

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A
REFERENCE UNDER SECTION 27(3) and (5) OF THE LEASEHOLD
REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

Reference number: LON/ENF/1379/04

Property: 92 Holland Road, London NW10 5AY

Applicant: Mr N V Davey and Mr P O'Brien (Nominee Purchasers)

Represented by: Grant Argent & Co, solicitors

Respondent: Ms L J Eastaugh (Missing Landlord)

Tribunal Members: Mr A Andrew, LLB
Mr W J Reed, FRICS
Miss M Krisko, BSc (EstMan), BA, FRICS

Application date: 30 November 2004

Directions: 24 May 2005

Inspection: 21 June 2005

Determination: 21 June 2005

Decision: 30 July 2005

BACKGROUND

1. The application was made under the provisions of Sub-sections 27(3) and (5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The Applicants sought the Tribunal's approval of the proposed form of transfer and a determination of the price to be paid into Court for the collective enfranchisement of the Property. The application was made pursuant to a Vesting Order of the Willesden County Court made on the 19 November 2004 under Section 26(1) of the Act, the whereabouts of the lessor being unknown.
2. On 24 May 2005 the Tribunal issued standard directions and set the case down for hearing on the 21 June 2005. The Applicants' solicitors submitted written representations and requested that the case be dealt with without a hearing.

EVIDENCE

3. We had an email copy of a valuation report dated 16 June 2005 prepared, on behalf of the Applicants, by Ms S M Burke, BSc (Hons), MRICS of Cluttons LLP. We also had copies of the entries on the registers of the freehold and two leasehold titles and the two leases to which the freehold interest is subject. At our request the Applicants' solicitors provided a copy of a deed varying the terms of the lease of the ground floor flat but in the event it was not material to our valuation. The lease of the ground floor flat is for a term of 99 years from 16 August 1974 at a ground rent of £25 per year rising to £75 per year. The lease of the first floor flat is for a term of 99 years from 29 September 1977 and reserves similar ground rents rising at intervals of 33 years.
4. Ms Burke valued the existing freehold interest in the ground floor flat at £1,858 and the landlord's 50% share of the marriage value at £11,071. Thus she valued the price to be paid for the landlord's freehold interest in

the ground floor flat at £12,929, which she rounded up to £13,000. For the first floor flat she valued the existing freehold interest at £1,477 and 50% of the marriage value at £9,062. Thus she arrived at a price of £10,538 for the landlord's freehold interest, which she rounded down to £10,500. She therefore valued the total price to be paid for the landlord's freehold interest at £23,500.

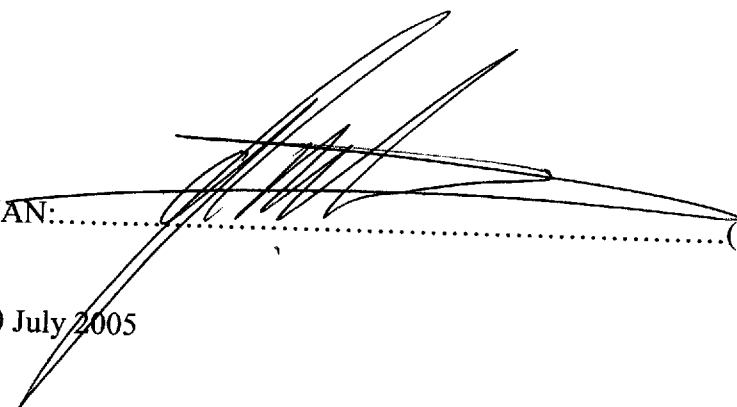
INSPECTION

5. We inspected the Property on 21 June 2005. It is a two storey, late Victorian, mid terrace property. Although Ms Burke suggested that the Property had been purpose built as two flats we considered that it had probably been converted into two flats shortly after it was built. It is of brick construction with a slate tiled roof and externally it has been well maintained and is in good condition. The ground floor flat comprised four rooms, a small bathroom/WC and a kitchen. The first floor flat comprised five rooms, a small bathroom/WC and kitchen. Included within the demise of both the ground and first floor flats is one half of the rear garden.
6. In establishing the long lease values of the two flats Ms Burke had relied on the sales of a number of similar flats and one house in the immediate locality. We conducted an external inspection of all those properties, which were at 66 Wrotersley Road NW10 (house), 110A Holland Road NW10 (ground floor flat), 18 O'Dessa Road NW10 (ground floor flat), 13 O'Dessa Road NW10 (ground floor flat), 159 Holland Road NW10 (first floor flat) and 145 Holland Road NW10 (ground floor flat). The flats all had two or three bedrooms and were sold on long leases. The first four flats were sold between August 2004 and May 2005 at prices of £247,500, £255,000, £250,000 and £265,000 with 145 Holland Road on offer at an asking price of £255,000. We agreed that they were all helpful comparables in valuing the long lease values of the two flats. The lessees of the subject properties had all carried out a number of improvements, which were noted and allowed for in our calculations.

DECISION

7. In arriving at our valuation we adopted the date of our determination as the valuation date, that being the date when we approved the transfer and hence determined the quality of the freehold interest to be acquired by the Nominee Purchasers. We noted that Ms Burke had calculated the unexpired term of the first floor flat at 72.25 years whereas, on our calculation, it is 71.25 years and this is reflected in our valuation. Taking into account the location, type of property, length of term and low but rising ground rent and potential for additional income we agreed with Ms Burke that 8% was an appropriate rate to capitalise the ground rent and defer the reversion.
8. We also agreed with Ms Burke that the comparables, recited above, supported her long lease values of the ground and first floor flats, in their unimproved state, at £240,000 and £245,000 (£485,000 in total). However we had some difficulty with her existing lease values. She had valued them by applying relativities of 90% (ground floor flat) and 92% (first floor flat) on the basis of "*similar Leasehold Reform transactions both agreed through negotiations and those settled by the Leasehold Valuation Tribunal*": thus she arrived at values of £216,000 (ground floor flat) and £225,000 (first floor flat). However she offered no market or settlement evidence to support these relativities and we did not consider it appropriate, in any event, to have regard to other tribunal decisions in reaching our decision.
9. We considered that these relativities were on the high side. Doing the best that we could from the very limited information provided to us and therefore relying, to a degree, on our own knowledge and experience, as a specialist tribunal, we considered that relativities of 88% and 90% were more appropriate. We therefore valued the existing leases at £211,200 (ground floor flat) and £220,500 (first floor flat): £431,700 in total.

10. Our valuation is attached to this decision. We determined the enfranchisement price at £28,360. To that sum should be added £425, being the aggregate unpaid ground rents due to the Respondent, in accordance with Sub-section 27(5)(b) of the Act.
11. A copy of the draft transfer submitted by the Applicants' solicitors is appended to this decision. Pursuant to Sub-section 27(3) of the Act we approved the draft transfer subject to the following amendments: -
 - a. the Transferor should transfer with limited title guarantee in accordance with Paragraph 2 of Schedule 7 of the Act; and
 - b. the inclusion of a statement in accordance with Section 34 (10) of the Act.

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

DATE: 30 July 2005

Appendix A

92 Holland Road, London NW10 5AY

Determination of the price to be paid by the nominee purchaser in accordance with s.32 and Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended, for the purposes of s.27(5) of the Act, as at 21 June 2005 - the date of the decision of the Leasehold Valuation Tribunal.

Flat A - The ground floor flat

A. Value of landlord's freehold interest (Sched. 6 para. 3)		
Ground rent 21/6/2005 to 15/8/2007	£25.00 pa	
YP 2.16 yrs @ 8%	<u>1.9103</u>	£48
Ground rent 16/8/2007 to 15/8/2040	£50.00 pa	
YP 33 yrs @ 8%	<u>11.5139</u>	
	£575.69	
PV £1 2.16 yrs @ 8%	<u>0.847178</u>	£488
Ground rent 16/8/2040 to 15/8/2073	£75.00 pa	
YP 33 yrs @ 8%	<u>11.5139</u>	
	£863.54	
PV £1 35.16 yrs @ 8%	<u>0.066834</u>	£58
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£240,000	
PV £1 68.16 yrs @ 8%	<u>0.005272</u>	£1,265
		£1,859
B. Marriage value (Sched. 6 para. 4)		
Value of leasehold interest after enfranchisement, excluding value of tenants' improvements		£240,000
<u>Less</u>		
Value of freehold interest before enfranchisement	£1,859	
Value of leasehold interest before enfranchisement, excluding value of tenants' improvements (88%)	<u>£211,200</u>	<u>£213,059</u>
	Marriage value	£26,941
	50% of marriage value	£13,470
C. Any other loss (Sched. 6 para.5)		
		£nil
D. Price to be paid for the landlord's freehold interest		
Value of landlord' freehold interest	£1,859	
Share of marriage value	£13,470	
Compensation for any other loss	<u>£nil</u>	
	£15,329	
	Say	£15,330

Flat B - The first floor flat

A. Value of the landlord's freehold interest (Sched. 6 para. 3)

Ground rent 21/6/2005 to 28/9/2010	£25 pa	
YP 5.25 yrs @ 8%	<u>4.1502</u>	£104
Ground rent 29/9/2010 to 28/9/2043	£50 pa	
YP 33 yrs @ 8%	<u>11.5139</u>	
	£575.69	
PV £1 5.25 yrs @ 8%	<u>0.667980</u>	£385
Ground rent 29/9/2043 to 29/9/2076	£75 pa	
YP 33 yrs @ 8%	<u>11.5139</u>	
	£863.54	
PV £1 38.25 yrs @ 8%	<u>0.052696</u>	£46
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£245,000	
PV £1 71.25 yrs @ 8%	<u>0.0041572</u>	£1,019
		£1,554

B. Marriage value (Sched. 6 para. 4)

Value of leasehold interest after enfranchisement,
excluding value of tenants' improvements £245,000

Less

Value of freehold interest before enfranchisement £1,554

Value of leasehold interest before enfranchisement,
excluding value of tenants' improvements (90%) £220,500 £222,054

Marriage value £22,946
50% share of marriage value **£11,473**

C. Any other loss (Sched. 6 para. 5) £nil

D. Price to be paid for the landlord's freehold interest

Value of landlord's freehold interest	£1,554
Share of marriage value	£11,473
Compensation for any other loss	<u>£nil</u>
	£13,027
Say	£13,030

E. Total price to be paid for the landlord's freehold interest -

Flat A	£15,330
Flat B	<u>£13,030</u>
Total	£28,360

**Transfer of whole
of registered title(s)**

Land Registry

TR1

If you need more room than is provided for in a panel, use continuation sheets CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £

☐ It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of Section 92 of the Finance Act 2001

2. Title Number(s) of the Property *Leave blank if not yet registered.*

MX474661

3. Property

92 Holland Road

4. Date

2005

5. Transferor *Give full names and company's registered number if any.*

6. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

NOEL VINCENT DAVEY and PATRICK O'BRIEN

Unless otherwise arranged with the Land Registry headquarters a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

7. Transferee's intended address(es) for service in the U.K. (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

Flat B, 92 Holland Road, London, NW10 5AY

Flat A, 92 Holland Road, London, NW10 5AY

8. The Transferor transfers the Property to the Transferee

9. Consideration *Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.*

☒ The Transferor has received from the Transferee for the property the sum of (in words and figures)

☐ Insert other receipt as appropriate.

☐ The transfer is not for money or anything which has a monetary value

10 The Transferor transfers with Place "X" in the appropriate box and add any modifications.

☒

full title guarantee

☐

limited title guarantee

11. Declaration of trust Where there is more than one Transferee, place an "X" in the appropriate box.

☐

The Transferees are to hold the property on trust for themselves as joint tenants.

☒

The Transferees are to hold the property on trust for themselves as tenants in common in equal shares.

☐

The Transferees are to hold the property Complete as necessary.

12. Additional Provisions Insert here any required or permitted statements, certificates or applications and any agreed covenants, declarations, etc.

13. **Execution** The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).

Signed as a deed by the said

Sign here

in the presence of

Signature of Witness

Name [in BLOCK CAPITALS]

Occupation

Address

Signed as a deed by the said

Sign here

**NOEL VINCENT DAVEY
and PATRICK O'BRIEN**

in the presence of

Signature of Witness

Name [in BLOCK CAPITALS]

Occupation

Address

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A
REFERENCE UNDER SECTION 27(3) and (5) OF THE LEASEHOLD
REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

Reference number: LON/ENF/1379/04

Property: 92 Holland Road, London NW10 5AY

Applicant: Mr N V Davey and Mr P O'Brien (Nominee Purchasers)

Represented by: Grant Argent & Co, solicitors

Respondent: Ms L J Eastaugh (Missing Landlord)

Tribunal Members: Mr A Andrew, LLB
Mr W J Reed, FRICS
Miss M Krisko, BSc (EstMan), BA, FRICS

Application date: 30 November 2004

Directions: 24 May 2005

Inspection: 21 June 2005

Determination: 21 June 2005

Decision: 30 July 2005

BACKGROUND

1. The application was made under the provisions of Sub-sections 27(3) and (5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The Applicants sought the Tribunal's approval of the proposed form of transfer and a determination of the price to be paid into Court for the collective enfranchisement of the Property. The application was made pursuant to a Vesting Order of the Willesden County Court made on the 19 November 2004 under Section 26(1) of the Act, the whereabouts of the lessor being unknown.
2. On 24 May 2005 the Tribunal issued standard directions and set the case down for hearing on the 21 June 2005. The Applicants' solicitors submitted written representations and requested that the case be dealt with without a hearing.

EVIDENCE

3. We had an email copy of a valuation report dated 16 June 2005 prepared, on behalf of the Applicants, by Ms S M Burke, BSc (Hons), MRICS of Cluttons LLP. We also had copies of the entries on the registers of the freehold and two leasehold titles and the two leases to which the freehold interest is subject. At our request the Applicants' solicitors provided a copy of a deed varying the terms of the lease of the ground floor flat but in the event it was not material to our valuation. The lease of the ground floor flat is for a term of 99 years from 16 August 1974 at a ground rent of £25 per year rising to £75 per year. The lease of the first floor flat is for a term of 99 years from 29 September 1977 and reserves similar ground rents rising at intervals of 33 years.
4. Ms Burke valued the existing freehold interest in the ground floor flat at £1,858 and the landlord's 50% share of the marriage value at £11,071. Thus she valued the price to be paid for the landlord's freehold interest in

the ground floor flat at £12,929, which she rounded up to £13,000. For the first floor flat she valued the existing freehold interest at £1,477 and 50% of the marriage value at £9,062. Thus she arrived at a price of £10,538 for the landlord's freehold interest, which she rounded down to £10,500. She therefore valued the total price to be paid for the landlord's freehold interest at £23,500.

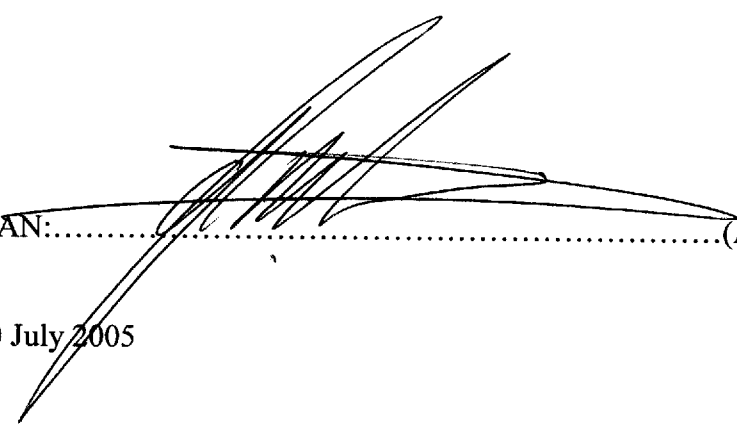
INSPECTION

5. We inspected the Property on 21 June 2005. It is a two storey, late Victorian, mid terrace property. Although Ms Burke suggested that the Property had been purpose built as two flats we considered that it had probably been converted into two flats shortly after it was built. It is of brick construction with a slate tiled roof and externally it has been well maintained and is in good condition. The ground floor flat comprised four rooms, a small bathroom/WC and a kitchen. The first floor flat comprised five rooms, a small bathroom/WC and kitchen. Included within the demise of both the ground and first floor flats is one half of the rear garden.
6. In establishing the long lease values of the two flats Ms Burke had relied on the sales of a number of similar flats and one house in the immediate locality. We conducted an external inspection of all those properties, which were at 66 Wrotersley Road NW10 (house), 110A Holland Road NW10 (ground floor flat), 18 O'Dessa Road NW10 (ground floor flat), 13 O'Dessa Road NW10 (ground floor flat), 159 Holland Road NW10 (first floor flat) and 145 Holland Road NW10 (ground floor flat). The flats all had two or three bedrooms and were sold on long leases. The first four flats were sold between August 2004 and May 2005 at prices of £247,500, £255,000, £250,000 and £265,000 with 145 Holland Road on offer at an asking price of £255,000. We agreed that they were all helpful comparables in valuing the long lease values of the two flats. The lessees of the subject properties had all carried out a number of improvements, which were noted and allowed for in our calculations.

DECISION

7. In arriving at our valuation we adopted the date of our determination as the valuation date, that being the date when we approved the transfer and hence determined the quality of the freehold interest to be acquired by the Nominee Purchasers. We noted that Ms Burke had calculated the unexpired term of the first floor flat at 72.25 years whereas, on our calculation, it is 71.25 years and this is reflected in our valuation. Taking into account the location, type of property, length of term and low but rising ground rent and potential for additional income we agreed with Ms Burke that 8% was an appropriate rate to capitalise the ground rent and defer the reversion.
8. We also agreed with Ms Burke that the comparables, recited above, supported her long lease values of the ground and first floor flats, in their unimproved state, at £240,000 and £245,000 (£485,000 in total). However we had some difficulty with her existing lease values. She had valued them by applying relativities of 90% (ground floor flat) and 92% (first floor flat) on the basis of *“similar Leasehold Reform transactions both agreed through negotiations and those settled by the Leasehold Valuation Tribunal”*: thus she arrived at values of £216,000 (ground floor flat) and £225,000 (first floor flat). However she offered no market or settlement evidence to support these relativities and we did not consider it appropriate, in any event, to have regard to other tribunal decisions in reaching our decision.
9. We considered that these relativities were on the high side. Doing the best that we could from the very limited information provided to us and therefore relying, to a degree, on our own knowledge and experience, as a specialist tribunal, we considered that relativities of 88% and 90% were more appropriate. We therefore valued the existing leases at £211,200 (ground floor flat) and £220,500 (first floor flat): £431,700 in total.

10. Our valuation is attached to this decision. We determined the enfranchisement price at £28,360. To that sum should be added £425, being the aggregate unpaid ground rents due to the Respondent, in accordance with Sub-section 27(5)(b) of the Act.
11. A copy of the draft transfer submitted by the Applicants' solicitors is appended to this decision. Pursuant to Sub-section 27(3) of the Act we approved the draft transfer subject to the following amendments: -
- a. the Transferor should transfer with limited title guarantee in accordance with Paragraph 2 of Schedule 7 of the Act; and
 - b. the inclusion of a statement in accordance with Section 34 (10) of the Act.

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

DATE: 30 July 2005