

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993: SECTION 48

PREMISES: Ground Floor Flat, 23 Upper Wimpole Street, London, W1

APPLICANT Lorna Anne Kirtland
Represented By Mr S Murch of Counsel
Mr I Asbury BSc (Hons) MRICS
Mr W Baars
(Messrs Rokeby Johnson Baars, LLP, Solicitors)

RESPONDENT Howard de Walden Estates Ltd
Represented By Ms Fairbairn of Counsel
Mr J Godliman
(L/L Howard De Walden Estates Ltd)
Mr J Souter
(Messrs Speechly Bircham, Solicitors)
Mr J Clark BSc MRICS
(Messrs Gerald Eve)
Mr K Ryan FRICS
(Messrs Carter Jonas)

Section 42 notice dated 28th November 2002 - £178,992 offered +£1008.
Section 45 notice dates 3rd February 2003 -£312,800 requested +£1000.
Valuation Date 8th November 2002.

Existing Lease

Date of lease 3rd August 1972.
Term 51 years less 3 days from 6th April 1970.
Unexpired term at valuation date 18.35 years.
Rent £100pa.

Application to Tribunal

By Boodle Hatfield - Solicitors dated 12th May 2003

Heard

21st and 22nd October 2003

Inspection

20th November 2003

TRIBUNAL Mrs B M Hindley LLB
MEMBERS: Mr R A Potter FRICS
Mr T N Johnson FRICS

Description

A ground floor flat in a converted, terraced, Georgian house, situated within the Harley Street conservation area. The flat comprises, a reception room, bedroom, kitchen and bathroom/wc, a shower room/wc, utility room and further bedroom, the rooms being accessed from parallel hallways.

1. Attached at Annex 1 and Annex 2 are the valuations of Mr Asbury and Mr Clark respectively as revised during the course of the hearing.
2. At the commencement of the hearing the positions of the parties were as set out below;

| Issue | Landlord | Tenant |
|---|----------|----------|
| Extended Lease Value | £627,500 | £500,000 |
| Percentage uplift to be applied to extended lease value to arrive at freehold value | 2% | 1% |
| Existing Lease Value | £278,250 | £257,575 |
| Premium | £284,050 | £208,000 |
| Reversion | 6% | 6% |
| Capitalisation of the Ground Rent | 8% | 8% |

3. Under Schedule 13 of the Act it is the unimproved values which are to be assessed. A list of work undertaken by the Tenant was provided by Mr Asbury and is attached at Annex 3. Considerable time was spent at the hearing in discussion as to whether any of the work constituted improvements. Mr Ryan claimed that they were either works of renewal or insignificant in value.
4. The Tribunal, in the context of a lack of detailed and necessarily accurate information concerning the differences in the appointments of the offered comparables and the subject flat, chose to attribute no specific positive value to the alleged improvements but throughout had regard to the lack of central heating in the subject flat.
5. Both valuers adopted the Savills PLC Indices. However, Mr Asbury utilised the Indices for PCL North whilst Mr Ryan reflected PCL West as well. The Tribunal preferred Mr Ryan's approach as better encompassing the location of the subject property.
6. Mr Asbury calculated his existing lease value of £257,575 by reference to relativities ascribed in previous Leasehold Valuation Tribunals determinations between existing and extended lease values.
7. Mr Ryan relied on the sale of the lease of approximately 17 years of flat 5, 5 Bryanston Square, W1 at £312,5000 in February 2002. Making adjustments for enfranchisement rights, differing lease lengths and dates of sale, as well as the value of views over a garden square, he ascribed a value of £278,000 to the subject property.
8. The Tribunal noted that whilst, it appeared, that Mr Asbury had notice of this transaction he chose to disregard it on the basis that it was not comparable.
9. The Tribunals preferred approach is to consider market evidence. Having inspected Flat 5, 5 Bryanston Square externally, and having carefully examined the particulars

and floor plan provided, they considered that there were sufficient similarities between it and the subject property for it to be possible to make the subjective adjustments to reflect specific flat-type and location differences.

10. Noting that Mr Ryan's adjustment for enfranchisement rights was not challenged at the hearing the Tribunal adopted 15% producing an adjusted figure of £271,739. They also accepted his unchallenged adjustment to reflect the difference in lease term, thereby achieving £287,219. However, like Mr Asbury the Tribunal considered a 5% reduction inadequate to reflect a garden square position. They chose to adopt a 10% reduction. Accordingly, the Tribunal determined the existing lease value at £270,199, say £270,000.
11. Both parties achieved their extended lease values by calculating rates per square foot from the adjusted sale prices of a number of allegedly comparable properties. Attached at Annex 4 and Annex 5 are the schedules produced by Mr Asbury and Mr Ryan respectively.
12. The Tribunal made an external inspection of all the listed comparables. Having done so, and having carefully examined all the particulars and layout plans provided, they considered that three of the properties offered the most assistance - the lower ground floor flat at 3 Upper Wimpole Street (mentioned only by Mr Ryan), the first floor flat at 10 Devonshire Place and the third floor flat at 39 Devonshire Place (both mentioned by both valuers). These were closest in location to the subject property and conversions. All the other properties were either purpose built or located in less residential areas.
13. The Tribunal was conscious that at the hearing, considerable time had been devoted to debating the merits and demerits of the layout of the subject property. Even more time had been spent in challenging the accuracy or otherwise of the Agent's particulars describing the first floor flat at 10 Devonshire Place. In the Tribunal's opinion the layout of all the converted flats could be criticised and for this reason they chose to make no adjustment under this heading.
14. The lower ground floor flat at 3 Upper Wimpole Street was substantially smaller than the subject. It was also apparent to the Tribunal from their inspection and examination of the layout plan that this did not enjoy good natural light. The Tribunal accepted all Mr Ryan's adjustments apart from that for size where they substituted 10%. They also considered that a counter balancing adjustment of 10% was required to reflect the lower ground floor situation and the fact that the lift shaft apparently intruded into the middle of the flat. This produced an adjusted rate per square foot of £445.
15. Mr Asbury and Mr Ryan adjusted the sale prices of the two Devonshire Place flats differently. The Tribunal noted that Mr Ryan, who had inspected the interior of the first floor flat at 10 Devonshire Place made no adjustment for its condition, whereas Mr Asbury, relying solely on an Agent's particulars, applied a reduction of £75 per square foot.
16. Questioned by the Tribunal Mr Ryan acknowledged that 10 Devonshire Place had central heating and that the market preferred first floor to ground floor flats. These

differences, the Tribunal was persuaded, merited a £50 per square foot adjustment. Further, the Tribunal did not accept Mr Ryan's adjustment of 10% for size. They preferred 5%. However, they considered that there was a balancing adjustment of -5% to be made to reflect the Tribunal's view that Devonshire Place was a wider road than the subject and that the Devonshire Place properties benefitted from more imposing entrances. This produced an adjusted rate per square foot of £450 say £525,000.

17. On the basis of only Agent's particulars both valuers made an adjustment for condition at Flat 6, 39 Devonshire Place. Mr Asbury again adopting £75 per square foot and Mr Ryan £50 per square foot. The Tribunal preferred to adopt Mr Asbury's figure which they considered also reflected the third floor situation with the benefit of a lift. The Tribunal also made the balancing adjustment to Mr Ryan's figures shown at paragraph 16 above. This resulted in a rate per square foot of £512.
18. Having calculated these rates per square foot and their average at £469 the Tribunal achieved an extended lease value of £525,280 (1120sqft x 469) say £525,000.
19. The Tribunal accepts that 2% is the appropriate uplift to be applied to the extended lease value to arrive at the freehold value in the light of the volume of evidence produced by Mr Clark at the hearing.
20. Accordingly, taking all other matters into account and adopting the agreed value of the interest of the intermediate leasehold at £736, the Tribunal produced the following valuation: -

VALUATION OF THE L. V. T

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 SCHEDULE 13

Calculation of Premium and Appointment between Freeholder and Intermediate Leaseholder

Ground Floor Flat, 23 Upper Wimpole Street, W1
as at 28 November 2002 (the agreed valuation date)

A) Diminution in Value of Intermediate Leaseholder's Interest

£

Agreed between parties

736

B) Diminution of Freeholder's Existing Interest on Reversion

a) Value of Freeholder's Existing Interest on Reversion (Assuming no headlease rent reduction)

Reversion to value of freehold in possession
Value lease with 108.35 years unexpired

525,000

| | | |
|-------------------------|--------------|--------------|
| Say Freehold equivalent | Uplift by 2% | 535,500 |
| Defer 18.35 years @ | 6% (agreed) | <u>0.348</u> |

186,354

b) Value of Freeholder's Proposed Interest on Reversion

| | |
|--|----------------|
| Reversion to value of freehold in possession | 535,000 |
| Defer 108.35 years @ 6% (agreed) | <u>0.00181</u> |

969

c) Diminution in Value of Freeholder's Interest

185,385

C) Diminution in Value of Both Landlord's Interests (carry forward)

186,121
say 186,000

C) Diminution in Value of Both Landlord's Interests (brought forward) 186,000

D) Calculation of Marriage Value

a) Value of Proposed Interest

| | | |
|----------------------------|----------------|----------------|
| Freeholder's | 969 | |
| Intermediate Leaseholder's | nil | |
| Tenant's | <u>525,500</u> | |
| | | <u>526,469</u> |

b) Value of Existing Interests

| | | |
|----------------------------|----------------|----------------|
| Freeholder's | 186,000 | |
| Intermediate Leaseholder's | 736 | |
| Tenant's | <u>270,000</u> | |
| | | <u>456,736</u> |

c) Marriage Value 69,733

d) Attributed to Landlord 50.00% 34,866

E) Enfranchisement Price 220,866
221,000

F) Landlord's Other Loss 0

G) Premium Payable 221,000

H) Apportionment of Marriage Value and Premium between Freeholder and Intermediate Leaseholder

a) To Intermediate Leaseholder

| | | |
|---------------------------------|---|------------|
| Diminution in value of interest | 736 | |
| Share of Marriage Value | $34,866 \times \frac{736}{186,000} = 138$ | |
| Other Losses | <u>0</u> | |
| | 874 | |
| | say | <u>875</u> |

b) To Freeholder

| | | |
|---------------------------------|---|--------------------|
| Diminution in value of interest | 185,385 | |
| Share of Marriage Value | $34,866 \times \frac{185,385}{186,000} = 34,7500$ | |
| Other Losses | <u>0</u> | |
| | 220,135 | |
| | say | <u>220,125</u> |
| | | say <u>221,000</u> |

21. The Tribunal, therefore, determined the premium payable under Section 48 and Schedule 13 of the Act by the Tenant to the Freeholder in respect of the ground floor flat at 23 Upper Wimpole Street, London, W1 to be £221,000 (two hundred and twenty one thousand pounds).

Chairman: B. D. H. Kelly

Date: 15/12/03

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)
Valuation of Ian Asbury BSc (Hons) MRICS for the tenant
Enfranchisement Price payable by tenant in accordance with
Section 32 and Schedule 6

23 Upper Wimpole Street, London, W1

Basic Facts & Assumptions

| | | | |
|---------------------------------|----------------------------------|-----------------------|--------------------|
| Valuation date: | 28-Nov-2002 | | |
| Expiry date: | 03-Apr-2021 | | |
| Existing lease: | 18.35 years unexpired | | |
| Ground Rent: | £100 per annum | | |
| Rent Review date: | 25-Mar-2017 | | |
| Reviews: | 0.0 yearly | | |
| Years to 1st Review: | 18.35 | | |
| Capitalisation rate: | 8 % | (Dual rate & Tax Adj) | |
| Deferment rate: | 6 | | |
| Landlord's % of marriage value: | 50 % | | |
| Leaseholder's improvements: | Valuation is on unimproved basis | | |
| Unimproved Market value of:- | | | |
| Existing lease: | say | £257,575 | 0.51 % of Freehold |
| | | £500,000 | 99 % of Freehold |
| Freehold in possession: | say | £505,050 | 100 % of Freehold |

£208,000

23 Upper Wimpole Street, London, W1

Value of Landlord's current interest

Diminution in value of landlords' interest in accordance with paras 2(a) & 3:

Term of existing lease

| | | |
|---|----------|----------|
| Loss of rental income for head lessee | £100 | |
| YP 18.35 yrs @ 8% 2.5%SF 22%Tax | 7.37 | £737 |
| plus | | |
| Freeholder's loss of reversion to capital value | | |
| disregarding Leaseholder's improvements, say | £505,050 | |
| PV £1 in 18.35 yrs @ 6 % | 0.3433 | £173,369 |

Less

Value of Freeholder's Interest Following Sale of New Lease

| | | |
|---|----------|------|
| Freeholder's loss of reversion to capital value | | |
| disregarding Leaseholder's improvements, say | £505,050 | |
| PV £1 in 108.4 yrs @ 6 % | 0.0018 | £912 |

Total Diminution in Value

£173,193

Landlord's share of Marriage Value

Landlord's share of marriage value in accordance with paras 2(b) & 4:

Proposed interests

| | | |
|--|----------|----------|
| 1. Value of Freehold in possession | | |
| disregarding Leaseholder's improvements, say | £500,000 | |
| 2. Value of landlord's interest in house | | |
| after enfranchisement | £912 | £500,912 |
| less | | |

Existing interests

| | | |
|--|----------|----------|
| 1. Value of tenant's existing lease | | |
| disregarding Leaseholder's improvements, say | £257,575 | |
| 2. Value of landlord's existing interest | £173,193 | £430,768 |

Difference (marriage value) = £70,143

Landlord's share, @ 50 % = **£35,072**

Compensation payable to Landlord

Compensation payable to landlord under paras 2 (c) & 5:

£0

Valuation Summary

| | |
|---|-----------------|
| Diminution in value of landlord's interest in accordance with paras 2(a) & 3: | £173,193 |
| Landlord's share of marriage value in accordance with paras 2(b) & 4: | £35,072 |
| Compensation payable to landlord under paras 2 (c) & 5: | £0 |
| Enfranchisement price = | £208,265 |
| but say | £208,000 |

Howard de Walden Estates

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 SCHEDULE 13

Calculation of Premium and Apportionment between Freeholder and Intermediate Leaseholder

Ground Floor Flat, 23 Upper Wimpole Street, W1

as at 28 November 2002

Valuation by Julian Mansfield Clark BSc MRICS

| | | | | | | | | | |
|--|----------------|---------|-------------|---------|---------|---------|-------|-----|---------|
| | | | | | £ | £ | £ | £ | £ |
| A) Diminution in Value of Intermediate Leaseholder's Interest | | | | | | | | | |
| a) <u>Value of Intermediate Leaseholder's Existing Interest</u> | | | | | | | | | |
| (Assuming no headlease rent reduction) | | | | | | | | | |
| Headlease expires 6 April 2021 | | | | | | | | | |
| Underlease expires 3 April 2021 | | | | | | | | | |
| Annual rent payable | | | | | | 100 | | | |
| Years Purchase | 18.35 | years @ | 8.00% | 2.5% | 7.357 | | | | |
| | | Tax | 22.0% | | | | 736 | | |
| Value of Reversion | | | | | | | | Nil | |
| | | | | | | | | | 736 |
| b) Less | | | | | | | | | |
| <u>Value of Intermediate Leaseholder's Proposed Interest</u> | | | | | | | | | |
| | | | | | | | | Nil | |
| c) Diminution in Value of Intermediate Leaseholder's Interest (agreed) | | | | | | | | | 736 |
| B) Diminution in Value of Freeholder's Interest | | | | | | | | | |
| a) <u>Value of Freeholder's Existing Interest on Reversion</u> | | | | | | | | | |
| (Assuming no headlease rent reduction) | | | | | | | | | |
| Reversion to value of freehold in possession | | | | | | | | | |
| Value lease with 108.35 years unexpired | | | | | | | | | |
| @ peppercorn rent in amount of | | | | | 620,000 | | | | |
| (from the evidence of K Ryan Esq) | | | | | | | | | |
| Say freehold equivalent @ | | | Uplift by: | 2.0% | | | | | |
| | | | | 632,400 | say | 632,500 | | | |
| Defer | 18.35 years @ | | 6% (agreed) | | | 0.3430 | | | 216,948 |
| Less | | | | | | | | | |
| b) <u>Value of Freeholder's Proposed Interest on reversion</u> | | | | | | | | | |
| Reversion to value of freehold in possession | | | | | | 632,500 | | | |
| Defer | 108.35 years @ | | 6% (agreed) | | | 0.00181 | | | |
| | | | | | | | 1,145 | | |
| c) <u>Diminution in value of Freeholder's Interest</u> | | | | | | | | | 215,803 |
| C) Diminution in Value of both Landlords' Interests (carry forward) | | | | | | | | | 216,538 |

| | | | | | | | |
|----|---|------------|-------|---------|-----|---------|---------|
| | | | £ | £ | £ | £ | £ |
| C) | Diminution in Value of both Landlords' Interests (brought forward) | | | | | | 216,538 |
| D) | Calculation of Marriage Value | | | | | | |
| a) | Value of Proposed Interests | | | | | | |
| | Freeholder's | | | 1,145 | | | |
| | Intermediate Leaseholder's | | | nil | | | |
| | Tenant's | | | 620,000 | | | |
| | | | | | | 621,145 | |
| b) | Value of Existing Interests | | | | | | |
| | Freeholder's | | | 216,948 | | | |
| | Intermediate Leaseholder's | | | 736 | | | |
| | Tenant's | % of FHVP: | 44.0% | 278,000 | | | |
| | (from the evidence of K Ryan Esq) | | | | | 495,683 | |
| c) | Marriage Value | | | | | | 125,462 |
| d) | Attributed to Landlord @ | 50.00% | | | | | 62,731 |
| E) | Enfranchisement Price | | | | | | 279,269 |
| | | | | | Say | | 279,300 |
| F) | Landlord's Other Loss | | | | | | 0 |
| G) | Premium Payable | | | | | | 279,300 |
| H) | Apportionment of Marriage Value and Premium between Freeholder and Intermediate Leaseholder | | | | | | |
| a) | To Intermediate Leaseholder | | | | | | |
| | Diminution in value of interest | | | | | 736 | |
| | Share of marriage value | 62,731 | X | 736 | = | 213 | |
| | | | | 216,538 | | | |
| | Other losses | | | | | Nil | |
| | | | | | | 949 | |
| | | | | | say | | 950 |
| b) | To Freeholder | | | | | | |
| | Diminution in value of interest | | | | | 215,803 | |
| | Share of marriage value | 62,731 | X | 215,803 | = | 62,518 | |
| | | | | 216,538 | | | |
| | Other losses | | | | | Nil | |
| | | | | | | 278,320 | |
| | | | | | say | | 278,350 |
| | | | | | | | 279,300 |

Gerald Eve
Chartered Surveyors
IM/JMC/MH8261/20

ANNEX 3

During the period of her tenure we understand Mrs Kirtland to have made the following improvements: -

- a) The closure of an opening between what was originally a rear sitting or dining room to enable use of that rear room as a bedroom more quietly situated to the rear of the flat and to, in effect, turn the flat from a one bedroom, two reception room flat to a two bedroom, with one sitting room;
- b) The refitting of the bath with good quality fitting, to include a tiles shower cubicle, bath , vanity unit and WC;
- c) The refitting of the kitchen with a more extensive range of modern units to include integrally fitted appliances;
- d) The removal of a cupboard between the utility room and former cloakroom to make space for the fitting of a shower cubicle in the corner of the cloakroom.
- e) The construction of bespoke fitted wardrobes to the principal rear bedroom and the construction of a further range of wardrobes to the second rear bedroom;
- f) The insertion of fitted book display shelves and cupboard to an alcove in the sitting room;
- g) The provision of an electric night storage heating system.

