

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/ENF/1977/06**

**IN THE MATTER OF 92 HUDDLESTON ROAD, LONDON, N7 0EG**

**AND IN THE MATTER OF SECTION 27 OF THE LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993**

**BETWEEN:**

**92 HUDDLESTON ROAD LIMITED**

**Applicant**

**-and-**

**PATRICK DONNELLY**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicant, as nominee purchaser, pursuant to s.27(1)(b) of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act").
2. By a notice served pursuant to s.13 of the Act dated 16 June 2005, the relevant participating tenants exercised their right to collectively enfranchise by acquiring the freehold interest in the subject property. The proposed purchase price for the freehold interest was £11,500 and £1,000 for the garden area. No counter notice was served by or on behalf of the Respondent.

Subsequently, unsuccessful attempts were made to locate the Respondent, who was then the freeholder. On 9 September 2005, the Applicant made a CPR Part 8 application to the Central London County Court for, *inter alia*, a vesting order pursuant to s.26(1) of the Act. That order was granted on 3 July 2006 and transferred the matter to the Tribunal so that a determination of the purchase price to be paid by the tenants could be made.

3. The participating tenants in this application are three of the four leaseholders in the subject property. They are Mr Andrew Birnie (Flat 1), Mr David Locke (Flat 3) and Mr David Hawkins (Top Floor Flat). The Tribunal was not provided with copies of the leases granted in respect of these various flats. However, the Applicant has adduced valuation evidence contained in an amended report dated 10 October 2006 and prepared by Mary-Anne Bowring, a Chartered Surveyor from the firm of Ringleys. Her report is supported by a Statement of Truth that complies with the requirements of the RICS in relation to expert witnesses and also CPR PD35. At paragraph 9, it states that she had been provided with copies of two leases and makes the assumption that all of the four leases commenced on the same date and are for a term of 99 years commencing on 29 September 1986 with rent reviews taking place every 40 years. The current ground rent is £100 with fixed increases of £100, £200 and £300 on the first, second and third rent reviews respectively. Although Ms Bowring, in her report, states the valuation date to be 4 December 2004. This is in fact incorrect. The correct valuation date is the date when the initial s.13 notice was served, namely, 16 June 2005. The unexpired term of the leases was, therefore, in excess of 80 years as at the valuation date.

## **Inspection**

4. On 17 October 2006, the Tribunal externally inspected the subject property and also the comparable properties relied on by Ms Bowring in support of the current leasehold value of the flats. These were 65, 82 and 118 Huddleston Road, 15 Freegrove Road and 205 Tufnell Park Road, all of which were located in the London, N7 area. Huddleston Road is a street of solid Victorian housing, comprising residences in a quiet residential street in the heart of Tufnell Park. Tufnell Park underground station is nearby. The subject property and comparables are all of a similar type, Victorian houses converted and occupied as flats. The subject property comprises a terraced house of 5 storeys occupied as 4 self-contained flats. Constructed of solid brick under a pitched tile roof, sash windows. The property from external inspection appears to be in a fair condition of repair. Entrance to the property is stepped from the street on the raised ground floor. The rear garden is stated to be for the sole use of flats A and B. Flats A, B, and C are all one bedroom, flat D being a maisonette of 3 bedrooms. All flats are stated to have the benefit of central heating. Residents permit parking operates in the area.

## **Decision**

5. The Tribunal's determination also took place on 17 October 2006. There was no hearing and the Tribunal heard no oral evidence. Its determination is based entirely on the documentary evidence before it.
6. The basis on which the Tribunal has to value the freehold interest is set out in s.32 and Part II of Schedule 6 of the Act. Paragraph 2(1) of Schedule 6 sets

out how the freehold price is to be comprised. In this instance, that is only the value of the freeholder's interest because as at the valuation date the unexpired term of the various leases exceeded 80 years and by virtue of paragraph 4(2A) of Schedule 6, the marriage value is deemed to be nil. The Tribunal did not consider that any compensation was payable to the freeholder as it did not appear that the Respondent had suffered any loss or damage resulting from the acquisition of the freehold interest. In other words, there was no evidence before the Tribunal that there had been any diminution in value of any interest in other property as a result of the Applicant acquiring the freehold interest. Generally, compensation would only be payable where the purchase of the freehold interest affected the freeholder's ability to develop other land owned by hi and there was no evidence of this here.

7. It is not necessary to set out the valuation assumptions to be made within paragraph 3 of Schedule 6, as these are self-evident. Essentially, in this case, the valuation of the freehold interest will be:

- (a) the capitalised value of the ground rent payable under the leases until the expiry of the term.
- (b) the investment value of the freehold.

Each of these matters is considered in turn below.

**(a) Capitalised Ground Rent**

8. In her report, Ms Bowring contended that investing in property was not as stable as investing by placing funds in a bank or purchasing gilts. Accordingly, she applied a premium of 2% to Barclays Bank plc base rate of

4.75% to provide a yield rate of 6.75%. Ms Bowring went on to state that her yield rate was supported by reference to residential auction evidence. She gave examples of three properties in North London where the sale of freehold ground rents between 13 June and 30 November 2004 realised yields of 6% to 7.7%.

9. The Tribunal accepted Ms Bowring's basic proposition that investing in property perhaps posed a greater investment risk than placing funds in a bank account of in gilts, which could be considered to a risk free investments. The Tribunal, therefore, accepted her base figure of 4.75% as the starting point when determining the yield to be applied to capitalise the ground rent. However, the Tribunal considered that the addition of a further 2% overstated the level of risk by investing in property, as this is still considered to be at the lower end of the risk scale in terms of investments. It is also now almost the universally held view that in the last several years, yield rates have been falling largely as a result of the increasing capital cost of property investments. In addition, the ground rent payable under the leases, albeit rising, would not prove to be unduly attractive to any potential investor, especially once the cost of collection had been deducted. Taking all of these matters together, the Tribunal found that a further addition of 1.25% to the base figure of 4.75% adequately reflected the increased investment risk to any potential investor. Accordingly, it determined that the appropriate yield to be applied to capitalise the ground rent was 6%.

**(b) Value of the Reversion**

10. To arrive at the capital values for the leasehold as at the valuation date, Ms Bowring relied on the five comparable properties referred to in paragraph above. As stated, the Tribunal externally inspected each of these properties and found 118 Huddleston Road to be virtually identical to the subject property and, therefore, the best comparable. Ms Bowring stated in her report that a 3 bedroom flat, which was a raised ground floor conversion had sold for £350,000 in December 2004, with a 100 year unexpired term on the lease.
11. In the same property it appears that a two double bedroom flat on the first and second floors with a roof terrace and an unexpired term of 115 years on the lease had an asking price of £389,950 and was under a “close” offer in October 2006. This flat appeared to be directly comparable to the top floor flat in the subject property because the roof terrace and upper floor, albeit with two bedrooms more than compensated for the third bedroom in the top floor flat. This demonstrated that there had been an increase in capital values of approximately 11% in the preceding 22 months since Ms Bowring had prepared her initial report based on a valuation date of 9 December 2004. Her amended report dated 10 October 2006 repeated the valuation evidence given in the 2004 report. Indeed, the Tribunal was aware that in the same period capital values had increased between 10% to 15% overall. The Tribunal, therefore, did not accept Ms Bowring’s contention that the valuation date was unimportant in this matter. Having regard to these matters, the Tribunal accepted Ms Bowring’s capital values of the four flats in the subject property and applied an increase of 7.5% to reflect the increase that had occurred as at

the correct valuation date. The amended capital values are set out in the Tribunal's valuation annexed to this Decision.

12. As to the yield to be applied to the deferment rate, Ms Bowring also contended for 6.75% based on the same arguments she had advanced in relation to the yield to be applied to capitalise the ground rent. In deciding this issue, the Tribunal had regard to the recent and important decision of the Lands Tribunal in the matter of *Earl Cadogan & Cadogan Estates Ltd v Sportelli* [LRA/50/2005] and other consolidated appeals. In its judgement, the Lands Tribunal found that a deferments rate of 5% for flats was appropriate. This had been arrived at by aggregating a risk free rate of 2.25% and a real growth rate of 2% to produce a generic deferment rate of 4.75%. An addition of 0.25% was made to this figure to reflect the greater management problems associated with flats, which included difficulties with service charges and repairs that inevitably occurred. The Lands Tribunal stressed that this deferment rate could only be interfered with where a Tribunal was satisfied that there were particular features fell outside the matters reflected in the vacant possession value of the flat. In the instant case, there is no evidence of any of the special factors enunciated by the Lands Tribunal that would allow this Tribunal to interfere with the Lands Tribunal finding of 5% yield on deferment rates. In further written representations dated 31 November 2006, the Applicant's solicitors submitted that *Sportelli* had no application here, as it was not intended to apply to all reversion values. *Sportelli* turned on its own facts because the Lands Tribunal only considered the very specific reversionary interests to be valued and the financial evidence before it. The

unexpired terms of the leases in *Sportelli* were short with only one lease with an unexpired term of 71 years. The unexpired terms of the leases in this matter were in excess of 80 years. Moreover, the effect of the judgement in *Sportelli* was not intended to be retrospective. The relevant valuation date in this matter predated *Sportelli*.

13. With respect, the Tribunal did not agree with the submissions made on behalf of the Applicant in relation to *Sportelli*. In a tightly worded judgement, when finding that a generic yield rate of 5% should be applied when valuing the reversionary interest in relation to the collective enfranchisement of flats, the Lands Tribunal made no distinction between long and short unexpired terms of leases. Whilst the Lands Tribunal accepted in principle that the deferment rate of 5% may be subject to adjustment, it would only be open to a Tribunal to interfere with that rate where it was satisfied that there were particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate. As stated above, the circumstances or special factors outlined by the Lands Tribunal in *Sportelli* that would allow this Tribunal to depart from a deferment rate of 5 % do not exist in this matter. It is bound by the decision in *Sportelli* and does not appear to have a discretion to determine any other yield rate. The Applicant's solicitors have correctly stated that *Sportelli* does not have retrospective effect, as the valuation date predated the judgement in *Sportelli*. However, in the Tribunal's view, the relevant date is the date of its determination and it



must apply the prevailing law as at that date. Accordingly, it determines that the yield to be applied to the deferment rate is 5%.

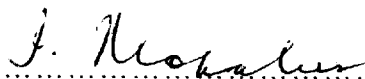
13. The Tribunal, therefore, determines that the purchase price to be paid by the Applicant for the freehold interest is **£30,250** as set out in the Tribunal's valuation annexed to this Decision and this sum is to be paid into Court.

#### **Other Matters**

14. With regard to the draft Transfer of Whole (TR1), the Tribunal approves this save for paragraphs 5, 9, 10 and 11 which will need to be properly completed on behalf of the Applicant.
15. As to the costs of this application, the only entitlement to costs arises under s.33 of the Act. This provides that the nominee purchaser shall be liable for the landlord's reasonable costs. The nominee purchaser has no entitlement to its costs incurred in bringing the application in the Tribunal. In this case, the Respondent is a missing landlord and there is no evidence that he has incurred any costs, as he has not responded at all in these proceedings. It follows that the Tribunal makes no order under s.33 of the Act.

Dated the 15 day of January 2007

CHAIRMAN.....



Mr I Mohabir LLB (Hons)

Valuation

92 Huddleston Road, London N7 0EG

G.R.	£400 pa	
YP 21 yrs @6%	x 11.7641	£ 4,705.64

G.R.	£800 pa 2nd rev.	
YP 40 yrs @ 6%	x 15.0463	
PV£1 def.21 yrs.@ 5%	x 0.3589424	£ 4,320.60

G.R.	£1,200 pa	
YP 19 yrs. @ 6%	x 11.1581	
PV£1 def.61 yrs.@5%	x 0.0509862	£ 682.69

Rev. to Cap.Val.	
Flat A (1bed)	£241,875
" B (1 " )	£241,875
" C ( 1 bed smaller)	£236,500
" D (3 bed)	£349,375

Total	£1,069,625	
PV in 81 yrs time @5%	x 0.0192162	£20,554.13

M.V. , over 80 yrs remaining	Nil
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£30,263.06

(say) **£30,250**