



Residential
Property
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Case reference: LON/00AG/OCE/2009/0019

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Property: 27 Belsize Park, London NW3 4DU

Applicant: 27 Belsize Park Limited

Respondent: Roger Edwin Leonard Galler

Date heard: 16 June 2009 (inspection 17 June 2009)

Appearances: Christopher Heather, counsel, instructed by Jaffe Porter
Crossick LLP, solicitors,
Nigel Braham, Braham Sears & Partner
John Golden and Justin Barrington, leaseholders
for the nominee purchaser.

Anthony Radevsky, counsel, instructed by Speechly
Bircham LLP, solicitors,
Andrew Lester MRICS, AML Surveys and Valuation
Limited, chartered surveyors
The respondent
for the landlord

Members of the leasehold valuation tribunal:

Margaret Wilson
Frank James FRICS

Date of the tribunal's decision: 9 August 2009

Background

1. This is an application by a nominee purchaser under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the price to be paid for the freehold of 27 Belsize Park, London NW3. The terms of transfer are agreed.

2. 27 Belsize Park is a five storey semi-detached Victorian stucco-fronted house which has been converted into flats. Six of the flats are held by the participating tenants on long leases. The remaining parts of the building, which include three flats, are owned by the respondent landlord. The leases held by the participating tenants contain a landlord's covenant to repair the structure and common parts of the building, and tenants' covenants to pay service charges based upon the rateable value of each flat as a proportion of the rateable value of the building.

3. The application was heard on 16 June 2009. The nominee purchaser was represented by Christopher Heather of counsel, instructed by Jaffe Porter Crossick LLP, solicitors, who called Nigel Braham of Braham Sears & Partners to give evidence of value. Mr Braham is not a chartered surveyor, but he said that his report complied with the requirements of the Royal Institution of Chartered Surveyors' "Practice Statement as to Surveyors Acting as Expert Witnesses", and we accept that he has relevant experience as an estate agent and property developer and is able to give expert evidence of value. Two of the leaseholders attended the hearing and one, Justin Barrington, the leaseholder of Flat 4, gave evidence as to the condition of Flat 4, a relevant comparable, at the date of its recent purchase by him. The landlord was represented by Anthony Radevsky of counsel, instructed by Speechly Bircham LLP, solicitors, who called Andrew Lester MRICS of AML Surveys and Valuation Limited, chartered surveyors, to give expert evidence. On 17 June we inspected the property in the presence of the landlord and of two of the leaseholders, and we inspected the Third Floor Flat in the presence of its regulated tenant, Mr Holder.

4. The date of the tenants' notice of claim was 20 March 2008, which is the valuation date. The combined value of the landlord's reversion to the six flats held by the participating tenants is agreed to be £44,000. The issues are the value of parts of the property, other than the tenants' flats, which are to be acquired by the nominee purchaser, namely Flat 7, Flat 8, the Third Floor Flat, the front garden, a shed at the side of the property, a storage area under the front entrance steps, and two areas of flat roof over the front entrance and front bay window. The valuation of the Third Floor Flat involves consideration of the discount to be applied to reflect the occupation of part of the flat by a regulated tenant. A further issue is the deduction, if any, which should be made from the value of the landlord's interest in respect of the costs of repairing the fabric of the building.

The issues

The value of Flat 7

5. Flat 7 is at the rear of the first floor and comprises a studio bedroom, kitchen/breakfast room and bathroom/wc. Its agreed floor area is 750 sq ft. The flat is dated and in need of complete refurbishment.

6. Mr Braham said that he considered the most likely purchaser of the landlord's interest would be a developer who would buy all three flats owned by the landlord in order to refurbish and sell them. In analysing the bid of such a purchaser he first addressed the value of Flat 7, refurbished to a good standard, and concluded that it would be £462,500, which he based on the average of his own view of its value, which was £450,000, and Mr Lester's, which was £475,000. From this he proposed a deductions of £75,000 for development costs; professional fees at 12.5%; £18,500 for the costs of the selling agent, solicitor and stamp duty; £20,000 for interest on borrowing, based on five months' borrowing at 7.5%; and £115,625 for developer's profit of 25% of the gross development value. He said that he had not considered the comparables on which Mr Lester relied because he believed that the only

purchaser of the landlord's interest would be a developer who would develop Flat 7 along with Flat 8 and the Third Floor Flat and who would base his bid on a residual valuation.

7. Cross-examined, he agreed that he had no evidence to support his proposed deductions, which were based solely on his experience. He considered that his proposed building costs, which were £75,000 for each of the landlord's three flats, were reasonable notwithstanding the flats' differing sizes, and said that he considered that in difficult economic times developers would require a significant profit margin to off-set the risk. He agreed that, if it was appropriate to consider the alternative approach taken by Mr Lester, he could find nothing wrong with Mr Lester's proposed adjustments to the values derived from the comparable transactions.

8. Mr Barrington, the tenant of Flat 4, on which Mr Lester had relied as a comparable, gave evidence. He said that he had bought the flat on a buy to let basis in April 2008 and that the only works which he had considered it necessary to carry out prior to letting it at £400 per week were redecoration, the replacement of floor coverings and fitting new lighting in the kitchen. In all other respects, he said, the flat was in good condition when he bought it, although he had, subsequent to letting the flat, replaced the boiler.

9. Mr Lester's proposed value for Flat 7, as he revised it in the light of the evidence given by Mr Barrington at the hearing, was £358,162.50. He said that he had, prior to Mr Barrington's evidence, proposed a rate of £560 per sq ft for Flat 7, based on his analysis not only of the sale of Flat 4 but on all the 15 comparables listed in appendix G to his written statement, but, in the light of Mr Barrington's evidence that the flat was reasonably well modernised at the date of the sale, he now revised his valuation to £540 per sq ft. Of the comparables, he considered that the sale of Flat 4 was the most helpful, but that the sales of Flat D, 25 Belsize Avenue and the First Floor Flat, 28 Belsize Park (adjacent to the subject property) were also helpful. He said that Flat 7 had some advantages over Flat 4 because, being at the rear of the building, it was sheltered from traffic noise and it had the potential for development of a

small rear balcony. £540 per sq ft equated to £405,000, from which he deducted 7.5% for cost and risk, producing a value of £374,625.

10. Mr Lester then considered the alternative approach of valuing the flat on the basis that it was bought by a developer, although, he said, such a residual valuation was "full of problems". His opinion, based on the comparables, was that the value of Flat 7 if refurbished to a good standard would be £640 per sq ft (£480,000). From that figure he deducted £40,000 as the likely refurbishment costs (based on a statement from Mark Blooman MRICS, a chartered building surveyor, which he produced, plus contingencies) and on the assumption that the tenant would have to contribute one seventh of the cost of refurbishing the common parts and one ninth of the cost of refurbishing the exterior of the building. He then allowed £12,500 for interest (based, like Mr Braham, on five months' borrowing at 7.5%, though of a smaller sum, and increased from the £5000 which he had allowed for interest in his written statement); £15,000 for the costs associated with the acquisition and sale of the flat; and 12.5% of the gross development value for profit. He said that Mr Braham's proposed 25% for developer's profit was an extraordinarily high figure which he had never encountered in practice. This produced a value of £367,500. He then averaged his two proposed values to arrive at a value for Flat 7 of £358,162.50, which he considered to be conservative.

Decision

11. We have concluded that the value of Flat 7 is £353,812. In general we prefer as more reliable Mr Lester's approach of averaging the value of the flat as it was at the valuation date and its value to a developer purchasing all three of the freeholder's flats, and our valuation is based on the average of the valuations at which we have arrived on these two bases. In relation to the value to a developer, we accept Mr Lester's proposed gross development value of £640 per sq ft, or £480,000 for the flat. From that we have deducted £40,000 for the costs of development, based on Mr Lester's evidence. We accept Mr Braham's proposed deduction of £20,000 for the cost of borrowing,

which we consider to be more realistic than that of Mr Lester, and we adopt Mr Lester's proposed sale costs of £15,000, a sum which, in our view, is sufficient to include a reasonable allowance for stamp duty. In our view an appropriate allowance for profit, in the market conditions which prevailed at the valuation date, is 15% of the gross development value. We consider that Mr Braham's proposed allowance for professional fees is too high, and that 12% is more realistic in the conditions which prevailed at the valuation date. We thus arrive at a value to a developer of around £333,000. In arriving at the value of the flat as it was at the valuation date we accept Mr Lester's approach, not criticised by Mr Braham, of starting from £540 per sq ft. That gives a value of £405,000 from which, like Mr Lester, we deduct 7.5% for costs and risk, producing a value on that basis of £374,625, which we average to produce our valuation.

The value of Flat 8

12. Flat 8 is not a habitable unit of accommodation. It is a single room at the rear of the second floor, with a sink and small water heater in one corner, and makeshift cooking facilities. Its agreed floor area is 379 sq ft. Planning consent was granted on 30 September 1999 for the "self-containment of one bedsitter unit ... by the installation of an integral bathroom as shown on 2 unnumbered drawings". The consent required the development to begin within five years of the consent. It is the landlord's case that the development was begun within the required period in that a lobby was constructed adjacent to the door of the flat.

13. Mr Braham proposed a value to a developer of £104,000. He based this figure on an open market value of the refurbished flat of £275,000 from which he deducted development costs of £75,000; professional fees of £6,250 (which he said was based on 12.5% but which is in fact 8.33% of his proposed development costs); £12,000 for the costs of acquisition and sale; £9,000 for interest; and profit of 25% of the gross development value. He said that all these figures were derived from his experience. Cross-examined, he said that

his proposed development costs would be higher as a proportion of the value than in the case of Flat 7 because more work was required.

14. Mr Lester's proposed value, revised at the hearing in the light of Mr Barrington's evidence, was £162,864. As with Flat 7, he averaged two values derived from different approaches: the value of the unimproved unit at the valuation date derived from the comparable evidence, and the likely value to a developer. He said that, if the planning consent had expired, a purchaser would envisage no real difficulty in obtaining it now in view of the shortage of small units of accommodation in Camden. In arriving at the value of the unit as it was at the valuation date he applied a rate of £540 per sq ft, derived principally from the sale of Flat 4, and then deducted 5% to reflect the fact that Flat 8 is on the second floor and a further 10% for risk, producing a value, by this method, of £174,984.

15. Using his alternative approach, Mr Lester started with a gross development value of £640 per sq ft, less 5% for its location on the second floor. He then deducted £31,500 to reflect the cost of the necessary work; £2600 for interest; £10,000 for the costs associated with the acquisition and sale; and 15% of the gross development value for profit, the required profit margin being, he said, higher than for Flat 7 because of the greater risk in view of the planning difficulties. This resulted in a value to a developer of about £151,762. He then averaged the two values. We take the resulting sum to be £163,373, slightly higher than the figure Mr Lester suggested in his evidence.

Decision

16. In our view, based on our inspections and consideration of the plans, a prudent developer would re-apply for planning consent because the lobby does not accord with the approved design in that it has only one doorway instead of the two shown in the approved drawing. We accept that planning permission would be granted in due course. We accept Mr Lester's approach

of averaging the value of the room as it is and its residual value to a developer, although we regard his value as on the high side. We have started with a value based on £540 per sq ft derived from the sale of Flat 4, from which we have, like Mr Lester, deducted 5% for floor level and 10% for risk. We have then deducted a further £10,000 to reflect the lack of services to the room, producing a value of £163,961. We have then considered its value to a developer. For this we have started with £640 per sq ft, based on Mr Lester's evidence, producing £242,560. We have then deducted £31,500 for the likely cost of the necessary works; £10,670 for interest (based on 7.5% over nine months); £10,000 for the costs of acquisition and sale, including stamp duty, based on Mr Lester's evidence; and 15% of the gross development value for profit. This produces £154,006. The average of these two approaches is £158,983, which we adopt.

The value of the Third Floor Flat

17. The Third Floor Flat comprises three rooms and a bathroom/wc. It is not self-contained, in that one room and the bathroom are on one side of a landing and the other two rooms on the other. One of the rooms has kitchen facilities. The floor area of the flat is agreed to be 763 sq ft. The room with kitchen facilities and the bathroom/wc, the latter shared with the landlord, are let on a regulated tenancy to a tenant who is understood to be 78 years old and who currently pays a registered rent equivalent to £3762 per annum. The rooms are unmodernised and in need of wholesale refurbishment.

18. Mr Braham considered that the value of the flat to a developer was £145,600. He started with an open market value of the refurbished flat of £462,500. He then deducted development costs of £75,000; professional fees at 12.5%; costs of sale at £18,500; interest at £26,000; and profit of 25% of the gross value, or £115,625. From the resulting sum of £224,000 he proposed a deduction of 35% for the regulated tenancy, to arrive at his proposed value.

19. In cross-examination he agreed that all the components of his valuation were based on his experience and not on evidence. He said that he had not asked the age of the regulated tenant when he arrived at his proposed discount for the regulated tenancy and he agreed that the age of the tenant was relevant to the amount of the deduction.

20. Mr Lester's proposed valuation, revised in the light of the evidence of Mr Barrington, was £260,802, based on the average of four different approaches.

21. First, he said that a prospective purchaser might buy the property on the assumption that the regulated tenant would remain until his death. To arrive at the current value with assumed vacant possession he adopted a rate of £540 per sq ft, derived from Flat 4, from which he deducted 10% for the third floor location and the low ceiling height, but taking into account the flat's good natural light and reasonable views. He said that in order to assess the effect on value of the regulated tenancy he had established that the tenant's expectation of life, based on actuarial tables, was 8.69 years, and had deferred the vacant possession value for that period at 5%, which produced a value of £242,675.

22. Second, he considered the value of the flat to be derived from market evidence of sales of properties subject to regulated tenancies and concluded that the market would discount the perceived value of the flat by 20% in this instance.

23. Third, he considered a residual valuation on the assumption that the regulated tenant would agree to vacate the flat which would then be developed in line with the planning consent granted to the landlord in 1985 to enable him to modernise and reconfigure the flat to render it self-contained, but with only one bedroom. He said that negotiation and therefore uncertainty would be involved in obtaining vacant possession, but that it would be reasonable to allow £50,000 as a payment to the tenant. He said that it was strongly arguable that the planning consent which the landlord had obtained was still valid because the works to re-position the staircase in line with the

planning permission had been started within the appropriate period. He based his gross development value on £640 per sq ft and a floor area of the developed flat, based on the plans, of 764 sq ft, but deducted 10% for the third floor location and ceiling height, and added £20,000 to reflect the benefit of two balconies as shown in the plans. From the resulting gross development value of £460,000 he deducted £50,000 for the cost of obtaining vacant possession; £115,000 for the cost of the work; £8922 for interest on borrowing, based on five months at 7.5%; £15,000 for costs; and 15% profit (a higher margin than with Flat 7 to reflect risks relating to planning permission). The net current value by this method of valuation was £204,500, which suggested to him that that particular refurbishment would not be efficacious and that it would be more profitable to provide a two bedroomed flat, which, he considered, would produce a profit of £245,500. This was based on a gross development value of £420,000, less £40,000 cost of the works, £50,000 payment to the tenant to obtain vacant possession, £6500 for interest, £15,000 sale costs and £63,000 (15% of the gross development value) for profit.

Decision

24. We value the flat at £258,868. We base this on the average value derived from two approaches, both based on the assumption that the sub-tenant would vacate, which we consider to be very probable. The first approach is to value the flat as it is. We start from £540 per sq ft from which we deduct 10% for the third floor location and low ceilings, to produce £370,818. We then deduct £50,000 to obtain vacant possession which is in our view realistic in the circumstances, and 10% (rather than the 5% suggested by Mr Lester) of £370,818 for risk, producing £283,736. We then consider the value to a developer. We accept that the flat is more likely to be developed as a two bedroomed flat. On that basis we broadly accept Mr Lester's figures although in our view he has made insufficient allowance for interest. We start from a gross development value of £420,000. From it we deduct £40,000 for the cost of the works, £50,000 for the regulated tenant,

£18,000 for interest, £15,000 for legal and other costs and £63,000 for profit, producing £234,000. The average of the figures produced by these two approaches is £258,868, which we adopt.

The value of the front garden

25. Mr Heather submitted that the front garden was for communal use and had no value beyond that which was included in the nominal £1000 offered in the notice of claim for appurtenant property within the meaning of section 1(2)(a) of the Act. Mr Radevsky submitted that the front garden was not for communal use and that the rights granted to the tenants by the second schedule to their leases were limited to rights of way for the purpose only of obtaining access to their properties. In our view Mr Radevsky's submission is correct. On that basis, Mr Lester said that the garden could be of significant benefit to the leaseholder of Flat 1, which is at the front of the lower ground floor, has no demised outside space, and looks out over the garden. He suggested that the leaseholder might pay £15,000 for the garden, but deducted 50% for the risk that he might not, producing a present value of £7500.

26. Having seen the garden we are satisfied that it has potential value in that it is not unlikely that in due course the leaseholder of Flat 1 might wish to purchase it. While the tenants of all the flats have rights to pass across it in order to obtain access to their flats, in practice they have little need to do so. We are satisfied, however, that Mr Lester's valuation is significantly too high, given the size and position of the garden and the risk that it will not be purchased, and our assessment is that its value at the valuation date is £2000.

The value of the shed

27. There is a wooden shed at the side of the property which appears to be used by the freeholder for storage. Mr Lester suggested that it had a value of £2000. Having seen it, and observed its poor condition, we are quite satisfied that it has no value whatsoever.

The value of the area under the front steps

28. This is a small area under the communal front steps which houses the electricity meters for the flats in the block. Mr Lester suggested that it had a value of £1500 to one or more of the tenants who might wish to acquire it for storage purposes and that it thus had a hope value of £750. Having seen it and observed its small size and communal use we are in no doubt that it has no value.

The value of the areas of flat roof over the entrance portico and outside the front bay window

29. This dispute relates to a small and narrow level area at the front of the building at first floor level. The part adjacent to a bedroom in Flat is easy to reach through a picture window, but there is no barrier and, as it is, it would not be safe to use. The area is part of the structure of the building and is not demised. Mr Lester suggested that if it was demised to the tenant of Flat 4 it would add £15,000 to the value of the flat and that its hope value should be put at £7500. Mr Heather submitted that, since the property was in a conservation area, it could not be assumed that planning permission would be granted to convert it into a proper balcony which was safe to use.

30. We do not accept that the area in dispute has value. We observe that there is severe damp penetration through the balcony area to the lower ground floor flat below, and in our view a sensible purchaser would consider a demise of the area in question to be more of a liability than a benefit. We attach no additional value to this area.

The deduction, if any, which should be made to the value of the freeholder's interest to reflect the cost of repairing the building

31. Mr Braham said that the fabric and common parts of the building were in poor condition and he adopted, as the likely cost of putting them into a reasonable state of repair, an estimate of £90,792.50, including VAT, which he attached to his statement. He suggested that a further sum of between £5000 and £10,000 might be required to refurbish the area at the side of the property but that part of the cost of £15,000 for re-building the side party wall might be recovered from the owner of the adjoining property. He said that as the landlord owned three of the flats he would be responsible for one quarter of the likely cost of the necessary works, and this sum should be deducted from his interest. His evidence was not disputed by Mr Lester.

32. Having seen the building, we accept that it is in poor condition and urgently requires repair, and we see no reason to disagree fundamentally with Mr Braham's assessment of the likely cost, or the freeholder's obligation to contribute a quarter of the cost. Doing the best we can, we consider that the necessary works will cost at least £93,292 along the lines which Mr Braham suggested and that the landlord would be liable to pay one quarter of this sum, or £23,323, say £23,500, which sum should be deducted from his interest.

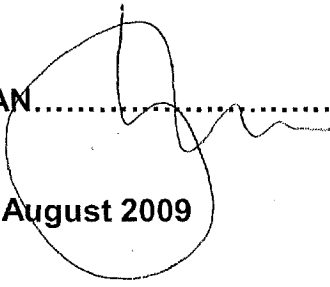
Determination

33. The price for the freehold is thus £794,163 which comprises the following:

- i. £44,000 as the agreed value of the landlord's interest in the participating flats;
- ii. £353,812 for Flat 7;

- iii. £158,983 for Flat 8;
- iv. £258,868 for the Third Floor Flat;
- v. £2000 for the front garden

Less £23,500 landlord's share of cost of works.

CHAIRMAN.....

DATE: 9 August 2009