

IN THE LEASEHOLD VALUATION TRIBUNAL

LON.ENF/1857/06

**IN THE MATTER OF 186 SOUTHFIELD ROAD, CHISWICK, LONDON, W4
5LD**

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

BETWEEN:

**(1) JOSEPHINE ANNE McNALLY
(2) SALEENA HAQUE**

Applicants

-and-

SUNNY KAPOOR

Respondent

THE TRIBUNAL'S DECISION

Background

1. The Applicants makes this application pursuant to s.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") for a determination of the purchase price to be paid for the freehold interest in the subject property.

2. The First Applicant occupies the first floor flat, known as 186 Southfield Road, by virtue of a lease granted by the Respondent dated 21 July 2004 for a term of 99 years from the same date. The ground rent payable under this lease is £200 per annum for the first 25 years, increasing to £300 per annum for the next 25 years, £400 per annum for the next 25 years and £500 for the remainder of the unexpired term.
3. The Second Applicant occupies the ground floor flat, known as 186A Southfield Road, by virtue of a lease granted by the Respondent dated 17 July 1992 for a term of 125 years from the same date. The ground rent payable under this lease is £125 per annum for the first 25 years, increasing to £150 per annum for the next 25 years, £175 per annum for the next 25 years, £225 per annum for the next 25 years and £275 for the remainder of the unexpired term.
4. By a notice served pursuant to s.13 of the Act, the Applicants exercised their right to collectively enfranchise by acquiring the freehold interest in the subject property. The proposed purchase price in the notice was £5,750. By a counter notice dated 22 November 2005, the Respondent proposed a purchase price of £70,000. Having failed to reach agreement on the purchase price for the freehold, on 5 April 2006, the Applicants applied to the Tribunal for that determination to be made. The issues initially in respect of which a determination was sought were:
 - (a) the deferment rate.

- (b) the terms of the transfer.
- (c) s.33 costs.
- (d) other sums due from the Applicants.

However, at the hearing it was agreed by both parties that the issues set out at (b) and (c) above should be adjourned to allow the parties' further time to agree those matters. The Tribunal grants that adjournment with permission granted to either party to restore the application in relation to those matters by 12 March 2007. As to the issues at (d), Mr Moules, Counsel for the Respondent, accepted that the Tribunal did not have jurisdiction to deal with this matter as it concerned the Respondent's potential claim in damages for the First Applicant's alleged breach of covenant by structurally altering her premises without the landlord's consent. Therefore, the only issue to be determined by the Tribunal was the deferment rate for the reversionary interest.

5. Prior to the hearing, the matters agreed by the parties were:

- (a) Valuation date: 19 September 2005
- (b) Unimproved flat values with share of freehold:

Flat 186	£330,000
Flat 186A	£330,000
- (c) Unexpired term at valuation date:

Flat 186	97.84 years
Flat 186	111.82 years

- (d) Capitalisation rate for the ground rent 7%
- (e) No marriage value applied in this instance
- (f) The Applicants would be liable for the Respondent's statutory costs

6. **Inspection**

Immediately following the hearing, the Tribunal externally inspected the subject property and also carried out an internal inspection of Flat 186. The subject property is located on the Northern borders of Chiswick on a main bus route connecting to Turnham Green and Chiswick High Road. The property is mid-terraced consisting of two purpose built flats located on the ground and first floors each with exclusive use of part of the rear garden. It is of solid brick construction under a tiled roof built c.1900 and has replacement uPVC double glazed windows. The property appeared to be overall in a reasonable state of repair.

7. **Hearing**

The hearing in this matter took place on 12 December 2006. The Applicants were represented by Mr Rayner of Owen White & Catlin, solicitors. The Respondent was represented by Mr Moules of Counsel.

8. The Applicants expert, Mr Sworn FRICS, a Partner in the firm of Sworn & Co, Chartered Surveyors, gave evidence as to the deferment rate that should be applied in this instance. He had prepared a valuation report dated 27 November 2006. Mr Sworn contended for 7% and relied upon an earlier LVT decision in

respect of 133 Vicarage Lane Stratford, E15 dated 15 August 2006, where the LVT had determined that a deferment rate of 7.5% was appropriate in that instance. Mr Sworn did not consider that property to be in as good a location as the subject property. He also referred to an LVT decision dated 23 May 2006, in respect of 85 Boston Manor Road, Brentford, TW8 which was the subject of an enfranchisement of an absentee landlord. There he contended for an interest rate of 7.5%, which had been accepted by the LVT. Again, he considered that Southfield Road was a better location and therefore an interest rate of 7% was appropriate.

9. Mr Sworn also referred to three sales of freehold ground rents by public auction within the last six months. These were:
 - (a) 16/17 Dover Terrace, Sandycombe Road, Kew, TW9 2EF, which had sold on 13 July 2006 for £7,750. The property comprised two self-contained flats with unexpired terms of 115 and 117 years respectively. Number 16 had a rising freehold ground rent which doubled every 25 years, but number 17 had a fixed ground rent of £150 per annum. The initial gross yield was shown on the auction results particulars as 6.77% and Mr Sworn had analysed the sale to show the yield as 8.5%. His analysis, however, had been based on a freehold ground rent for number 16, which had increased by £375 every 25 years and not on a doubling of the rent, which would have produced a higher yield.

- (b) 6/6A Woodstock Grove, Shepherds Bush, W12, which had sold on 14 September 2006 for £9,500. This property contained two self-contained flats and the auction results particulars showed an initial yield of 7.37%. Both flats had terms of 95 years unexpired but Mr Sworn had been unable to analyse the sale due to a lack of rental information.
- (c) 51 Davisville Road, Shepherds Bush, W12, which had sold on 13 July 2006 for £7,750. This property comprised 3 self-contained flats with 83.46, 104 and 109.21 years unexpired. The initial yield shown on the auction results particulars was 3.87%, but Mr Sworn had analysed the sale price to show an actual yield of 6.6%. However, his analysis was based on rents which were increasing by £100 every 25 years rather than doubling every 25 years, which would have shown a higher yield.
10. Mr Sworn also referred to an agreement in respect of 33/33A Richford Street, Hammersmith, W6 in which he had adopted a yield of 7% and had reached agreement with Cluttons, who acted for the freeholder, at £1,000.
11. Mr Sworn was, therefore of the opinion that the decisions of the LVT and the recent auction results and the settlement all indicated that the figure for the reversionary yield should not be less than 7%. He was mindful of the recent decision of the Lands Tribunal in *Earl Cadogan & Cadogan Estates Ltd v Sportelli* [LRA/50/2005] and other consolidated appeals, but he had no evidence

to suggest that interest rates were below 7% in the Outer West London area. Accordingly, he valued the freehold interest at £5,792.21.

12. Mr Moules, for the Respondent, simply relied on the deferment rates adopted by the Lands Tribunal in *Sportelli*. He submitted that the Tribunal was bound to follow the rates adopted in that case and, therefore, a deferment rate of 5% should be applied in this instance. He further submitted that the valuation approach adopted by Mr Sworn in this matter had been disapproved of by the Lands Tribunal in *Sportelli*. Moreover, he said that in *Sportelli* the Lands Tribunal went on to say that there had to be compelling evidence before a Tribunal could depart from a deferment rate of 5%. He further submitted that the valuation evidence adduced by Mr Sworn could not be said to be compelling.

Decision

13. In *Sportelli*, the Lands Tribunal determined a generic deferment rate for houses of 4.75%, based on a risk free rate of 2.25%, a real growth rate of 2% and a risk premium of 4.5%. It then considered what adjustments needed to be made for special factors, including length of term, location, obsolescence and for flats (see: paras.80-96). The Lands Tribunal then considered its role in the decision making process and the status of its decision on the deferment rates. It said (at para.117) that the function of the Tribunal is to make decisions on points of law and on what may be called principles of practice to which regard should be had by the first tier tribunals and by practitioners dealing with claims within its jurisdiction.

14. The Lands Tribunal (at para.123) went on to say:

"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat in the deferment rate itself and can be shown to make a departure from the rate appropriate."

The Lands Tribunal then applied deferment rates of 4.75% and 5% to houses and flats respectively on the Cadogan Estate, which many would regard as being at the centre of the Prime Central London area, to Maybury Court, Marylebone Street on the Howard de Walden Estate and to 13 South Terrace, Kensington.

15. In this case, the Tribunal is required to determine the deferment rate to be applied in respect of a purpose built two storey terraced property containing two flats, built c.1900, and located in a relatively busy road off Acton Lane, Chiswick. The property itself is of no particular architectural merit, being fairly typical of developments in the London area at the end of the nineteenth century.
16. The leases of the flats have unexpired terms of nearly 98 and 112 years respectively at relatively modest rising ground rents. Because of the length of the unexpired terms and the statutory exclusion of any hope that the tenants may wish

to extend their leases at a future date, the Tribunal regards this property as a relatively unattractive investment by comparison with properties in the Prime Central London area. This view is supported by the parties' agreement of the capitalisation rate at 7%, and other matters which are not necessarily reflected in the capital vacant possession value or are attributable to the "special factors" identified in *Sportelli*. Furthermore, because of the long unexpired terms of the leases, the substantive value in the purchase price for the freehold is attributable to the revenue stream provided by the ground rents. Nevertheless, the parties were prepared to agree that a rate of 7% was appropriate. This lent support for the Tribunal's conclusion that a deferment rate of 5% was not appropriate in this matter.

17. The Tribunal did not accept the submission made by Mr Moules that the valuation evidence provided by Mr Sworn was not sufficiently compelling to allow it to depart from the deferment rate of 5% applied in *Sportelli*. An important distinction should be made in this instance. In *Sportelli* the Lands Tribunal heard valuation evidence from the parties as to the appropriate deferment rates to be applied before making its findings. In this case, the Respondent adduced no expert evidence to independently confirm that a deferment rate of 5% was appropriate in this matter. The Applicants' expert evidence, and in particular the deferment rate of 7% contended for by Mr Sworn, was unchallenged. This proved to be sufficiently compelling evidence because it was the only valuation evidence before the Tribunal. Had the Respondent adduced his own expert

evidence confirming the rate of 5% contended for, then perhaps the Tribunal may have reached a different conclusion. The Tribunal is obliged to decide applications, such as this, on the basis of the evidence before it and this principle has recently been confirmed (at para.23) by the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [LRA/72/2005].. The Tribunal, therefore, considers that it is appropriate to adjust the risk premium in this case from 4.5% to 5.5% thereby resulting in an increase of the deferment rate from 5% to 6%.

18. The Tribunal determined the enfranchisement price for the freehold of the subject property at **£6,670**. A copy of the Tribunal's valuation is annexed to this Decision.

Dated the 15 day of December 2006

CHAIRMAN.....

I. Mohabir

Mr I Mohabir LLB (Hons)

Ground Rent 17/7/2042 to 16/7/2067	£175 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£2,039	
PV £1 36.82 yrs @ 7%	<u>0.082811</u>	£169
Ground Rent 17/7/2067 to 16/7/2092	£225 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£2,622	
PV £1 61.82 yrs @ 7%	<u>0.015258</u>	£40
Ground Rent 17/7/2092 to 16/7/2117	£275 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£3,205	
PV £1 86.92 yrs @ 7%	<u>0.002811</u>	£9
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£330,000	
PV £1 111.82 yrs @ 6%	<u>0.0014646</u>	£483
		£2,470

B. Marriage Value (Sched.6 para 4) £nil

(Section 128 of the Commonhold and Leasehold reform Act 2002 amended paragraph 4(2) of Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993, and inserted paragraph 4(2A) which provides that the marriage value is to be ignored where at the relevant date the unexpired term of the lease held by a participating tenant exceeds eighty years. The "relevant date" is defined in s.1(8) of the 1993 Act as the date on which notice of the claim was given under s.13 of the Act. In this case the notice under s.13 was dated 16 September 2005 and the valuation date is 19 September 2005.)

C. Any Other Loss (Sched. 6 para 5) £nil

D. Enfranchisement Price

Value of freehold interest in 186 Southfield Road	£4,288
Value of freehold interest in 186A Southfield Road	<u>£2,470</u>
	£6,758
Say	£6,760

Appendix

186 & 186A Southfield Road, Chiswick, London W4 5LD

Valuation in accordance with s.32 and Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993, as at 19 September 2005 - the agreed valuation date.

A. Value of the freehold interest (Sched. 6 para3)

186 Southfield Road - The First Floor and Second Floor Flat

Ground Rent 19/9/2005 to 30/7/2029	£200.00 p a	
YP 23.84 Yrs @ 7%	<u>11.4387</u>	£2,288
Ground Rent 31/9/2029 to 30/9/2054	£300.00 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£3,496	
PV £1 23.84 yrs @ 7%	0.199292	£697
Ground Rent 31/9/2054 to 30/9/2079	£400.00 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£4,661	
PV £1 48.84 yrs @ 7%	<u>0.036719</u>	£171
Ground Rent 31/9/2079 to 30/9/2103	£500 p a	
YP 24 yrs @ 7%	<u>11.4693</u>	
	£5,735	
PV £1 73.84 yrs @ 7%	<u>0.006766</u>	£39
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£330,000	
PV £1 98 yrs @ 6%	<u>0.0033115</u>	£1093
		£4,288

186A Southfield Road - The Ground Floor Flat

Ground Rent 19/9/2005 to 16/7/2017	£125.00 p a	
YP 11.82 yrs @ 7%	<u>7.8650</u>	£983
Ground Rent 17/7/2017 to 16/7/2042	£150 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£1,748	
PV £1 11.82 yrs @ 7%	<u>0.449452</u>	£786

Ground Rent 17/7/2042 to 16/7/2067	£175 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£2,039	
PV £1 36.82 yrs @ 7%	<u>0.082811</u>	£169
Ground Rent 17/7/2067 to 16/7/2092	£225 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£2,622	
PV £1 61.82 yrs @ 7%	<u>0.015258</u>	£40
Ground Rent 17/7/2092 to 16/7/2117	£275 p a	
YP 25 yrs @ 7%	<u>11.6536</u>	
	£3,205	
PV £1 86.92 yrs @ 7%	<u>0.002811</u>	£9
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£330,000	
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