

1973

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993
(Sections 48, 91 and 60)**

REF: LON/00BK/OLR/2010/0062

Address: Flat 4, 20 New Cavendish Street, London W1G 8TS

Applicant: Silver Developments Ltd.

Respondent: Howard De Walden Estates Ltd.

**Tribunal: Mrs J S L Goulden JP (Chairman)
Mr J R Humphrys FRICS**

1 The Applicant, who is the lessee of Flat 4, 20 New Cavendish Street, London W1G 8TS ("the property"), has exercised its right to a lease extension under S48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The Applicant's Notice of Claim was dated 11 June 2009. The Respondent's Counter Notice was dated 11 August 2009.

2. A hearing was held on Wednesday 2 June 2010.

3. The Applicant was represented by Rokeby Johnson Baars LLP, Solicitors but, by a letter to the Tribunal dated 21 May 2010, the Applicant's solicitors stated "*We write to advise you of the instructions of our client, Silver Developments Ltd., the Applicant. Our client instructs us that it will not be making representations, nor putting forward any evidence at the hearing, even though our client believes that the competent landlord will do so. We have advised our client that the Leasehold Valuation Tribunal is an expert Tribunal, as has been stated on many occasions, including explicitly by the Tribunal itself. In those circumstances, our client instructs us that he intends to rely upon the expertise of the Tribunal to ensure that a fair and proper price is fixed and apportioned between the landlords.*"

4. The Respondent was represented by Mr M Pryor of Counsel and Ms E M Murray of Speechly Bircham LLP, Solicitors. Evidence for the Respondent was provided by Mr K P Ryan FRICS of Carter Jonas and Mr M D Josey BA MSc MRICS of Gerald Eve

5. The matters in issue were as follows:-

(a) Value of the extended lease

- (b) Value of the existing lease**
- (c) Premium**
- (d) Valuer's fees**
- (e) Legal fees**

6. Although a Statement of Agreed Facts was produced, this was in draft and had not been signed, since Mr P K Beckett, the valuer for the Applicant had been disinstructed. The Tribunal was advised that the lease terms had been agreed as had apparently the deferment rate (5%), the rate used to value the negative income flows (4.11%), the gross internal floor area at 125.60 sq m (1352 sq ft), the valuation date (12 June 2009), the unexpired lease term (52.03 years) and relativity between the extended lease and the freehold (99%).

Inspection

7. The Tribunal carried out its inspection of the property externally and internally on 3 June 2010 after the conclusion of the hearing. 20 New Cavendish Street was found to be a double fronted purpose built block comprising 8 flats over five storeys over commercial premises. There was a video entrance phone system. The common parts were clean, although dated and without furnishings, with painted wood panelling in the entrance lobby. The floor was tiled and there was carpeting up to each floor. There was a small passenger lift on the half landing.

8. Flat 4 was a second floor flat comprising entrance hall, two intercommunicating reception rooms, two bedrooms, one with a bathroom/wc en suite, a further bathroom/wc and kitchen/diner. The Tribunal noted secondary double glazing to the windows at the front of the building and replacement PVCu sash type windows to the kitchen and both bedrooms. The kitchen and both bathrooms had been modernised.

9. The Tribunal also inspected, externally only, the Respondent's comparables as shown on the Respondent's schedule which had been prepared by Carter Jonas (and which is referred to in greater detail in paragraph 12 below).

Hearing

10. The salient parts of the evidence, together with the Tribunal's determinations, are given under the appropriate head.

(a) Value of the extended lease

11. The Respondent contended for a figure of £1,411,500 (which equates to £1,044 psf). The Applicant's figure is unclear.

12. Evidence for the Respondent was provided by Mr K P Ryan FRICS of Carter Jonas by way of a schedule of adjusted comparables (which is attached at Appendix B). Mr Ryan adjusted and analysed a basket of twelve comparables. Three of these, those at Flats 5 and 6, 20 New Cavendish Street and Flat 2, 16 New Cavendish Street, were almost identical in layout and size to the subject flat, and had been sold between May 2009 and March 2010. The entire basket, with the exception of Flat 9 Tenby Mansions, Nottingham Street W1, were in near

proximity to the subject flat. Mr Ryan said that he had inspected all the comparables internally save for the flat in Tenby Mansions. Two of the twelve comparables, those at the lowest price, had been included at the request of Mr Beckett.

13. Mr Ryan explained to the Tribunal the reasons behind all the adjustments which he had made to the comparables and in particular, those for condition, location and other matters such as poor common parts or poor layout. Mr Ryan pointed out that during his discussions with the Applicant's valuer, Mr Beckett had wished to introduce further comparables. Mr Ryan had included these further comparables in his proof of evidence but had not included them in his basket of comparables. He considered that Mr Beckett's additional comparables were either far too small and/or the lease length was too short. Nevertheless he had included them for the sake of completeness.

14. From his basket of comparables, Mr Ryan observed that the three best comparables had produced an average price per square foot of £1,176 psf, but he preferred to adopt the average of all twelve which produced a figure of £1,044 psf and a price of £1,411,500.

15. Mr Ryan had drawn the Tribunal's attention to the improvements as suggested by Mr Beckett which Mr Ryan said had appeared for the first time in the second draft of the unsigned Statement of Agreed Facts. Mr Beckett had suggested that these comprised the refitting of the family bathroom and kitchen, the installation of timber floors and the double glazing to the rear windows in 1997/8 at a cost of £70,000. Mr Ryan was of the view that these were works of renewal and/or replacement of existing fittings and in any event had been carried out some years ago and were of little or no value.

The Tribunal's determination

16. The Tribunal accepts that Mr Beckett's additional comparables were not of assistance for the reasons given by Mr Ryan.

17. Careful consideration has been given to Mr Ryan's evidence and adjustments contained within his schedule of adjusted comparables and the Tribunal is satisfied that these adjustments are reasonable and have been based on Mr Ryan's internal inspections thereof.

18. In respect of improvements, the Tribunal is of the view, having inspected, that in general these were works of renewal and/or replacement of existing fittings in accordance with the lease terms. In any event, with this class of property, the fittings are somewhat dated and it is felt that the majority of purchasers in this market would be inclined to replace the same and therefore are of negligible value. The only possible exception are the three replacement PVCu windows in the kitchen and two rear bedrooms. However the Tribunal considers that their value is de minimis and would have no impact on the price.

19. Having inspected the twelve comparables externally, which the Tribunal found of assistance, and in consideration of the other evidence provided, the Tribunal determines the value of the extended lease at £1,411,500.

Value of the existing lease

20. The Respondent contended for a figure of £1,060,000 (which equates to £784 psf). The Applicant's figure is unclear (but it is possible that it may be based on a relativity of 82.50% from the draft Statement of Agreed Facts).

21. Mr Ryan's main approach was to look at the three sales at 16 and 20 New Cavendish Street referred to above. These produced a price of £883 psf which he felt was too high probably because his long lease values were based on a basket of twelve comparables. Accordingly, he used the ratio between the long lease and short lease analysis to adjust this figure by 11.23% giving him a price of £784 psf. This produced a relativity to the freehold of 74.3%. Mr Ryan pointed out that this was just below the Gerald Eve 1996 graph.

22. Evidence on behalf of the Respondent was also provided under this head by Mr M D Josey BA MSc MRICS of Gerald Eve. He suggested that there was a relativity "creep" in favour of tenants and encouraged the Tribunal to adopt the Gerald Eve 1996 graph if the Tribunal decided not to use Mr Ryan's analysis of the comparables.

The Tribunal's determination

23. Whilst the Tribunal can see problems which could arise by using the same comparables to reach the extended and existing lease values and thus the relativity, in this instance, the Tribunal considers that with adjustments the correct value has been reached. The Tribunal takes comfort from the fact that the result is close to the Gerald Eve 1996 graph, a graph which is not at the extreme end of the spectrum.

24. The Tribunal determines that the existing lease value is £1,060,000

Premium

25. The Respondent contended for an enfranchisement price of £269,050 which is apportioned as to £108,650 to the Intermediate Landlord and £160,400 to the Freeholder. The Respondent's valuation is attached to this Decision at Appendix A. No valuation was received from the Respondent.

26. Mr Josey went through his valuation with the Tribunal and in particular drew the Tribunal's attention to the negative value he had attached to the Intermediate Landlord's interest where he had followed the Nailrile decision and said that the yield of 4.11% had been discussed (and he thought agreed) with Mr Beckett.

The Tribunal's determination

27. The Tribunal accepts that Mr Josey's calculations adopting Mr Ryan's valuations is relatively straightforward and, following the guidance in Sportelli and Nailrile, it is reasonable and has been adopted by the Tribunal.

28. The Tribunal determines the enfranchisement price of £269,050 which is apportioned as to £108,650 to the Intermediate Landlord and £160,400 to the Freeholder.

29. The Tribunal wishes to make it clear that, notwithstanding the Applicant's solicitors' comments in their letter to the Tribunal of 21 May 2010 as set out in paragraph 3 above, it is not the duty of the Tribunal to make a party's case unless it is abundantly clear that, in the particular circumstances of this case, the conclusions reached by the valuers for the Respondent were wholly unreasonable and therefore could not be relied on by the Tribunal.

Valuer's fees

30. The valuers' fees which were contested were in the sum of £2,466.31 including VAT at 15% (being the fees of Carter Jonas) and £2,528.07 including VAT at 17.5% (being the fees of Gerald Eve). Breakdowns for both were provided, that for Carter Jonas indicated that 8.5 hours had been spent and that for Gerald Eve indicated that 10.75 hours had been spent.

31. The invoice of Carter Jonas dated 30 July 2009 stated that this was in respect of *"to attending the above property and reporting to you with our valuations in respect of the existing and proposed leasehold interests as at 12 June 2009...our fees as agreed being 0.15% of the extended lease valuation figure £1,429,750"*. Mr Pryor said that the Carter Jonas fees were subject to a minimum charge of £750 and a maximum of £3,000.

32. The invoice of Gerald Eve dated 30 April 2010" stated that this was in respect of *"our fee for advising, in accordance with your instructions, on the premium payable for a new lease of this flat"*. Mr Pryor explained that Gerald Eve's fees was also a scale fee based on the valuation but he did not know the scale on which it was based.

33. The letter from Rokeby Johnson Baars LLP referred to the Lands Tribunal appeal in the case relating to Flat 3, 49-51 Cheval Place SW7 1EW in which valuation fees of £1,750 plus VAT were allowed and where the Lands Tribunal upheld the Leasehold Valuation Tribunal's decision and declined to increase such fees. They also stated *"it is not apparent to our client how the calculation figure of 19 ¼ hours could be justified in any case, let alone as in relation to which the valuers involved had recently undertaken valuations of four adjacent flats"*.

The Tribunal's determination

34. Although the Respondent's breakdowns indicated a charge out rate, Counsel informed the Tribunal that in fact both sets of valuers had carried out their work on a scale fee basis. He also accepted that there was *"a degree of overlap"* in the work carried out and that Mr Ryan was *"an estate agent type of valuer"*.

35. The Tribunal is not against two valuers being instructed in principle, one providing evidence of market value for the long and short leasehold interests and the other, using his professional expertise, to produce a valuation in accordance with the legislation and adopting the guidance of the Lands Tribunal in Sportelli

and Nailrile. However, as set out in the case of *Blendcrown Ltd. v The Church Commissioners for England* (2004) and as repeated in the *Cheval Place* case, a valuation fee should be "a reasonable fixed fee on a reasonable amount of valuation work costed at a reasonable rate". In the Tribunal's view, a total fee in the region of £5,000 for a standard two bedroom flat in this location, without any undue complexities, where the local valuer knows the market is excessive and the expert valuer is familiar with leasehold enfranchisement matters is excessive and therefore unreasonable. It is not felt that this work should take a competent valuer more than 8 hours in total. Further, the statutory valuation is contained in computer programmes and the complexity of some of the variables has been reduced by decisions such as *Sportelli* and *Nailrile* and may, in cases like this, not be particularly onerous.

36. The Tribunal determines the valuers' fees of Carter Jonas at £700 plus VAT at the appropriate rate and Gerald Eve at £900 plus VAT at the appropriate rate.

Legal costs

37. A schedule of costs of Speechly Bircham LLP was provided and Miss Murray provided explanations at the hearing in respect of the queries raised by the Tribunal. The work was split into two, being work in respect of investigation charges and conveyancing charges. The charge out rate was £360 plus VAT per hour for a partner and £193.50 plus VAT rising to £225 plus VAT per hour after 1 July 2009 for an assistant. Most of the work was carried out a lawyer of assistant status. The investigation charges were £731.23 including VAT and the conveyancing charges were £1,252.35 including VAT. Ms Murray said that no further charges would be incurred in respect of completion.

38. Although the Applicant's solicitors maintained that the legal fees were excessive, no specific challenge was made.

The Tribunal's determination

39. S 60(1)(b) of the Act provides that where a tenant's notice to exercise the right to a new lease is served under S42 of the Act, the tenant is liable "for the reasonable costs of and incidental to any of the following matters, namely (a) any investigation reasonably undertaken of the tenant's right to a new lease; (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56 (c) the grant of a new lease under that section;...."

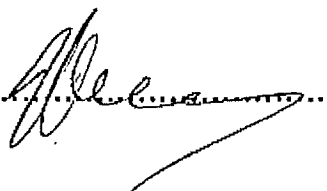
40. S 33(1) of the Act states:

"(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely-

- (a) any investigation reasonably undertaken –
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
 - (ii) of any other question arising out of that notice;
- (b) deducing, evidencing and verifying the title to any such interest;
- (c) making out and furnishing such abstracts and copies as the nominee purchase may require;
- (d) any valuation of any interest in the specified premises or other property;
- (e) any conveyance of any such interest;.....

(2) For the purposes of subsection (1) any costs incurred by the Reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs”

41.A landlord is entitled to instruct solicitors of its own choice. The hourly charging rate is not excessive and it was noted that the greater part of the work was not carried out by a partner but by an assistant at a lower charging out rate. It is possible that there may have been some duplication between the respective assistants with conduct of this matter, but notes the assurance given by Ms Murray that no further costs would be incurred in connection with the completion. The Tribunal therefore allows legal fees as set out above, totalling £1,983.58 including VAT.

CHAIRMAN.....

DATE.....11 June 2010.....

Howard de Walden Estates

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 SCHEDULE 13

Calculation and Apportionment of Premium between Freeholder and Intermediate Leaseholder

Flat 4, 20 New Cavendish Street, London W1

As at 12 June 2009

Valuation by Marcus Josey MRICS

	£	£	£	£	£
A) Diminution in Value of Intermediate Leaseholder's Interest					
a) <u>Value of Intermediate Leaseholder's Existing Interest</u>					
Headlease expires 24 June 2061					
Underlease expires 20 June 2061					
Current Annual rent receivable				2,958.00	
Less Headrent payable as apportioned to Subject Flat					
Headrent payable		22,750			
Apportioned to Subject Flat		13.00%			
				<u>2,958.00</u>	
Profit Rent					
Years Purchase	7.03	years @	6.5%	2.25%	
		Tax	0.0%		
				<u>5,0553</u>	0
Annual rent receivable from review 24/06/2016					
Value of freehold in possession			1,425,750		
Estimated rent receivable on review				3,757.00	
Less Headrent payable as apportioned to Subject Flat				2,958.00	
Inflate by same proportion as for underlease rent	3,757.00	/	2,958.00	=	
				<u>1,270</u>	
Profit Rent				<u>3,757.00</u>	
Years Purchase	45.00	years @	7.0%	2.25%	
		Tax	0.0%		
				12.0381	
Deferred	7.03	years @	7.0%		
				<u>0.6213</u>	
				<u>7.4793</u>	0
Reversion - 4 days only					Nil
b) <u>Less</u>					
<u>Value of Intermediate Leaseholder's Proposed Interest</u>					
Annual rent receivable					
Less Headrent payable as apportioned to Subject Flat				<u>2,958.00</u>	
				(2,958)	
Years Purchase	7.03	years @	4.11%		
(yield on 2.5% consols June 2009)			4.6816%		
				<u>6.0025</u>	(17,755)
Annual rent receivable from review 24/06/2016					
Annual rent payable					
Less Headrent payable as apportioned to Subject Flat				<u>3,757.00</u>	
				(3,757)	
Years Purchase	45.00	years @	4.11%	20.3585	
Deferred	7.03	years @	4.11%	<u>0.7533</u>	
				<u>15.3381</u>	(57,618)
Reversion - None					Nil
					<u>(75,373)</u>
c) Diminution in Value of Intermediate Leaseholder's Interest (carry forward)					75,373

GeraldEve

	£	£	£	£	£
c) Diminution in Value of Intermediate Leaseholder's Interest (brought forward)					75,373
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			1,425,750		
Defer 52.03 years @ 5.0%			<u>0.0790</u>		112,634
Less					
b) <u>Value of Freeholder's Proposed Interest on reversion</u>					
Reversion to value of freehold in possession			1,425,750		
Defer 142.03 years @ 5.0%			<u>0.00098</u>		1,397
c) <u>Diminution in value of Freeholder's Interest</u>					<u>111,237</u>
C) Diminution in Value of both Landlords' Interests (Carry forward)					186,610
D) Calculation of Marriage Value					
a) <u>Value of Proposed Interests</u>					
Freeholder's				1,397	
Intermediate Leaseholder's				(75,373)	
Tenant's	99.0%	of FHVP of	1,425,750	<u>1,411,500</u>	1,337,524
b) <u>Value of Existing Interests</u>					
Freeholder's				112,634	
Intermediate Leaseholder's				0	
Tenant's	% of FHVP:	74.35%	<u>1,060,000</u>		<u>1,172,634</u>
c) <u>Marriage Value</u>					<u>164,890</u>
d) Attributed to Landlord @ 50.00%					<u>82,445</u>
E) Enfranchisement Price					269,055
				Say	269,050
F) Landlord's Other Loss					<u>0</u>
G) Premium Payable					269,050
H) Apportionment of Marriage Value and Premium between Freeholder and Intermediate Leaseholder					
a) <u>To Intermediate Leaseholder</u>					
Diminution in value of interest					75,373
Share of marriage value	82,445	X	<u>75,373</u>	=	33,300
			186,610		
Other losses					<u>Nil</u>
					<u>108,673</u>
				Say	108,660
b) <u>To Freeholder</u>					
Diminution in value of interest					111,237
Share of marriage value	82,445	X	<u>111,237</u>	=	49,145
			186,610		
Other losses					<u>Nil</u>
					<u>160,382</u>
				Say	<u>160,400</u>
					269,050

Flat 4, 20 New Cavendish Street, London W1
Schedule of Adjusted Comparables



Property	Floor	Date of Sale	Tenure Years	Sale Price £	Adjust to 142 year lease	Adjust to June 2009	GIA	Adjusted Rate Epsf	Adjust for 1. Condition 2. Location 3. Other	Final Rate Epsf
Flat 6, 20 New Cavendish Street, W1	3	Mar-10	51.25	1,575,000	2,079,000	1,895,307	1,342	1,412	1. -15% : approx £200 psf better 2. Nil 3. None	1,200
				1,750,000 Sale Price						
Flat 4, 39 New Cavendish Street, W1	2	Dec-09	90	1,250,000	1,275,773	1,195,895	1,193	1,002	1. -10% : approx £100 psf better 2. +5% : opposite pub 3. +5% : poor layout	1,002
2 Kingsley Lodge, New Cavendish Street, W1	1	Sep-09	92	1,250,000	1,275,773	1,247,367	1,066	1,170	1. -20% : approx £200 psf better 2. Nil 3. +10% : poor building	1,053
Flat 10, 29 Wimpole Street, W1	4	Aug-09	115.5	1,100,000	1,105,584	1,088,866	1,139	956	1. Nil 2. Nil 3. +10% : repairs due/poor layout	1,052
Flat 7, 29 Wimpole Street, W1	3	Jul-09	115.75	1,150,000	1,155,838	1,147,061	1,193	961	1. Nil 2. Nil 3. +10% : repairs due/poor layout	1,058
Flat 5, 20 New Cavendish Street, W1	3	May-09	52	1,269,000	1,661,786	1,680,124	1,352	1,243	1. -15% : approx £200 psf better 2. Nil 3. None	1,056
				1,410,000 Sale Price						
9 Tenby Mansions Nottingham Street, W1	3	May-09	SoF	1,300,000	1,287,000	1,301,202	1,310	993	1. -10% : approx £100 psf better 2. +7.5% : West of Marylebone HS 3. None	968
Flat 4, 29 Wimpole Street, W1	2	Mar-09	116	1,050,000	1,055,330	1,091,266	1,167	935	1. Nil 2. Nil 3. +10% : repairs due/poor layout	1,029
Flat 6, 33 Wimpole Street, W1	3/4	Dec-08	104	1,100,000	1,111,224	1,112,640	1,144	973	1. Nil 2. Nil 3. +5% : 2 floors, lift to 2nd floor	1,021
Flat 2, 16 New Cavendish Street, W1	1	Aug-08	53	1,377,500	1,789,665	1,630,665	1,142	1,428	1. -15% : approx £200 psf better 2. Nil 3. None	1,214
				1,450,000 Sale Price						
2 Kingsley Lodge, New Cavendish Street, W1	1	Apr-08	93.75	650,000	867,526	744,599	1,076	692	1. +17.5% : approx £100 psf worse 2. Nil 3. +10% : unattractive, poor building	882
2 Gordon House 37 Welbeck Street, W1	1	Oct-07	90	1,175,000	1,199,227	999,798	1,162	860	1. +10% : approx £85 psf worse 2. Nil 3. +5% : poor common parts	989
Averages	2							12,626 1,052		12,525 1,044

Appendix B