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Ref LON/NL/654/98

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicant: Mr Donald Rushton

Respondent: Howard de Walden Estates Ltd

RE: Flat 3, 23/25 Weymouth Street, London, W1

Application to Tribunal by Farrer & Co., Solicitors, dated 17 December 1998

Heard: 11 January 2000

Inspection: 12 January 2000

Appearances:

Mr T Bannister of Counsel

Mr P H Marr-Johnson ARICS, Marr-Johnson & Stevens

for the Applicant

Miss K Holland of Counsel

Mr J Hudson, Messrs Speechly Bircham, Solicitors

Mr J M Clark, BSc ARICS, Gerald Eve

Mr K Ryan, ARICS, FSVA, Egerton London Residential Ltd

Mr J Goldiman (Management Company)

for the Respondent

Members of the Leasehold Valuation Tribunal:

Dr J T Farrand, QC, LLD, FCI Arb (Chairman)

Mrs J E Davies FRICS

Mrs L Walter, MA (Hons)

Valuation date: 11 January 2000

Leasehold Valuation Tribunal's determination: £619,000

Date of Tribunal's decision: 14 FEB 2000

1. The only matter effectively referred to the Tribunal was determination of the premium payable by the Applicant for the acquisition of a new lease of Flat 3, 23/25 Weymouth Street, London W 1, in accordance with the Leasehold Reform, Housing and Urban Development Act 1993, Part I Chapter II (particularly Schedule 13).
2. In the Notice of Claim (dated 3 June 1998), as in the Application to the Tribunal (dated 17 December 1998), the Applicant had proposed paying a premium of £100,000. In contrast, by an amended Counter-Notice (dated 11 August 1998), admitting the Claim, the Respondent had proposed a premium of £430,000.
3. However, by a written submission (dated 11 January 2000), the Applicant's Valuer had "respectively" (*sic*) asked the Tribunal to determine a premium of £561,826. In contrast again, by written submissions (dated 4 January 2000), the Respondent's Valuer sought a premium of £664,400.
4. At the Hearing on 11 January 2000, an agreed Statement of Facts was accepted (as slightly amended). Essentially the Respondent is the freeholder and landlord whilst the Applicant is the tenant of Flat 3 holding by virtue of an assignment (partial) of a lease for a term of 75 years from 11 October 1925, ie. with only a fag-end of 9 months to expire but with entitlement, in effect, to a 90 year extension. Flat 3 occupies the whole 2nd floor of a 1920's purpose-built mansion block and comprises some 9 rooms with a floor area of 1,882 square feet. It was agreed that the flat is in good decorative order and certain 'alterations' by the

Applicant were indicated (but not claimed as significant 'improvements'). The location was described so as to be accepted as undoubtedly 'desirable'.

5 Certain Valuation Issues were stated (and accepted by the Tribunal) as agreed, including the following:

- (i) Valuation as at date of Hearing (11 January 2000) on the basis that the precise terms of the new lease had not been agreed.
- (ii) Ground rent for remaining 9 months of term (at £100 pa) to be capitalised at 5% producing a value of £72.
- (iii) Values of existing and proposed freehold reversions to be deferred at 6%.
- (iv) Marriage value to be divided equally.

6 The Valuation Issues remaining in dispute and, therefore, needing determination by the Tribunal were the following:

(a) Value of extended lease (disregarding any improvements): Applicant contended £578,400; Respondent contended £675,000.

(b) Percentage uplift of (a) for freehold value: Applicant contended 2%; Respondent contended 3%.

(c) Value of existing lease (ie 9 months unexpired): Applicant contended £20,500; Respondent contended £8,000.

- 7 As to (a) – value of lease extended for 90 years (ie to expire on 11 October 2000) – the parties’ Valuers relied upon the various comparables referred to in their written submissions whilst conceding that none constituted such an exact precedent that valuation adjustments were unnecessary. The Tribunal inspected all these comparables externally (on 12 January 2000) and also took careful account of the detailed descriptions provided. In the Tribunal’s view, the flats in Portland Place enjoyed a more prestigious location but suffered from a somewhat less convenient location whereas the flats in Brickenhall and Montagu Mansions appeared much more convenient for local shops and other amenities but were undoubtedly significantly less prestigious in location than Flat 3. In the result, the Tribunal considered that the flats in Wimpole Street were the closest as useful comparables although individually they were poorer in layout than Flat 3 Weymouth Street. The Tribunal therefore adjusted the figures for those flats appropriately so as to arrive at its valuation for Flat 3 of £630,000.
- 8 As to (b) – percentage uplift for freehold – the Tribunal was especially influenced by the decision of HH Judge Marder QC in *Cadogan Estates Ltd. v Shahgholi* 1998 (unreported). On the present issue, Judge Marder concluded by saying (transcript p.21):

“The next issue is the value of the freehold reversion from the proposed lease. The actual figure is not significant in financial terms as it is reduced by deferment, but I agree with Mr Strathon’s view that, since the value of the landlord’s interest is a fundamental element in the calculation, *it is necessary to establish the correct principle* [emphasis added]. I accept Mr Strathon’s evidence as to the differences between the leasehold and the freehold interest, and I do not accept that that these differences are adequately reflected by the purely nominal 1% uplift adopted by the Leasehold Valuation Tribunal....In my view 3% is a fair and reasonable figure.”

The essence of Mr Strathon's evidence had been summarised (transcript p.10):

"He then considered the adjustment to value the freehold in possession. This required a number of factors to be borne in mind. First, a lessee could not obtain absolute title, there was always a reversion. Second, the lessee always had obligations, including the payment of rent, where appropriate, repair and decorating, possible restrictions on user and on alterations, the need for the landlord's consent to vary the terms, and the threat of forfeiture for breach. The landlord will generally retain a right of access to inspect. By contrast a freeholder with vacant possession had full control. Thus a leasehold interest will be less than a freehold with vacant possession."

9 In the Tribunal's opinion, Judge Marder should be taken as indicating a principle of general application whereby the differential in value (or uplift) between leasehold and freehold should, as a rule, be taken to be 3% irrespective of market evidence. The contrary was submitted on behalf of the Applicant but not accepted and, in any event, the Tribunal was not persuaded that the 'market evidence' adduced actually supported the contention that 2% rather than 3% would be a 'fair and reasonable' figure in this case.

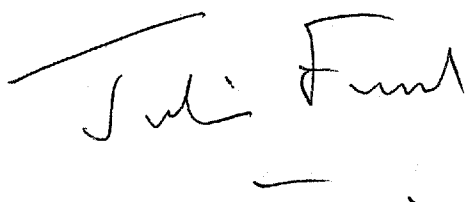
10 As to (c) – value of existing lease – the Tribunal took the view that a notional purchaser would have regard to the rent recoverable under the current sub-tenancy (to the American Embassy) which was due to end on 1 May 2000, a yearly rental of £30,888 having been paid in advance, but would also assume renewal. On this basis the rent receivable for the remaining 9 months would approximate to £24,000. Against this would be set service charges of some £3,000 plus management and VAT totalling say £4,230 and legal costs of

say £1,000 so that the net profit could be calculated at £15,770. In the Tribunal's judgment, a notional purchaser of this short investment lease would be prepared to pay no more than £10,000.

11 Having determined the three Valuation Issues remaining in dispute and accepted the agreed Valuation Issues, the Tribunal was readily able to reach agreement as to the Valuation attached (Annex A). Accordingly, the Tribunal has determined that the premium payable by the Applicant for the acquisition of a new lease of Flat 3, 23/25 Weymouth Street, London W1, is **£619,000**.

CHAIRMAN.....

DATE..... 14 FEB 2000

A handwritten signature in black ink, appearing to read "Julie Funn", is written over the signature line. The signature is cursive and somewhat stylized.

ANNEX A

FLAT 3, 23/25 WEYMOUTH STREET, LONDON, W1

VALUATION DATE 11 JANUARY 2000

Diminution of Landlord's Present Interest

Ground Rent Receivable	£100		
YP for .75 years @ 5%	<u>.719</u>	£72	
Reversion to Freehold			
Value of Extended lease £630,000			
Uplift to Freehold value			
in possession @ 3% 648,900	say £649,000		
PV £1 in .75 years @ 6%	<u>.9572</u>	<u>£621,223</u>	<u>£621,295</u>
<u>Less</u>			
Landlord's interest under new lease	£649,000		
PV £1 in 90.75 years @ 6%	<u>.0051</u>		<u>£3310</u>
Diminution			<u>£617,985</u>
<u>Marriage Value</u>			
Value of Landlord's reversionary Interest	£3,310		
Value of Tenant's interest under new lease	<u>£630,000</u>	<u>£633,310</u>	
<u>Less</u>			
Value of Landlord's interest under new lease	£621,295		
Tenants interest under existing lease	<u>10,000</u>	<u>£631,295</u>	
Marriage Value		2,015	
Landlords share @ 50%			<u>£1,007</u>
Premium payable say	<u>£619,000</u>		<u>£618,992</u>