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Ref: LON/LVT/1639/03

**LEASEHOLD VALUATION TRIBUNAL FOR
THE LONDON RENT ASSESSMENT PANEL**

Leasehold Reform Act 1967

Housing Act 1980

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: The Earl Cadogan

Respondent: Pinchas Establishment

RE: 66 Pavilion Road, London, SW1X OES

Date of Tenant's Notice: 22 May 2003

Application to the Tribunal dated: 3 September 2003

Heard: 13 January 2004

Appearances: Mr T Harry of Counsel
Mr S Kerrigan of Boodle Hatfield Solicitors
Mr R J Orr-Ewing of Knight Frank
for the Tenant

Mr K S Munro of Counsel
Miss L Blackwell of Pemberton Greenish
Mr A McGillivray of W A Ellis
Mr K D Gibbs, FRICS of Gerald Eve Chartered
Surveyors
for the Landlord

Members of the Leasehold Valuation Tribunal

Mrs C A Lewis FCI Arb (Chairman)
Mr D D Banfield FRICS
Mr D Levene OBE MRICS

Date of the Tribunal's decision: 24 February 2004

Introduction

- 1) This is an application by the Landlord to determine the price to be paid on the enfranchisement of the freehold interest under Section 9(1) of the Leasehold Reform Act 1967.
- 2) The subject property is a 2 storey mews flat over garages, in a long mews running parallel with Sloane Street SW1, which at this point comprises a mixture of commercial and residential properties.
- 3) The interest is subject to a Head Lease dated 18 June 1957, for a term of 49 years from 25 March 1957, at a ground rent of £10 per annum, and an Underlease dated 16 October 1957, for a term of 49 years less 5 days from 25 March 1957 at a ground rent of £25 per annum payable quarterly from 25 December 1957.
At the valuation date of 22 May 2003 it was agreed that the leasehold interest had an un-expired term of 2.83 years.
- 4) The parties submitted a statement of agreed facts to the Tribunal and paragraph 10 of the Statement stated that the freehold interest with vacant possession adapted to best advantage but not extended had an entirety value of £1,050,000.
- 5) The remaining issues before the Tribunal were:-
 - a) Site proportion
 - b) Capitalisation and deferment rate
 - c) The Haresign addition
 - d) Potential for enlargement of the property

THE HEARING

A. SITE PROPORTION

1. Both parties dealt with this element on the "Standing House" approach. For the applicant landlord it was contended that the proportion of the entirety

value attributed to the site should be taken at 60%, and for the respondent lessee at 50%. It was acknowledged for the landlord that settlements and decisions in the locality had been on the basis of 50% for many years, but they now claimed that there was evidence to support a higher percentage. For the lessee it was maintained that the evidence did not support any departure from the percentage which had been established by long usage and acceptance.

2.1 In support of the landlord's case evidence was given under three headings:-

- a) Transactions where the property had been purchased for development or refurbishment which had included substantial demolition
- b) Settlement evidence
- c) The increase in house prices in the area compared with the much lower increase in building costs, which it was contended, would lead to higher site values

TRANSACTION EVIDENCE FOR THE LANDLORD

2.2 The landlord's transaction evidence was as follows:-

19A Princes Gate Mews SW7

- (i) Purchased by Developer in June 1999 for £550,000.
- (ii) An unmodernised mews cottage with planning permission for an additional floor and roof terrace.
- (iii) The developer had demolished the interior of the property and part of the front wall and re-built to a high standard.
- (iv) The property had been re-sold in July 2000 for £1,030,000
- (v) Indexation of the purchase price to date of re-sale gave a "site value" proportion of 69.8%.

- (vi) The lessee contended that it was not correct to describe the property as a "site". The walls, foundations and main services remained. Of the purchase price £100,000 could be attributed to these factors. It was accepted that the Developer might have preferred a cleared site. However a purchaser for owner occupation might have paid a higher price as there would be no profit element to be covered. There was a large disparity between the original asking price on resale and that realised which indicated that the Developer had a higher expectation.
- (vii) On behalf of the landlord it was conceded that the retained elements would lead to some saving in costs but not more than £50,000 should be attributed to this. It was disputed that there would be a purchaser for owner occupation of the property, and in any event there was only one market and the Developer would need to match any bid. The Developer had been too ambitious in his original asking price.

19A Lexham Mews

- (i) This had been purchased by the Developer in June 2001 for £800,000.
- (ii) Planning permission had been granted in October 2001 for alterations to the front side and rear elevation, including demolition of part of the ground floor for a single storey side extension and roof terrace. A statement made by the Developer which was put in evidence gave details of the works carried out, and stated that " the project was in essence a new build behind a part retained façade and retained timber roof structure and coverings". He said that the costs for the work done were 50% above normal due to the complexity of the project, and it

would definitely have been cheaper to build a new house on a cleared site.

- (iii) The property had been resold in June 2003 for £1,275,000.
- (iv) The purchase price indexed to the date of re-sale gave a "site" value proportion of 59%.
- (v) On behalf of the lessee it was stated that the fact that there was a large disparity between the asking price and that realised indicated that the Developer had higher expectations when purchasing. The response on behalf of the landlord was that the Developer had been over ambitious in his asking price and had also been hit by the falling market.

21 Creswell Place SW10

- (i) This property had been purchased by the Developer for £865,000 in March 2000.
- (ii) For the landlord it was stated that the property had been then substantially demolished, and a statement was put in evidence made by the Developer detailing the works which had been carried out. This extended to a new drainage connection, strengthening the foundations to the front elevation and complete re-planning of the interior.
- (iii) The property had been re-sold in December 2000 for £1,600,000.
- (iv) The purchase price indexed to resale gave a "site" value proportion of 58%.

- (v) On behalf of the lessee it was contended that no planning permission had been needed for the project, and it was no more than refurbishment with a fast resale. For the landlord it was contended that the Developer had been asked what value could be attributed to the elements retained and he had not disagreed with a figure put to him of £50,000.

Summer Place Mews SW7

- (i) The purchase by the Developer had been agreed at £825,000 in December 2002 but contracts not exchanged until April 2003.
- (ii) The property comprised 4 single storey lock up garages and planning permission had been granted in August 2001 to demolish and build a 2 storey mews cottage of GIA 1400 sq feet. In May 2003 a revised planning permission had been obtained for an enlarged building of 1670 sq feet and a basement of 835 sq feet.
- (iii) The development had not yet taken place. To arrive at the expected value of the proposed new house reference was made for the landlord to evidence of sales at Onslow Mews West. A price per square foot was derived from this evidence which was applied to the area of the subject property taking the basement area at 50% and also discounting by 50% the increased area and basement, for which permission had not been obtained at the date the purchase price was agreed. On this basis a value of £1,332,225 was arrived at on the basis outlined above.
- (iv) The purchase price represented 62% of the anticipated value arrived at as above.
- (v) On behalf of the lessee it was contended that it was incorrect to make the 50% allowance for planning uncertainty in arriving at

the value of the proposed new house, as it was not factual. Reference should be made to the building for which permission had been obtained to give a higher entirety value.

- (vi) For the landlord it was maintained that there had been no planning permission for the increased area at the time the price had been agreed. If it had been thought that permission for a larger house could be obtained the owners, the Wellcome Foundation, would have pursued the matter before marketing. It was thought that the enlarged scheme encroached on the highway for which a licence would be required, and some extra payment involved, but no details were known of this: it had been a hope value only for the increased area at the time the purchase had been agreed, and this should be reflected.

SETTLEMENT EVIDENCE FOR THE LANDLORD

- 2.3.1 The settlement evidence for the Landlord was derived from a schedule of settlements on the Cadogan and Grosvenor Belgravia Estates dating back to 1965. This showed that the percentage for "site proportion" had in no case exceeded 50% until March 1999 when the following settlements had been recorded:-

	<u>SITE PROPORTION</u>
122 Pavilion Road	58.5%
1 Tite Street	58%
108 Pavilion Road	58%
7 West Eaton Place Mews	57%
6 Eccleston Mews	60%
21 Bloomfield Terrace	55%

- 2.3.2 For the Landlord, Mr Gibbs acknowledged in his evidence that in the 3 most recent of the cases above in which he had been involved,

valuations had not been agreed in detail, but he gave evidence as to the extent of the agreement which had been reached on other elements to indicate that the "site proportion" adopted by the other side was unlikely to have been substantially different.

Mr Orr-Ewing, for the lessee, gave evidence that he had contacted the valuer for the other side in two of the cases referred to, and had been told in both cases that the client lessee had been anxious to settle without recourse to the Tribunal. In one case the lessees had been in their late eighties. He maintained that the prices agreed in these cases did not represent the opinion of the Valuers involved who had not agreed the "site proportion" indicated on Mr Gibbs' schedule.

OTHER EVIDENCE FOR THE LANDLORD

- 2.4.1 Mr Gibbs referred as secondary evidence and by way of explanation to the relative movement in house prices and building costs from 1991-2003. The Saville Prime Central London House Index had risen by 206% against the Spons Building Price Index showing only 63%.
- 2.4.2 Mr Gibbs also made reference to a recent decision of the Tribunal in respect of 12 Eaton Mews where a number of transactions had been considered. In that case the Tribunal had declined to move from the established 50% due to many unknown factors at the hearing. He suggested that there was now more open market evidence and information to merit a careful examination and analysis on the best information available to analyse it.

EVIDENCE FOR THE LESSEE

- 3.1 For the lessee Mr Orr-Ewing also made reference to the Tribunal decision on 12 Eaton Mews North where they had declined to move from a 50% proportion. It was acknowledged that the Tribunal was not bound by that decision, but Mr Orr-Ewing thought that it was

useful because some of the same transactions were considered in that case.

3.2 Reference was made to the following transactions:-

19/19A Wilton Row

Sold for redevelopment for £1.8 m. Allocating £300,000 to the part of the building to be retained gave a "site value" of £1.5m and the completed development sold for £3.6m. The transaction had been referred to in the Eaton Mews North case but the sale price had not been known at that date.

Cavendish House – 28 Caroline Terrace, SW1

This property had been sold for £4.7m in July 2000 with a GIA of 9844 sq feet. It had been a warehouse/garage building which was now being developed as a grand single house and was on the market at £23m. Mr Orr-Ewing considered that the "site value" was 25% of the finished development. In the Eaton Mews North case the estimated site proportion was given as 44%.

Old Chelsea House, 15 Old Church St, SW3

This had been sold for £2.236m in March 2000, with a further sale in June 2001 for £3.055m on the basis of planning permission to redevelop with a building of 7577sq feet. The anticipated sale price was £8m and Mr Orr-Ewing's opinion was that the site proportion was 37%.

3.3 He said that the subject site was small was not in the best location and would not attract a leading developer. He did not consider that there was any reason to alter the existing practice of applying 50% to this site.

TRIBUNAL DECISION

A – SITE PROPORTION

4. The Tribunal inspected all the properties referred to in evidence by the parties, but for reasons given below we considered that the evidence on Sumner Place Mews was the only useful evidence.
- 4.1 Sumner Place Mews comprised a range of 4 garages at the end of a very short residential mews, one side of which backed onto the garage block of Malvern Court, a large block of flats. South Kensington Underground Station was in close proximity. The Tribunal considered that this was a convenient location, but that the surroundings were less favourable than Onslow Mews West. The latter while more attractive was a development of new build mews houses to a high density and was slightly further away from South Kensington station.

As indicated in para 2.2 above there was a difference as to how the purchase price of this site should be analysed. The Tribunal prefer the lessee's approach. The substantial period between the date the purchase price was agreed and the exchange of contracts, in the Tribunal's view, pointed to the price agreed being subject to obtaining a revised consent. The new planning permission was obtained in the month following exchange of contracts but it is considered a reasonable assumption that the purchaser was assured of consent before contracts were exchanged.

- 4.2 Analysis on this basis gives a site proportion compared with transaction evidence on Onslow Mews West of 51.56%. Of the other three transactions referred to by the landlord, the Tribunal did not consider that they provided useful evidence. While in these cases it is clear that a very substantial amount of building took place, in none can

the development be considered to be akin to a new building on a cleared site envisaged in the standing house approach. This is underlined in one case where no planning was needed for the project. It is noted in the statements given by a Developer that in two of the cases he could have built a new house at a lower cost, with the implication that he would have paid more for a cleared site. However it is perhaps doubtful that the same sale price would be realised by a new building lacking the character and feel of the traditional mews house. While attempts have been made to adjust the purchase price in some cases to reflect the extent of retained elements, they were somewhat arbitrary and not reliable to arrive at a cleared site value.

- 4.3 Similarly in the lessee's market evidence the transaction at Wilton Row where a substantial part of the building was retained is not considered reliable for the reasons given above. Caroline Terrace is a property of a completely different scale, and again with a retained building. Old Church House is similarly of a quite different scale to the subject property, and no evidence was given as to the sale price other than that "anticipated" later in 2004. It is a site sale and the purchase price analysed against the GIA may be of some interest for comparison purposes with other evidence (£3.055m/7577 sq feet = £403 per sq feet) compared with Sumner Place Mews (£825,000/2137 sq ft = £386 sq ft) given the differences in location and value, this devaluation produces a net inconsistent result.

The Settlement Evidence is not useful. None of the settlements were agreed in detail and the evidence for the lessee in two of the three cases relied upon was that the lessees had agreed for personal reasons to avoid Tribunal proceedings at prices above those arrived at by their professional advisors.

As to the evidence of the movement in building cost visa versa house prices, no evidence was brought to show that land value had increased

as a result, and in the absence of evidence that this had been translated into higher land values no conclusion could be drawn.

In the absence of persuasive evidence to the contrary the Tribunal did not consider the marginal increase as demonstrated in Sumner Place Mews sufficient to depart from the established proportion of 50%. In particular this was because there was no transaction evidence of entirety value at Sumner Place Mews.

B. CAPITALISATION AND DEFERMENT RATE

5.1 For the landlord it was accepted that historically yields in this area had been accepted at 6%, but arguing for lower rates they referred to the continued low interest rates, low yields in residential investments and the yield advertised in the prospectus of the Freehold Income Trust, which specialised in freehold ground rents and aimed to produce a distribution as from 1 October 2000 of a target yield of 4.25%.

5.2 For the lessee it was argued that there was no reason to depart from the 6% as adopted in Cadogan v Hows 1989, which had been applied at a time of both high and low inflation. It was contended that the low yields on Assured Shorthold tenancies were irrelevant because it was a completely different market.

5.3 On balance the evidence provided on behalf of the Applicants was considered not sufficiently persuasive to convince the Tribunal that we should depart from the established figure of 6%.

C. The Haresign Addition

6.1 The landlord contended that the reversion to the standing house value was something that should be taken into account. Reference was made to the decision in Haresign v St John the Baptists College Oxford (LR/18/1979), where the Lands Tribunal had accepted the un-

contradicted evidence of the Landlord's valuer that an additional value ("the Haresign addition") should be attributed to the reversion to a 3 storey Victorian house in Oxford falling in 53 years ahead. The lessee relied on the decision in Re Marlodge (Monnow) Ltd's Appeal (unreported) (LRA/15/02), where it was stated that the addition should be regarded as exceptional and not made in the case of small terrace houses. They maintained that the subject property could be described as a small terrace house.

6.2 The Tribunal considered both arguments, and concluded that it was a matter of valuation and not description that was relevant and that in the words of the LT Member in Merlodge "the essential question, to my mind, is not whether the subject property will still be standing 62 years after the valuation date, but whether the purchaser in the hypothetical sale envisaged in Section 9(1) of the 1967 Act would value the reversion to standing house value".

6.3 In the case of the subject property with an existing unexpired term of 2.83 years, and therefore the reversion in 52.83 years, given the entirety value of the existing property at £900,000, the value of the reversion is a substantial sum which would not be disregarded by a prospective purchaser.

D. Enhanced Hope Value

7. This was raised by Mr Gibb on behalf of the landlord but not reflected in his valuation. The Tribunal took the view that it was too speculative to include a figure for this element.

8. The Tribunal therefore determine that the price payable is the sum of £462,500 as detailed in the Tribunals Valuation appended at Appendix II apportioned £24 to the Headlessee and the remainder to the Freeholder.

The statement of Agreed Facts is attached at Appendix I.

CHAIRMAN..... *C. A. Lavis*
DATE..... *24 February 2004*

66 Pavilion Road, London SW1
Leasehold Reform Act 1967 (as amended)

Statement of Agreed Facts

1. **Situation:**

Pavilion Road is a highly regarded residential street, comprised mainly of mews properties, in one of the prime locations in Central London. Running parallel and immediately west of Sloane Street, Pavilion Road connects Sloane Square with Knightsbridge. Set back away from the constant traffic of Sloane Street, Pavilion Road is a peaceful residential location. The property is situated towards the northern section of the road close to the junction with Herbert Crescent and therefore benefits greatly from its proximity to the shops of Sloane Street as well as Knightsbridge. There are also excellent transport connections nearby with numerous bus routes to a wide variety of destinations and Sloane Square and Knightsbridge Underground Stations are only a few hundred yards away. No 66 is towards the northern end of Pavilion Road which is narrower and has more commercial properties.

2. **Description:**

The subject property is a traditional 2 storey mews house, but with the benefit of a wide frontage. It comprises 3 garages and an office room at ground floor level with a mews flat above. The property is of traditional construction with brick external walls and party walls, suspended wooden floor, solid slab ground floor and slate covered pitched roof.

3. **Site Dimensions:** 42'0" frontage x 19'9" deep (13.36 m x 6.29m)
Area 829 fs (77m²)
4. **Gross Internal Area** 1432 m²
5. **Date of valuation:** 22nd May 2003
Unexpired term: 2.83 years
6. **Condition at valuation date:** Generally fair condition with a modest standard of fittings and decoration throughout.
7. **Headlease details:**
- Dated:** 18 June 1957
- Term:** 49 years from 25 March 1957 to 25th March 2006
- Parties:** The Right Honourable William Gerald Charles Earl Cadogan ("the Lessor")

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Cadogan Settled Estates Company ("the Company")
Ronald Laurence Gardner Thorpe ("the Lessee")

Premium: £3,950 (Including No. 1 Hans Place)

Deed of Surrender: Surrender of No.1 Hans Place on 13 January 1983 and grant of a new lease for that property.

Ground Rent: £10 per annum fixed (adjusted to this level on surrender of No. 1 Hans Place)

8. Underlease details:

Dated: 16 October 1957

Term: 49 years less 5 days from 25 March 1957 to 20th March 2006

Parties: Ronald Laurence Gardner Thorpe ("the Lessor")
Mary Elliot Blake ("the Lessee")

Premium: £6,300

Ground Rent: £25 per annum fixed payable quarterly from 25 December 1957

9. Summary of relevant lease terms:

To pay the rent, taxes, rates, charges, assessments and impositions and outgoings whatsoever.

At the lessee's own expense throughout the said term to well and substantially repair, maintain and keep the demised premises and all erections and buildings upon the site thereof in good and substantial repair and condition. To paint externally every 4 years and internally every 7th year.

At all times to bear, pay and allow a reasonable proportion of the expense incurred for or towards the making, supporting, repairing, cleansing and amending of all passageways, party walls, private roadways etc. At all times to insure.

Not to make any erection in or on or alteration in or addition to the exterior of the premises or external architectural decoration without consent nor to cut or alter the main walls, timbers or floors.

Not to use for business without consent nor let apartments or rooms. Not to use the residential flat forming part of the demised premises for any other purpose than as a private dwellinghouse in the occupation of one family only provided always that subject permitting lessor access the flat may be let for any period as a whole either with or without one or both of

2.53

GeraldEve

the garages included in the demised premises and one or both of the garages may be let without the said flat.

Not to assign, underlet nor part with possession of the whole or part of the demised premises (other than furnished lettings of the flat and lettings of the garages for periods not exceeding 12 months) except with the previous written consent of the Lessor which shall not be unreasonably withheld.

10. **Agreed Valuation Matters:**

Freehold interest with vacant possession adapted to best advantage but not extended.

£1,050,000 (Entirety Value)

11. **Disputed Valuation Matters:**

Site Proportion:

Capitalisation and deferment rate:

For the Cadogan Estate

[Signature]
6/1/04

For the Tenant

Robert Am-King
7.1.04

LVT Valuation

Appendix II

Leasehold Reform Act 1967 (as amended)

Valuation under section 9(1)

66 Pavilion Road, London, SW1X 0ES

Agreed matters

Valuation date	22nd May 2003
Unexpired term	2.83 years
Value of freehold, with V.P. adapted but not extended	£1,050,000
Value of freehold, existing condition	£900,000
Head lease	expires 25/3/2006. G.R. £10p.a.
Underlease	expires 20/3/2006. G.R. £25 p.a.

Determined by Tribunal

Site proportion	50.00%
Capitalisation and deferment rate	6.00%

Valuation

Head leasehold interest	Agreed by parties	£24
Freehold interest		
Value of existing term	Agreed by parties	£26
Value of reversion		
Freehold interest	£1,050,000	
Site value at 50%	£525,000	
Modern ground rent at 6%	£31,500	
YP 50 yrs @ 6%	15.761	
Deferred 2.83 yrs @ 6%	0.8479	£420,958
Reversion to freehold of existing property	£900,000	
Deferred 52.83 yrs @ 6%	0.046	<u>£41,400</u>
Enfranchisement price	Say	<u>£462,408</u> <u>£462,500</u>