

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON
RENT ASSESSMENT PANEL**

**APPLICATION UNDER SECTIONS 21(1A) AND 9(4) OF
THE LEASEHOLD REFORM ACT 1967**

Applicant Landlord: The Trustees of the Campden Charities

Respondent Tenant: Kleinwort Benson (Jersey) Trustees Ltd.

Re: 8 Reston Place, Kensington, London SW7 5DY

Hearing date: Tuesday, 17th October 2006

Appearances for Applicant: Mr S Jourdan of Counsel
Mr R Cullum FRICS FIRPM of Cluttons LLP
Chartered Surveyors

Appearances for Respondent: Mr P Letman of Counsel
Mr R Sharp

Members of the Leasehold Valuation Tribunal:

Mrs C A Lewis FCI Arb

Mrs S F Redmond BSc(Econ) MRICS

Mr A D Ring

8, Reston Place, Kensington, London SW7 5DY

Background

1. On 20 July 2005 the Respondent lessee gave notice under section 8 of the Leasehold Reform Act 1967 claiming the freehold of the property. The property was held on the terms of a lease dated 11 October 1968 for a term of 99 years from 24 June 1965. At the time of the notice the lease had 58 years and 11 months remaining.
2. The claim was admitted and an application made to the Tribunal on 4 November 2005 to determine the terms of the conveyance and the price to be paid by the Respondent for the Applicant's freehold interest.
3. By the time of the hearing or during the course of the hearing on the 17 October 2006 most matters had been agreed between the parties including:
4.
 - (a) The terms of the transfer
 - (b) The freehold vacant possession value at £2,807,500
 - (c) The deferment rate at 4.75%

The items which remained for consideration by the Tribunal were:

- (i) The implications of Clause 2(16) and Clause 2(25) of the lease, and
- (ii) Hope Value.

The Hearing

5. At the hearing Mr. S. Jourdan of counsel appeared for the Applicant, and he called Mr. R. Cullum FRICS to give expert evidence. Mr. P. Letman of Counsel appeared for the Respondent, and called Mr. R. Sharpe FRICS to give expert evidence.

Clause 2(16) and Clause 2(25)

6. Under Clause 2 (16) the leaseholder covenants '*Not to cut maim or injure or permit or allow to be cut maimed or injured any of the walls timbers roofs floors ceilings partitions lights or other parts of any erection or building from time to time erected or built on the demised premises*'
7. Under Clause 2 (25) the leaseholder covenants '*Not to erect on the demised premises or any part thereof any erection or building whatsoever not make any addition or alteration to any erection or building at any time and from time to time erected or built on the demised premises or any part or parts thereof or any architectural decoration thereof except in any and every such case upon a site and in strict accordance with the plans and elevations first approved of in writing by the Landlords' Surveyor and in such style and manner as the Landlords' Surveyor for the sake of architectural character and appearance or otherwise may require and in all respects to the satisfaction of each*

surveyor and will make such alterations in the siting plans and elevations of any and all such erections buildings additions and alterations as such surveyor may require and will further pay the fees of the Landlords' surveyor for all approval of plans and supervision of work'.

8. Mr. Jourdan, for the Applicant said that Clause (16) imposed an absolute prohibition on cutting the main walls which would preclude any extension of the property. A prospective purchaser would be advised that he might well be able to overcome that prohibition by applying to the Lands Tribunal under section 84 of the Law of Property Act 1925. This would produce uncertainty about cost, but certainty about the difficulties and would have the effect of depressing the leasehold value. He commented on the cases of *F.W.Woolworth and Company, Ltd. v Lambert* (1937) and *Lilley & Skinner v Crump* (1929) on which the Respondent relied.
9. Mr. Letman for the Respondent said that the operation of Clause 2 (25), was not nullified by Clause 2 (16) so as to amount to an absolute prohibition on improvements on the demised premises, and that in any case , two licences had been granted in recent years , one incurring a licence fee. His interpretation of Clause 2(16) was that it was concerned with prohibiting waste (damage) to the buildings on the demised premises, while Clause 2 (25) dealt with, amongst other things, the making of alterations to the building, subject to consent. He produced the two cases already referred to in para. 7. above for consideration by the Tribunal and argued that there would be a right to apply to the Lands Tribunal under section 84 of the Law of Property Act 1925 in any case.

The Tribunal's decision

10. While we agree that Clause 2 (16) is prohibitive, we consider that it should be read in the context of the rest of the lease terms. Clause 2(16) and Clause 2 (25) should each stand alone. Clause 2 (16) may be regarded as a provision dealing with damage whereas Clause 2 (25) clearly deals with alterations and allows such work to be carried out subject to conditions in the clause relating to consent being first obtained from the landlord, such consent not to be unreasonably withheld.
11. In the Tribunal's experience the clauses in the lease are not unusual, and we were not convinced that on any reasonable reading of the lease a prospective purchaser, after taking legal advice, would be persuaded that Clause 2 (16) would prevent them from undertaking alterations and extensions as specifically provided for under Clause 2 (25). Moreover evidence had been given that at least one licence had been given, and a more recent application made to extend which Mr. Cullum said involved a licence fee, although the leaseholder had not proceeded with that application.
12. We do not therefore consider that the existence of Clause 2 (16) has any material effect on the leasehold value.

Hope Value

13. Mr. Jourdan for the Applicant said that the expression “Hope Value “ first arose in respect of leasehold enfranchisement in the case of *Lloyd Jones v Church Commissioners* (1982)EGLR, when dealing with a section 9(1A) case under the 1967 Act. Until the recent Lands Tribunal case of the *Earl Cadogan & Cadogan Estates Ltd. v Sportelli & Sportelli* (2006), the “Sportelli” case, hope value had been reflected in the deferment rate. The issue of hope value for houses under section 9 (1A)and 9 (1C) had not been directly before the Tribunal, and the only tenant of a house had not been represented.
14. Mr. Cullum stated that since *Sportelli* it had been accepted that hope value was capable of separate identification and that it should be identified as he had shown in his valuation. If it was subsumed within the deferment rate too much would be allowed for at short and long unexpired terms and too little on medium term leases. The *Lloyd Jones* and *Sportelli* cases having made it clear that hope value exists and is to be included in the valuation, it was necessary to establish it as a proportion of the latent value. Mr. Cullum said that in his opinion the proportion was 20%, and he had concluded seven negotiations where hope value had been taken as that. 20% had been widely accepted by valuers for lessees who were active in the prime Central London market.
15. Mr. Letman for the Respondent said that hope value should not be added separately as Mr Cullum proposed for the following reasons:
 - 1) It was entirely inconsistent with the term and reversion valuation of the existing freehold valuation which was predicated on the basis of vacant possession being obtained at the end of the term.
 - 2) The invariable 20% relied upon by the Applicant appeared to take no account of the length of the unexpired term nor the im/probability of the tenant’s bid actually being made at some point during that term.
 - 3) Contrary to section 9(1D) which stipulates the tenant is entitled to 50 % of the marriage value, the allocation of 20% of latent value as hope value reduces the share of the marriage value to which the tenant is otherwise properly entitled.
16. Mr. Sharp said that the *Sportelli* case allowed the inclusion of hope value under section 9 (1A) and by implication section 9 (1C) of the 1967 Act, and that where hope value applied it was not to be represented in the deferment rate but by adding a lump sum to the value of the reversion prior to the statutory marriage value calculation. In his view, any hope value was inherent in the vacant possession value as applied in term and reversion calculations, because this was the best price achievable. In other words a bidder would be aware of the possibility of an early sale and would bid accordingly. Hope value was included necessarily in the marriage value calculation. An invariable 20% addition, regardless of term remaining, could not be correct. He considered that at a term of nearly 59 years the expectation of the tenant’s bid was too speculative. The effect of a separate hope value calculation was to skew the share of marriage value that the tenant was otherwise entitled to.

The Tribunal's decision

17. The Tribunal was not persuaded by Mr. Cullum's method of identifying the hope value element within the valuation calculation. Under this method he has relabelled "marriage value" as "latent value" and taken a percentage away to reflect hope value. By this means he has effectively top-sliced marriage value, leaving a smaller amount to be identified as marriage value and then split this 50/50 in accordance with section 9(1D) of the Act. The Tribunal was not convinced by this approach, given that the purpose of section 9(1D) is to establish that marriage value should be split strictly on a 50/50 basis.
18. We do not accept the conclusion that because it has been decided in Sportelli that hope value is excluded from valuations under Schedule 6, because the tenant's bid is excluded, that hope value is then payable under Section 9(1A) because the tenant's bid is excluded.
19. With reference to 13 South Street considered by the Lands Tribunal in Sportelli, and since determined (LRA/63/2005) this case was not contested by the lessees.
20. In the South Street case there was a term remaining of 22.58 years whereas in the present case there is nearly 59 years. We find that in any case the prospect of a tenant's bid is far more speculative at this length of term.
21. We attach little weight to Mr. Cullum's evidence of settlements with other surveyors in the matter following the Sportelli determination because we find there is insufficient information about the bargaining strength of the parties, and the extent to which they are simply achieving a deal.
22. Mr. Sharp argued that hope value is in the freehold vacant possession value. The Tribunal acknowledges the Lands Tribunal's finding in the Sportelli case concerning the treatment of hope value as a discrete element within the calculation. However, it appears to the Tribunal in the present case that Mr Sharpe's approach is the correct one. In particular, the Tribunal considers that because the tenant's bid is not excluded in this case the freehold value agreed does not exclude any additional value arising from the tenant being in the market. To include an additional sum for the hope of an early bid from the tenant would clearly be double-counting.

Determination

23. The valuers for each side, Mr. Cullum for the Applicant, and Mr. Sharpe for the Respondent, had each prepared two valuations appropriate to whichever interpretation of the lease was determined by the Tribunal. Mr Cullum's valuations show an additional amount for 'parking space (if applicable)' which was withdrawn at the hearing.
24. Because all other matters are agreed by the parties, following the Tribunal's decisions at para 12 and 17-22 above, Mr Sharpe's valuation labelled (1 Compromise), as set out in Appendix A, is therefore adopted and the price payable is £388,051.34. The remaining three valuations are at Appendix B.

Chairman C A Lewis

Date: 11th December 2006

Appendix A

VALUATION FROM PARA 12

8 RESTON PLACE LONDON SW7

(1 Compromise) ✓

Relevant Date 20th July 2005
Unexpired term 58 years 11 months

Freeholder's present interest

Ground Rent	£125		
YP 1 year 11m @ 6%	1.764		
		£220.50	
Ground Rent	£150		
YP 21 years def 1 yr 11m	10.517		
		£1,577.55	
Ground Rent	£175		
YP 36 years def 22 yr 11m	3.845		
		£672.88	
			£2,470.93
Reversion		£2,807,500	
PV 58 years 11 months 4.75%		0.0649	
			£182,206.75
			£184,677.68

Marriage Value

Freehold Vacant possession value		£2,807,500	
Freeholder's present interest	£184,677.68		
Lessee's present interest	£2,216,075		
		£2,400,752.68	
		£406,747.33	
50% division			£203,373.66

ENFRANCHISEMENT PRICE

£388,051.34

On the basis of no restriction to alter as set out in Robin Sharp's expert report

No restriction on alteration

16th October 2006
RDS

VALUATION FROM PARA 12 8 RESTON PLACE LONDON SW7
(2 Compromise)

Relevant Date 20th July 2005
 Unexpired term 58 years 11 months

Freeholder's present interest

Ground Rent	£125		
YP 1 year 11m @ 6%	1.764		
		£220.50	
Ground Rent	£150		
YP 21 years def 1 yr 11m	10.517		
		£1,577.55	
Ground Rent	£175		
YP 36 years def 22 yr 11m	3.845		
		£672.88	
			£2,470.93
Reversion		£2,807,500	
PV 58 years 11 months 4.75%		0.0649	
			£182,206.75
			£184,677.68

Marriage Value

Freehold Vacant possession value		£2,807,500	
Freeholder's present interest	£184,677.68		
Lessee's present interest	£1,946,300		
		£2,130,977.68	
		£676,522.33	
50% division			£338,261.16

ENFRANCHISEMENT PRICE £522,938.84

On the basis that potential to alter is restricted by terms of lease in Robin Sharp's expert report

16th October 2006
 RDS

**Valuation based on agreed vacant possession value and
on basis that lease clauses do not impact on the leasehold value**

8 Reston Place

Freehold with vacant possession £2,807,500

Rent	£125	
YP for 1.92 @ 6%	<u>1.764</u>	£220
Review to	£150	
YP for 21 @ 6% }		
PV in 1.92 @ 6% }	<u>10.517</u>	£1,577
Review to	£175	
YP for 36 @ 6% }		
PV in 22.92 @ 6% }	<u>3.845</u>	£673
Reversion to	£2,807,500	
PV in 58.94 @ 4.75%	<u>.0649</u>	£182,206
		£184,676

Leasehold values £2,216,075

Combined interest	<u>£2,400,751</u>
Latent value	£ 406,749
Hope value @ 20%	£ 81,349
Plus mathematical value of term and reversion	<u>£ 184,676</u>
Market value of freehold reversion	£ 266,025

Marriage Value

Freehold with vacant possession	£2,807,500
Market value of reversion	£ 266,025
Leasehold	<u>£2,216,075</u>
	£ 325,400
@ 50%	£ 162,700
Plus market value of freehold reversion	<u>£ 266,025</u>
	£ 428,725
Plus for parking space (if applicable)	<u>£ 125,000</u>
	<u>£ 553,725</u>

**Roland Cullum
16th October 2006**

Valuation based on agreed vacant possession value and on basis that lease clauses do impact on the leasehold value

8 Reston Place

Freehold with vacant possession £2,807,500

Rent	£125	
YP for 1.92 @ 6%	<u>1.764</u>	£220
Review to	£150	
YP for 21 @ 6% }		
PV in 1.92 @ 6% }	<u>10.517</u>	£1,577
Review to	£175	
YP for 36 @ 6% }		
PV in 22.92 @ 6% }	<u>3.845</u>	£673
Reversion to	£2,807,500	
PV in 58.94 @ 4.75%	<u>.0649</u>	£182,206
		£184,676

Leasehold values £1,946,300

Combined interest	<u>£2,130,976</u>
Latent value	£ 676,524
Hope value @ 20%	£ 135,304
Plus mathematical value of term and reversion	<u>£ 184,676</u>
Market value of freehold reversion	£ 319,980

Marriage Value

Freehold with vacant possession	£2,807,500
Market value of reversion	£ 319,980
Leasehold	<u>£1,946,300</u>
	<u>£2,266,280</u>
	£ 541,220
@ 50%	£ 270,610
Plus market value of freehold reversion	<u>£ 319,980</u>
	£ 590,590
Plus for parking space (if applicable)	<u>£ 125,000</u>
	<u>£ 715,590</u>

Roland Cullum
16th October 2006