tribunal to depart from a rate of 5% , as the circumstances set out in that case that would allow such a departure to be made do not exist in the present case.

(d) Relativity

13. Mr Stone proposed a relativity figure of 95.2% as set out in paragraph 6 of his report. He applied an uplift of 1% for the long lease being upgraded to the freehold interest. A further uplift of 2% was applied to reflect the 'No Act World' discount or valuing the flats as if the Act did not exist. Yet a further uplift of 2% was applied to reflect the difference between a 75 year unexpired term and a long lease. Alternatively, Mr O'Keeffe considered the Beckett & Kay Graph of Relativities 2006 and submitted that this showed a range of 85% (Savills 1992) to

96% (LVT determinations) for a term with just over 75 years unexpired. Within this range, Mr O'Keeffe adopted the LVT figure for the reasons set out in paragraph 6.4 of his report. It is not necessary to set these out in detail here because the Tribunal did not agree with them for the reasons set out below.

14. The Tribunal considered that a relativity figure of 92% was appropriate. It was the Tribunal's view that it was unsafe to rely solely on evidence of LVT determinations reached in specific cases because the Tribunal did not have before it details of those cases, as was the position here. The Tribunal was also not aware of what evidence or arguments were put before those Tribunals in each instance. These matters maybe completely irrelevant to the present case. The Tribunal considered that an overall view had to be taken on relativity rates and the Tribunal concluded that an appropriate average rate of 92% should be adopted in this instance. The Tribunal was further supported in this view because the Beckett & Kay Graph of Relativities 2006, when taken as an average, appears to indicate that a relativity figure of 92% was appropriate.
15. Having regard to the matters set out above and the findings made by the Tribunal, it determined that the premium to be paid by the Applicant for the grant of a new lease was **£16,000**. The Tribunal's valuation is annexed to this Decision.

Dated the 24 January 2007

CHAIRMAN.....I. Mohabir.....

Mr I Mohabir LLB (Hons)

Leasehold Valuation Tribunal

66 Sherwood Road South Harrow
HA2 8AR

	£		£	£	£
Proposed Freeholder's Interest			0		
Proposed Leaseholders' Interest			<u>290000</u>		
				290000	
Present Freehold Interest					
Term 1		60			
YP 9.21 years @ 8.5%		6.21196	373		
Term 2					
Ground Rent			180		
YP 33 years @ 8.5%	10.9678				
PV of £1 in 9.21 years @8.5%	0.4717				
		5.1735	931		
Term 3					
Ground Rent			300		
YP 33 years @ 8.5%	10.9678				
PV of £1 in 42.21 years @ 8.5%	0.03195	0.3504	105		
Reversion to		290000			
PV of £1 in 75.21 years @ 5%		0.02549			
			<u>7392</u>		
				8801	
Present Leasehold Interest			<u>266800</u>		
				<u>275601</u>	
Marriage Value					<u>14399</u>
50:50 Split					7199.5
Freeholder's Present Interest					<u>8801</u>
Premium Payable					16000