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LON/LVT/1148/99

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Masfield Estates Ltd

Respondent: Mr & Mrs R Gordon

RE: 8 Bark Place, London W2

Date of Tenant's Notice: 29 June 1996

Application to the Tribunal dated: 18 May 1999

Heard: Tuesday 18 January 2000

Appearances: Mr & Mrs R Gordon (tenants) appeared in person
Mr A Ford ARICS
Messrs Cluttons
for the Landlord

Members of the Leasehold Valuation Tribunal

Mrs H Kelly LLB (Chairman)
Mr D L Edge FRICS
Mr P S Roberts Dip Arch RIBA

Date of the Tribunal's decision 23 MAR 2000

A. Preliminary Matters

1. This was an application to the Tribunal dated 18 May 1999 under section 21 of the Leasehold Reform Act 1967 and made by Masefield Estates Ltd (the landlord) for the determination of the price to be paid for the freehold interest in the subject property. This matter falls to be determined in accordance with section 9(1A) of the Leasehold Reform Act 1967, as amended by Section 66 of the Leasehold Reform, Housing and Urban Development Act 1993 by the insertion of Section 9(1C) of the Act. It was accepted by the parties that this was to be the basis of the valuation.
2. Section 9(1A) of the Leasehold Reform Act 1967 provides that the price payable “shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions” and the assumptions are then set out.
3. Section 9(1C) provides by subparagraph (a) that:

“if in determining the price so payable there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interest, the share of the marriage value to which the tenant is to be regarded as being entitled shall not exceed one-half of it,

”
4. The tenants, Mr and Mrs R Gordon, by a notice dated 29 June 1996 sought to claim the freehold of the subject property, their right to make that claim being informally admitted by the landlord by a letter dated 10 July 1996. After a period of unsuccessful negotiations, terms were quoted to the tenant on 13 May 1998 for the freehold sale.

The subject property was the house, garden and integral garage at 8, Bark Place,
London W2.

5. The tenants acquired the leasehold interest of the property on 2 August 1991. The lease was originally granted by the landlord to Ralfisa Properties Ltd for a term of 94 years from 25 December 1958 at a ground rent of £75 per annum fixed throughout the term.

The lease provided that the tenant should be responsible for maintaining, repairing and insuring the property.

The date of valuation is the date of claim ie 29 June 1996, at which date the unexpired term was 56.5 years.

6. The parties agreed a rate of capitalisation and a deferment rate of 7% and that the marriage value should be split on a 50/50 basis.

B. Inspection

1. The subject house was part of a modern terrace built in the late 1950's in a relatively quiet street, conveniently placed for the shops and transport at Queensway and very close to Kensington Park. There were terraces of period houses on the opposite side of the street.

The property had brick elevations and sash windows under a tiled roof. It was arranged on three floors with an integral garage. There were eight steps up to the main entrance and eight steps down to the lower ground floor. The accommodation on the lower ground floor had its own front door to the street. Access to the garage was down a steep slope. There was a rear patio garden which was mainly paved.

The external appearance was plain but not unattractive. It was in satisfactory external condition except for some spalled concrete to the entrance porch.

2. Internally, the accommodation consisted of well-proportioned and spacious living rooms, kitchen, bathroom, cloakroom and shower room/wc. There was good natural light throughout. The fittings and the heating and lighting systems were mainly the original ones.

The accommodation was as follows:

Ground floor Entrance hall, cloak room, living room, kitchen

First floor 3 bedrooms (2 doubles and 1 single), bathroom/wc

Lower Ground floor Living room, utility room with shower/wc, single garage

C. Inspection of other properties drawn to the Tribunal's attention

1. No 12 Bark Place was an almost identical property in the same terrace, except for a rear dormer window and roof windows to the roof space. At the time of inspection, the house was being refurbished throughout, the substantial dormer window being a recent extension. This was the most comparable property.
2. No 5 Bark Place which was of similar style but on two floors only was sold in 1994, agreement being reached under section 9(1) of the 1967 Act. It was therefore not helpful to us nor was No 9 Bark Place as it too was decided by agreement under section 9(1) of the Act.
3. No. 4 Lombardy Place, the adjacent street, was similar in style to the subject house, except that it was on two floors only and it had velux windows in the roof. Its date of sale was November 1998, over two years after the date of the present valuation and it was therefore not a helpful comparable.
4. Nos 2 & 4 Caroline Place Mews were original two storey period properties which had been modernised in 1960. These were quite different in appearance, each having a narrow integral garage and lacking a garden. They were overlooked by a seven storey block of flats at the rear. We gained no help from our inspection of those properties as these were quite different from the subject house.

5. No. 7 Caroline Place Mews was a 1960's three storey mid-terrace house with a dormer window in the roof. It had an integral garage and no garden. We gained no assistance from it as it too was different in style from the subject property.

D. Hearing

1. The principal issues between the parties were considered in detail by the Tribunal and are set out in the parties' written representations included in the documents on the file.

The principal issues are as follows:

<u>Issue</u>	<u>Landlord's</u> <u>Contention</u>	<u>Tenant's</u> <u>Contention</u>
Freehold value in possession, excluding improvements	£389,500	£372,000
Value of existing lease of 56.5 years unexpired	£305,750	£345,000
Percentage of freehold value to arrive at Leasehold value	78.5%	92.74% which resulted from the tenant's different valuation approach

2. Valuations and schedules of comparables

(a) The valuation by Mr Ford for the landlord and his schedule of comparable properties are set out at Appendix A.

(b) The valuation by Mr Gordon, the tenant, and his schedule of comparables are set out at Appendix B.

E. The Tribunal's Decision and Reasons

1. With respect to the tenant's right to hold over at the end of the existing term, (ie in 56.5 years' time) the Tribunal was of the opinion that this possibility would have to be projected so far into the future as to envisage a negligible amount. The Tribunal, therefore, made no deduction in that respect.
2. Mr Ford submitted that no improvements had been made to the property and therefore no allowance should be made to the valuation. Mr Gordon on the other hand drew our attention to his installation of Ventrolla high performance perimeter seals to windows throughout (providing draught proofing and sound insulation/noise reduction) and his improvements to the central heating system and system controls. He considered that the enhancement value to the house should be valued at £2,500.

With respect to the tenant's improvements, the Tribunal considered that these consisted of an additional control for the boiler, a patent draught seal to the sash

windows throughout and some additional power points. The Tribunal was of the opinion that, though these improvements were useful, their value in relation to the reversionary unimproved value was negligible.

3. The Tribunal considered appropriate Mr Gordon's use of Saville's Index for Prime Central London Residential Capital Values with respect to PCL Houses in preference to the one relied on by Mr Ford for PCL West which included both houses and flats.
4. With respect to the freehold value of the subject property, there was evidence before the Tribunal contained in a letter from Messrs Winkworth, to Mr Gordon dated 5 July 1996, to the effect that the value of the property at that time would be between £380,000 and £390,000 and an opinion from Messrs Marsh and Parsons at about the same time put the freehold value at a higher level than £390,000.

We also considered the evidence offered by No 12 Bark Place, this being the most comparable property drawn to our attention. This house which was on the same side of the road as the subject was sold freehold for £480,000 in May 1998. Although we were informed that No 12 needed substantial repair and refurbishment, it did in fact appear to have its internal staircase between the ground floor and lower ground floor in situ and the main refurbishment seemed to be the reinstatement of the garage from a past conversion to living space.

We then added £10,000 to allow for the works of reinstatement and applied the appropriate index to the sum of £490,000 arriving at a sum in respect of the freehold value in the region of £340,000 at the valuation date of 29 June 1996.

The Tribunal considered that the adjusted figure for the freehold value of No 12 Bark Place at £340,000 was too low, as it was largely based on the letter to Mr Gordon from Winkworths in July 1996, suggesting a sum of £380,000 - £390,000.

5. In all the circumstances and after reviewing the evidence, the Tribunal considered the adjusted amount of £372,000 proposed by Mr Gordon to be appropriate and began their valuation by starting from the sum of £372,000 in respect of the freehold value of the subject property with vacant possession and without any tenant's improvements.
6. With respect to the existing lease of 56.5 years unexpired, Mr Gordon's proposal of £345,000 was derived from a valuation in November 1994 by Messrs F W Gapp at £320,000 approximately, adjusted for time and with a reduction for the tenant's improvements.

Mr Ford, however, had had regard to earlier decisions of the Leasehold Valuation Tribunal and in particular to No 1 and No 2, Caroline Close where the unexpired lease was 55 years and where the differential between the freehold value and the leasehold had been agreed by the parties at 78.5%.

The Tribunal did not accept Mr Gordon's valuation which resulted in a differential of 92.74% between the freehold and leasehold values nor Mr Gordon's opinion that "asking prices for good quality leaseholds of 50 years or more are at similar levels to freeholds."

On the other hand, the differential of 78.5% proposed by Mr Ford was supported by various graphs, such as the Gerald Eve/John D Wood and W A Ellis graphs which were within the knowledge of the Tribunal.

7. In those circumstances, the Tribunal adopted 78.5% as the appropriate differential between the leasehold and the freehold value and arrived at £292,020 as the value of the existing lease.

8. Determination

Accordingly, after considering the evidence produced, the parties' arguments and our inspection, the Tribunal determine the premium to be paid by the tenant for the freehold interest in possession of 8 Bark Place, W2 to be £44,600 (forty four thousand and six hundred pounds) in accordance with our valuation which is attached to the decision at Appendix C.

CHAIRMAN.....*Henrietta Kelly*

DATE.....*23 March 2000*.....

Leasehold Reform, Housing and Urban Development Act 1993**Premium payable by tenant**

Enfranchisement - House

Subject to Contract & Without Prejudice**8 Bark Place, London W2****Valuation****Para 2 (a) Diminution in value of landlord's interest:****Term of existing lease**

Loss of rental income				75		
YP	55 yrs @	7 %		13.97		1,048
	<i>plus</i>					
ERV				75		
YP	1.5 yrs @	7 %	1.38			
PV £1 in	55 yrs @	7 %	0.02	0.03		3
	<i>plus</i>					
Reversion to capital value				389,500		
Less: Leaseholder's Improvements				0		
				389,500		
PV £1 in	56.5 yrs @	7 %		0.0219	8,518	<u>£9,568</u>

Landlord's share of Marriage Value**Para 2 (b) Landlord's share of marriage value:****Extended interests**

1.	(a) Value of Freehold in possession	389,500	
	(b) Less: Leaseholder's Improvements	0	
2.	Value of landlord's interest in tenant's house once new lease is granted	0	389,500

*less***Existing interests**

1.	(a) Value of tenant's interest under existing lease	305,750	
	(b) Less: Leaseholder's Improvements	0	
2.	Value of landlord's existing interest	9,568	315,318

Difference (marriage value) = 74,182

CLUTTONS DANIEL SMITH

Landlord's share, @

50 %= £37,091**Chartered Surveyors - Property Consultants**

Leasehold Reform, Housing and Urban Development Act 1993**Enfranchisement Price****Enfranchisement - House****Subject to Contract & Without Prejudice****8 Bark Place, London W2****Valuation Summary****Lease Data**Lease Expires: **25/12/2052**

Rent Review:

Basis:

fixed**Facts**Date of Claim: **29/6/1996**Existing lease: **56.5 years unexpired**Ground Rent: **£75 per annum**Reviews: **55 yearly**Years to 1st Review: **55**Estimated Rental Value (ERV): **£75**Capitalisation rate: **7 %**Landlord's % of marriage value: **50 %**Leaseholder's improvements: **£0**

Market value of:-

Existing lease: say **£305,750**Freehold in possession: say **£389,500****Valuation Summary***(see Second page for detail)*Para 2 (a) Diminution in landlord's interest **£9,568**Para 2 (b) Landlord's share of marriage value **£37,091**Para 2 (c) Compensation payable to landlord **£0**Premium payable by tenant = **£46,659****but say £47,000**

CLUTTONS DANIEL SMITH
Chartered Surveyors - Property Consultants

8 Bark Place London W2

Schedule of Comperable Sales Evidence

Produced for the landlord

Address	Colour on plan	GEA GEA	Date of Sale	Sale Price	Savills Index %	Uplifted Value As At 29.06.96	£ per sq ft Value As At 29.06.96	Agent	Comments
5 Bark Place	Yellow	1450	Dec-94	£275,000.00	10.8%	£ 304,000.00	£ 209.66		GIA includes garage in compound Property sold leasehold. F/H uplifted by differential
2 Caroline Place Mews	Dark Green	1643	Dec-97	£425,000.00	27.3%	£ 333,850.00	£ 203.20	Lurot Brand	Property has no garden
7 Caroline Place Mews	Orange	1653	May-98	£460,000.00	34.5%	£ 342,000.00	£ 206.90	Lurot Brand	Property has no garden
12 Bark Place	Light Green	1885	May-98	* £500,000.00	34.5%	£ 371,750.00	£ 197.21	Westways	Property in need of substantial repair and refurbishment
4 Caroline Place Mews	Purple	1518	Aug-98	£425,000.00	34.5%	£ 316,000.00	£ 208.17	Lurot Brand	Property has no garden
4 Lombardy Place	Dark Blue	1666	Nov-98	£460,000.00	34.5%	£ 342,000.00	£ 205.28	Foxtons	GIA includes attached garage

* £480,000 according to the tenant

Appendix B (1)

LVT 1148/99
REPORT8 Bark Place, London W2 4AR
Section 9 (1a) 1974 Act basis as amended

Relevant Date

29 June 1996

Landlord's Interests

Term until expiry in December 2052

Ground rent reserved

£75 pa

YP for 56.5 years @ 7%

13.9733

£1,048

Reversion

Value of unencumbered freehold

£375,000

Amount attributable to tenant's improvements

2,500

£372,500

A nominal deduction is made to reflect the right to holdover under
as assured tenancy (Note 1)500

£372,000

PV of £1 in 56.5 years

0.0219

£8,147

Open market value of Landlord's interest excluding prospects of marriage

£9,195Marriage value

Value of unimproved unencumbered freehold

£372,500

Less

Open market value of

Landlord's interest excluding prospects of marriage

£9,195

Open market value of

Tenant's interest excluding prospects of marriage

£345,000

Marriage value

£18,305

Freeholder's share @ 50%

£9,152

Formula valuation

£18,347

However comparable Bark Place freeholds have sold at prices below this.

A further adjustment is required in order to ensure consistency with the
sales of other freehold interests on the estate (Notes 2 & 3).

less £8,347

Enfranchisement price (excluding costs see below)

Say £10,000

COMPARABLES - 8 BARK PLACE

Appendix B (2)

produced by the tenant

COMPARABLES LVT 1148/99

<u>DATE</u>	<u>ADDRESS</u>	<u>PROPERTY</u>	<u>ACCOMMODATION</u>	<u>"A" AREA</u> sq. ft.	<u>PRICE</u> £	<u>Leasehold/Freehold</u>	<u>Ground</u> <u>Rent</u> £	<u>Notes</u>
LEASEHOLD SALES								
16/05/91	Bark Place no. 8	house	3 Bedrooms,garden,garage,off street parking	1140	275,000	leasehold 61 years to 2052	75	completion 1august - paid £24000 for F&F
FREEHOLD INTEREST SALES								
18/11/94	Bark Place no.5	house	3 Bedrooms,garden,	c1000	6,000	leasehold 58 years to 2052	60	gif 1243 Sq. Ft. low circ space
20/06/86	Bark Place no.9	house	3 Bedrooms,garden,garage,off street parking	1140	2,150	leasehold 66 years to 2052	90	identical property next door to 8 Bark place
FREEHOLD VACANT POSSESSION SALES								
30/12/94	Bark Place no.5	house	3 Bedrooms,garden,	c1000	275,000	freehold		gif 1243 Sq. Ft. low circ space
May. 98	Bark Place no.12	house	3 Bedrooms, garden, off street parking	1400	480,000	freehold		Garage conv.,slightly wider per ord survey 1:1250
Nov. 98	Lombardy Place no 4	house	5 Bedrooms, garden, garage	1116	465,000	freehold		Sq. ftage from particulars bathrooms excluded
Open market transactions								
Sept. 97	119 Abbotsbury Close	house	4 Bedrooms,garden,garage,off street parking	*	580,000	leasehold 63 years End of Terr.		* substantially identical houses except tenure
Dec. 97	121 Abbotsbury Close	house	4 Bedrooms,garden,garage,off street parking	*	650,000	freehold		

Appendix C

LVT/1148/99

London Leasehold Valuation Tribunal Section 9(1C)

8 Bark Place, W2

Leasehold Reform Act 1967

Valuation in accordance with Section 9(1A)

Valuation date 29 June 1996

Unexpired term at valuation date 56.5 years

Ground Rent	75
YP 56.5 years @ 7%	<u>13.973</u>

1048

Reversion to unimproved freehold	372,000
Less for tenant's improvements	<u>nil</u>
	372,000

Less for tenant's rights to hold over	<u>nil</u>
	372,000

PV £1 in 56.5 years @ 7%	<u>0.0219</u>
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8147

9195

Landlord's Share of Marriage Value

Value of unimproved freehold less		372,000
Value of existing leasehold	292,020	
Value of landlord's interest	<u>9,195</u>	

301,215

Marriage value	70,785
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Landlord's share @ 50%	<u>35,392</u>
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Premium payable	44,587
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but say	<u>£44,600</u>
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