

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL

Property: Flat 1, 27 Queen's Gate London SW7

Applicant: R S Frischmann and J E Frischmann (landlord)

Respondent: P Sadigh (tenant)

Date of hearing: 7 June 2005

Appearances: Mr Damian Greenish (Pemberton Greenish, solicitors)
Mr Roland Cullum FRICS FIRPM (Cluttons, chartered surveyors)
Mr Asif Dhanani BSc (Hons) Est Man
for the applicant

Mr Gavin Buchanan BSc MRICS (Atisreal)
Dr Pirouz Sadigh, the respondent
for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D Levene OBE MRICS

Date of the tribunal's decision:



Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) to determine the price to be paid for a new lease of Flat 1, 27 Queen’s Gate, London SW7. This flat (“the subject flat” or “the flat”), is on the ground floor of a converted Victorian end of terrace property on the corner of Queen’s Gate and Queen’s Gate Terrace. The building has a lift, which is old and with an open lattice metalwork shaft. As now arranged, the flat has five rooms, a kitchen/breakfast room and two bathroom/wcs (one *en suite*). As let, the flat comprised five rooms, a bathroom, two separate wcs, a maid’s room and a kitchen/breakfast room. It is agreed that tenant’s improvements to be disregarded in the valuation include the creation of a new *en suite* bathroom in place of the maid’s room, the extension of the kitchen/breakfast room to include a former separate wc, the amalgamation of a separate wc into a combined bathroom/wc, and the provision of new fitted wardrobes to all bedrooms. The agreed internal floor area is 1576 sq ft (146.41 sq m).

2. The flat is held by the respondent, Dr Sadigh, under a lease dated 18 April 1977 for a term of 60 years from 25 December 1971 at a current ground rent of £150 per annum, rising to £200 per annum from 25 December 2011. The lease expires on 25 December 2031 and it is agreed that for the purposes of the valuation the unexpired term should be taken as 27.66 years on the valuation date, which is 29 April 2004, the date of the tenant’s notice of claim.

The hearing

3. At the hearing on 7 June 2005 the landlord was represented by Mr Damian Greenish of Pemberton Greenish, solicitors, who called Mr Roland Cullum FRICS FIRPM of Cluttons, chartered surveyors, to give expert evidence. The tenant was present and was represented by Mr

Gavin Buchanan BSc MRICS who presented the tenant's case and gave expert evidence. The tribunal inspected the flat on the following day in the presence of Dr Sadigh, and, unaccompanied, we externally inspected the comparables listed in the schedule of comparables attached to the statement of agreed facts.

Issues

4. The issues were:

- i. the value of the new lease;
- ii. the value of the freehold;
- iii. the value of the existing lease; and
- iv. the yields to be adopted for deferment and capitalisation.

Decision

i. The value of the new 117.87 year lease

The landlord's case

5. Mr Cullum proposed a value of £945,000, equivalent to approximately £600 per square foot. He relied on the eleven sales listed in the agreed schedule, which were all of flats in Queen's

Gate, on leases which ranged from 78 years to a share of the freehold. In two instances (Flat D, 47 and Flat 3, 83/85) the same flat appears twice, once unimproved and once improved. The two shortest leases, of 78 and 89 years, he adjusted for lease length via the Beckett & Kay Graph of Graphs, and he adjusted all the comparables for time via the Savills PCL SW Flats Index. He said that he regarded the sale of 36A as the main comparable and he had used it as his starting point, and he criticised Mr Buchanan's approach of averaging the comparables, some of which Mr Cullum regarded as less helpful.

6. 36A is a ground floor flat with a gross internal area of 2166 sq ft which was sold in July 2004 with a share of the freehold for £1,133,500, equivalent to a rate of £523 per square foot, which, according to the agreed schedule of comparables, was adjusted to £516 per square foot via the Savills Index. Mr Cullum maintained that the layout of the comparable was inferior to that of the subject flat because the subject flat had, unimproved, the potential to become what it is: a three bedroom, two bathroom, two reception room flat, whereas, he considered, it was difficult to see how the comparable could be more than a two bedroom, two reception room flat if it was to have two bathrooms. However, Mr Buchanan had obtained one of the architect's drawings for the conversion of 36A currently in progress, which showed a flat with reception room, large entrance hall, three bedrooms and three bathrooms, two of them *en suite*, and a kitchen/dining room. Having considered the drawing, Mr Cullum agreed that such a conversion was feasible, but said that he considered that it required much more extensive and expensive works to achieve it than the works required to achieve the present layout of the subject flat. He said that he also bore in mind that, at the date of sale, 36A required not only modernisation and reconfiguration but also complete repair and redecoration, whereas the subject flat had to be assumed to be in full repair.

7. Mr Cullum said that the subject flat was not only larger than most of the comparables but also by a considerable margin the best in terms of layout. Its return frontage to Queen's Gate

Terrace, where flats sold, he said, for higher prices than those in Queen's Gate, put it in a different category from the inner terrace flats. Based on the sale of 36A, he allowed £30 per square foot to bring it into the appropriate standard of repair. He then added 11% for what he considered to be the better layout of the subject flat, and adjusted the resulting figure of £614 per sq ft to £605 for time and then to £600 to reflect the 117 year lease instead of a share of freehold, giving £600 per sq ft, or £945,000 for the flat. He did not agree with Mr Buchanan's adjustments for size, because in his view the concept of higher values per sq ft for smaller flats was not appropriate to this market. He also considered Mr Buchanan's adjustment for lease length to be arbitrary and wrong. Nor did he agree with Mr Buchanan that the private street entrance to 36A was a valuable advantage: he considered it to be disadvantageous in terms of layout and a security risk. He acknowledged that the position of 36A was superior to that of the subject flat, the latter being next to the Bangladeshi High Commission, although he did not agree that there was a greater volume of traffic near the subject flat which might affect value.

The tenant's case

8. Mr Buchanan proposed a value of £780,000, equivalent to a rate of £495 per sq ft. He said that the comparables showed that the highest rates per sq ft had been achieved for the smaller, recently refurbished flats and the lowest rates for unimproved flats. He had made a percentage uplift to equate the sales of Flat 2, 76, Flat 2,124 and Flat 3, 83/85 to the extended lease term of the subject flat, and deducted 1% from the sale price of 36A to reflect the share of the freehold. He deducted 5% from the sale prices of 36A and Flat 1, 85A because they had what he regarded as the significant benefit of their own street entrance. He said that an analysis of the sales of Flat D, 47 and Flat 3, 83/85 showed that the difference between an unimproved and a recently improved flat was between £95 and £108 per sq ft. He considered that the value of the subject flat with its past changes in layout would be greater than the average value of the unimproved

comparables but lower than the average value of the improved comparables. The average rate per sq ft excluding the recently improved comparables was, he said, £511 per sq ft after adjustments, where appropriate, for time, size, lease length and private street entrance, which produced a value for the subject flat of about £805,000. This, however, was the value of the flat in its existing, partly improved condition, and he suggested a reduction of at least £25,000 to allow for that.

9. Like Mr Cullum, Mr Buchanan regarded 36A as much the best comparable, but he said that it was in a much better position than that of the subject flat, which suffered from much more traffic noise and was next to the High Commission for Bangladesh and the Royal Thai Embassy on the south side and opposite the Royal Saudi Military Attache to the north, which caused, he said, inconvenience and parking difficulties. He believed that the downward adjustment required for the inferior position of the subject flat exceeded any adjustment required for the unimproved condition of 36A. Taking the comparables as a whole, and comparing the average adjusted rate for the unimproved compared with that for the improved flats, but excluding those which had been recently improved equated, he said, to £490 per square foot which was close to his adopted rate of £495 per square foot.

10. In his oral evidence he said that he did not find compelling Mr Cullum's adjustments to the comparables for size and condition, and he was satisfied from his own consideration of the comparables that smaller flats in this location tended to attract higher rates per sq ft. He was quite satisfied that 36A was not only far and away the best comparable but also much superior to the subject flat. He did not consider that the condition of 36A had significantly affected the price which the developer purchaser had paid for it, and he believed that 36A would appeal just as much to an owner-occupier as to a developer. He was satisfied that the potential of 36A was, if anything, greater than that of the subject flat.

Decision

11. We are satisfied that Mr Buchanan's value for the extended lease is very close to the correct value, and we have adopted £785,000. Like Mr Cullum and Mr Buchanan, we have primarily had regard to the evidence derived from the sale of 36A. Adjusted for time as agreed in the schedule of comparables, 36A equates to £516 per square foot, or £813,216 for the subject flat. We have then deducted 1%, which we regard as appropriate to reflect the share of the freehold enjoyed by 36A, producing £805,084. We make no adjustment from that figure for condition in the circumstances of this case, because the comparable was agreed to have been bought with wholesale refurbishment in mind, and in our view the price obtained is likely to have reflected the location and size of the flat and not its condition. Having considered the plan of the improvements now being carried out at 36A, we do not accept that the unimproved subject flat had more potential for improvement. While there was some evidence to indicate that smaller flats commanded a greater price per sq ft, there was nothing to show that this would extend to the 1500 - 2000 sq ft bracket and we considered that any possible uplift for that factor would be offset by what we considered to be the inferior location of the subject flat. We have no doubt that the position in Queen's Gate of 36A is superior to that of the subject flat, particularly in that the subject flat is next to a very busy High Commission and near other official buildings and hotels, and we are also in no doubt that the imposing separate street entrance to 36A, and, to our eyes, the superior quality of the building, justifies a further deduction. For these two factors together we deduct 2.5%, arriving at a figure of £784,957, which we round to £785,000, a result which, we are satisfied, sits well with the comparables.

ii. The value of the freehold

The landlord's case

12. Mr Cullum proposed an uplift of around 2% from the long lease value to arrive at the value of the flat with a share of the freehold. In reaching this uplift he took into account the fact that the reversion would, he said, be to a flat and in a building which had been repaired and redecorated as the lease required.

The tenant's case

13. Mr Buchanan proposed an uplift of 1%. Like Mr Cullum, he produced no market evidence to support his figure.

Decision

14. We agree with Mr Buchanan that the difference in value between a lease of over 100 years and a lease with a share of the freehold is likely to be small, and we question Mr Cullum's approach of taking into account the assumed condition of the property at term, given that at every stage of the valuation the flat is assumed to be in good condition as the lease requires and that the tenants must pay service charges to ensure that the building is also in good condition. We therefore arrive at a virtual freehold value of £792,850, based on an uplift of 1%.

iii. The value of the existing lease

The landlord's case

15. Mr Cullum applied a relativity of 55% to the freehold value to arrive at the value of the existing 27.87 year lease. He said that, at that length of lease, the effect of the Act was very considerable. Although, like Mr Buchanan, he had found no relevant direct market evidence, he said that he was aware that, in the market, the value of such a lease was about 65% of the freehold value, but he considered that the marriage value was considerable and, without Act rights, the lease would be difficult to market and finance. He said that he was not a believer in the value of the well-known “Graph of Graphs”, which he considered to be seriously flawed in that it was largely based on the compilers of the graphs’ individual interpretations of settlements. However, he acknowledged that it was widely used, and had affected many settlements. He said that the Savills 1992 Graph and the Savills 2003 Graph of Enfranchiseable Leases were more reliable than the others on the Graph of Graphs because he believed them to be based on market evidence. The former showed a relativity of just over 50% and the latter showed about 65%. He knew of no reason why the 1992 Graph was wrong, but he accepted that there had been a creeping increase in relativities driven by various factors, including what he considered to be yield rates which were over-generous to tenants. The fact that prices for lease extensions had become, in his view, too low, had been reflected in the market. He therefore concluded that 55% was the correct relativity.

16. Mr Greenish criticised Mr Buchanan’s reliance (see below) on tribunal decisions. Mr Greenish said that his primary position was that they were, on the authorities, inadmissible, and his secondary position that other evidence was to be preferred.

The tenant's case

17. Mr Buchanan's proposed relativity was 61%, which he derived from tribunal decisions, settlement evidence and the Graph of Graphs. He relied on a leasehold valuation tribunal decision in relation to *Flat 6, 32 Brechin Place*, where the tribunal determined, and its determination was not challenged by the landlord on appeal to the Lands Tribunal (LRA/28/2003), a relativity of 62% for a lease of 28.34 year lease. He said that settlements based on similar relativities were subsequently agreed in respect of other flats in the same building. The Graph of Graphs, he said, showed relativities of between 55% and 65% of the freehold value, and supported his chosen relativity of 61%.

18. Cross-examined by Mr Greenish, Mr Buchanan said that he considered tribunal decisions, settlements and the Graph of Graphs to be equally valid sources, but he understood that the Savills 2003 Graph of Enfranchiseable Leases to be opinion rather than market based. He accepted that the John D Wood 2004 Ex Ground Rent Graph was unreliable as evidence in this case.

Decision

17. Understandably, given the apparent lack of market evidence, neither valuer has been able to provide much support for his chosen relativity. On balance, we prefer and are content with the relativity of 55% proposed by Mr Cullum, giving a value of £436,068, because we accept, firstly, that the effect of the Act is bound to be very pronounced on a lease of this length, even in Central London where demand is, we consider, likely to push up values, quite apart from the effect of the Act. We base this relativity primarily on the Savills 1992 Graph, which at least is untainted by the effect of the Act, tempered by our view, which accords with that of Mr Cullum,

that the market has, for reasons unconnected with the effect of the Act, pushed up short lease values in recent years.

18. We have not, in this instance, had regard to tribunal decisions in arriving at our chosen relativity, because the decision on which Mr Buchanan relies relates to property of a different quality in an inferior location, and because in the present case there was no discussion of the evidence for the relativity upon which the decision was based. But we reject the proposition that such decisions are inadmissible as a matter of law in all cases. Neither the leasehold valuation tribunal nor the Lands Tribunal is a court of record, and their decisions are, of course, not binding; but that does not mean that they are inadmissible. Their admissibility depends on their relevance. If a determination relates to a similar property, for example, it will be relevant and therefore admissible, but its weight will depend on a number of factors, and, in particular, the quality of the evidence upon which it was itself based and the degree to which the reasoning in the decision is explained and is cogent. Such decisions, even though founded on good evidence and properly explained, will tend to have less weight than market evidence and settlement evidence, although it is in our view questionable whether their value as evidence is, in some cases, less than that of graphs and indices, because decisions do at least have, or should have, the merit of a clear explanation of how the decision was reached. It has been suggested by the Lands Tribunal, in cases which include *Wellcome Trust Ltd v Romines* [1999] 2 EGLR 229 at 234 and *Blendcrown Limited v The Church Commissioners for England* LRA/50/2002 at paragraph 53, based partly on a decision of Hoffmann J as he then was in *Land Securities plc v Westminster City Council* [1992] 44 EG 153 at 155, that decisions of other tribunals are inadmissible, and this proposition has been much debated recently. Speaking for ourselves, and with great respect, we reject it. We are aware that in the Lands Tribunal the decisions of leasehold valuation tribunals are on occasions admitted: often they are the only material put before it (see, for example, *32 Arterberry Road* (LRA/1/2002)). Indeed, in many cases before the leasehold valuation tribunal, particularly where the parties are not professionally represented,

other tribunal decisions are the only material accessible to the parties and thus put before the tribunal; so any conclusion that such decisions were inadmissible might cause considerable injustice in some cases, as well as a most regrettable inconsistency in decision-making. As an expert tribunal, we are entitled to rely on our own knowledge and experience, but if last month we set it out in a decision in a similar case, it would seem bizarre to be unable to refer to it later; and it would deprive a party of the ability to see in black and white what the argument against him was. Carried to its logical conclusion, the proposition would mean that the decisions of neither the Lands Tribunal nor of leasehold valuation tribunals could be cited, which would cause chaos.

iv. Yield

The landlord's case

19. Mr Cullum proposed 6% for deferment and 6.5% for capitalisation. He referred to the ongoing debate relating to deferment yields, in which the conclusion that yields over the past 20 years had not changed was being challenged, and said that, historically, there had been “zones”, each with their own yield profile. Queen’s Gate, he said, had been regarded as on the cusp of the 6% zone, although the only tribunal decisions in the street in the 1990s had been at 7%. He produced a graph (his appendix 11) plotting yields for, for example, equities and gilts, the RPI and consumer prices index, base rate and the Savills PCL Net Yields (Flats), all of which showed, he said, a marked overall downward trend except for the freehold residential reversion rate. He said that, of the lines on the graph other than the freehold residential deferment rate, the most relevant was the Savills PCL Net Yields (Flats). He quoted from the decision of the Lands Tribunal in *Cadogan Holdings Ltd v Pockney* (LRA/27/2003), in relation to what he described as an undistinguished house in Chelsea, and said that the Lands Tribunal had rightly

in that case reasserted the basic valuation principle that any investment must be considered on its individual merits. He therefore considered that each property should be considered individually rather than according to its “zone”. He referred also to the decisions in *Blendcrown* and *Flat 6, 32 Brechin Place* (above) and said that since these cases were decided and the debate opened up, he had become more inclined to the view that a freehold reversion was a long term investment on which investors would wish to see a higher return than that available in the rack rent market. He said also that, since *Pockney*, there had been a fairly widespread acceptance of lower yields and he produced a schedule of such settlements as his appendix 6. He conceded that some valuers whose names appeared on the schedule were now contending for higher yields. Taking all the evidence into account and relating it to the subject flat, he said that, while many flats in Queen’s Gate might be 6.25% investments, he considered the quality of this investment to justify 6%. He proposed 6.5% for capitalisation.

The tenant’s case

20. Mr Buchanan proposed a rate of 6.75% for deferment and 7.75% for capitalisation. He referred to the decision of the Lands Tribunal in *Flat 6, 32 Brechin Place* (above), where a deferment yield of 6.25% was applied, and said that he would have proposed that rate in the present case but for the later valuation date, and the decision of a leasehold valuation tribunal in respect of a collective enfranchisement claim at *32 Rosary Gardens SW7* (LON/ENF/1014/04) where a rate of 6.75 % was applied in the case of a 26.5 year lease because of an increase in base rate between October 2003 and May 2004.

21. In his oral evidence, Mr Buchanan said that by far the most important determinant of yield was location, followed by lease length (the shorter the unexpired term, the lower the yield), and value

Decision

22. We have adopted a deferment yield of 6.25%, which is the yield which Mr Buchanan would have used had it not been for a short-term fluctuation in base rate which we regard as irrelevant, since we agree that investors in property will generally take a long term view. It also accords with Mr Cullum's opinion that 6.25% would apply to many flats in Queen's Gate but that the subject flat was exceptional, which was not a view we shared. We accept that some of the recent settlement evidence supports lower yields than those which have been applied consistently in the past, and we adopt the approach which both valuers favoured of looking at the subject flat on its merits as an investment rather than applying the same yield to almost all properties in a particular area of London. We have taken into account the drawbacks of the particular location of the flat as well as its advantages, as well as the shortness of the lease. In all the circumstances we have come to the conclusion that 6.25% correctly reflects the advantages and disadvantages of this investment. Both valuers have applied a different yield to capitalise the ground rent, and we follow their approach and adopt a rate of 6.75% for that purpose.

Determination

23. Accordingly, we determine that the premium to be paid for the new lease is £249,500, in accordance to our valuation which is attached to this decision.

CHAIRMAN.....
DATE.....
5 August 2005

LEASEHOLD VALUATION TRIBUNAL

LON/NL/3002/04

FLAT 1 27 QUEENS GATE LONDON SW7

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL

Valuation date 29 Apr 2004

A	Present Value of Freehold Interest			
A1	Ground Rent	£150		
	YP 7.66yrs @ 6.75%	<u>5.828</u>	£874	
A2	Review to Ground Rent	£200		
	YP 20yrs @ 6.75%	10.803		
	PV £1 in 7.66yrs	0.6066	<u>6.5531</u>	£1,311
A3	Reversion to freehold value	£792,850		
	PV £1 in 27.66yrs @ 6.25%	<u>0.187</u>	<u>£148,263</u>	
A4	Total present value of freehold interest		£150,448	
B	Value of freehold interest after grant of extended lease			
B1	Reversion to freehold value	£792,850		
	PV £1 in 117.66yrs @ 6.75%	<u>0.0004597</u>	<u>£364</u>	
C	Diminution in value of freeholders interest			£150,084
D	Marriage Value			
D1	Value of extended lease	£785,000		
	Freehold value after extended lease	<u>£364</u>		
	Total		£785,364	
D2	Existing lease value @ 55%	£436,068		
	Existing freehold value	<u>£150,448</u>		
	Total		<u>£586,516</u>	
D3	Total Marriage Value		£198,848	
D4	Landlord's 50% share			<u>£99,424</u>
E	Premium payable			£249,508
		say		£249,500