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(LVT 9)

REF: LON/LVT/822/98

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: Mr P J Dayer

Respondent: The Church Commissioners for England

RE: 37 CONNAUGHT SQUARE, LONDON, W2

RV at date when Tenant's Notice was given: £2597

Date of Tenant's Notice: 17 October 1997

Application to the Tribunal dated: 16 February 1988

Heard: 20 April 1999

Appearances:

Mr P J Dayer - the tenant in person

Mr D Radford BSc (Hons) (Boston Carrington Pritchard, chartered surveyors)

for the Tenant

Mr A E Ford ASVA (Cluttons Daniel Smith)

for the Landlord

Members of the Leasehold Valuation Tribunal

Mr D L Edge FRICS (Chairman)

Mr B H Hord CBE FRICS

Mrs L Walter MA (Hons)

Date of the Tribunal's decision: 6 April 1999.

Agreed Facts

1. 37 Connaught Square is situated on the south west side of Connaught Square, which is about 300 metres from the junction of Edgware Road and Bayswater Road.

It is in a terrace of similar houses built in the middle to late part of the 19th century.

It is held on a lease having a term of 115¼ years from 29 September 1992, expiring on 25 December 2107. The ground rent is £1000 per annum for the 1st 25 years, rising to £2,000 per annum for the next 25 years. £4,000 per annum for the next 25 years, £8,000 for the next 25 years and £16,000 per annum for the final 15¼ years.

3. The valuation date is the 17 October 1997, the date of the tenant's Notice of Claim.
4. The basis of valuation shall be in accordance with Section 9(1A) of the Leasehold Reform Act 1967 (as amended).
5. The unimproved freehold vacant possession value at the valuation date was £925,000.
6. That marriage value, if any be payable, be apportioned equally between the landlord and tenant.

FACTS

7. The Tribunal made an external inspection of 37 Connaught Square on the 21st April, together with an external inspection of the following comparables:- 6, 27 and 29, Connaught Square, 8 Stanhope Place and also 41, De Vere Gardens, W8.

8. The issues to be determined by the Tribunal were:-
 - (a) The yield
 - (b) The marriage value (if any)
 - (c) The effect of the annual charge of £150 as a result of the Estate Management Scheme
 - (d) The fees charged by the Landlord's agent.

DECISION

(a) The Yield Rate

Mr Dayer considered a 10% rate to be appropriate, based on standard mortgage rates in October 1997 of between 8.2% and 8.7%, and a recent white paper on leasehold reform which noted that most Tribunal decisions were in the range of 9% to 13%.

Mr Ford considered the appropriate yield rate to be 7% based on several settlements on the Hyde Park Estate, where the yield rate of 7% had not been exceeded, and in some cases had been lower (6% and 6.5%). He also mentioned two other properties within Connaught Square,

Nos 6 and 29, where considerations have been agreed and in both instances a 7% yield was agreed. He also drew the Tribunal's attention to three LVT cases, and in each case a 7% rate was adopted.

The Tribunal considered that the correct yield in this instance was 7% because the evidence sustains this. Mr Radford's valuation analysis on 41 De Vere Gardens was at 7.5% and he acknowledged that Connaught Square was both a superior property and location to De Vere Gardens.

(b) The Marriage Value

Mr Dayer contended that there should be no allowance for marriage value because the DCF (Discounted Cash Flow) factor calculated at 10% in 110 years time is 0.000029, and because the freehold is fettered by the annual EMS Management charge of £150.

Mr Radford, for Mr Dayer, said that he could find no evidence to suggest that there was any significant difference between the existing lease of 110¼ years and the value of the fettered freehold interest. He acknowledged that previous determinations of the LVT and Lands Tribunal have allowed for uplifts in value for very long leasehold interests (over 90 years remaining) to arrive at the equivalent vacant possession values, and he produced a graph and Schedule of LVT and LT determinations which, he said, showed that the LVT has yet to determine an uplift above 2% from leasehold to freehold in cases where existing leases were in excess of 100 years.

Mr Ford considered that the differential should be in the range 3½ - 4½% based upon his Schedule of agreed Settlements on the Hyde Park Estate, with Messrs Kemp and Hawley, and

upon the voluntary sale of 25 Connaught Square in March 1999, and the freehold sale of 27 Connaught Square in January 1996, which showed differentials of 5.5% and 4.4% respectively.

The Tribunal considered both the BCP Research graph and the John D Wood/Gerald Eve graph which both showed a narrowing of the differential up to 100 years, with a differential average of between 2 and 3%, and on this basis alone, Mr Ford's figure of 3½ - 4½% was clearly too high.

The Tribunal was also of the opinion that, in the market, there is a definite difference between a long leasehold (of say 100-150 years) and a freehold, and recognises that purchasers of identical properties would always prefer a freehold to a long leasehold and would be prepared to pay something for that preference.

In this instance, bearing in mind the evidence of Mr Ford, whose Schedule shows differentials of between 3½ and 5½% with two of 3½% having similar length leases and of the graphs and other LVT and LT decisions showing around 2% and of the market, the Tribunal considers the differential should be 2½%.

(c) The effect of the annual management charge of £150 as a result of the Estate Management Scheme

Mr Dayer submitted that the freehold was fettered by the £150 per annum management charge imposed by the EMS and that the price of the freehold should be reduced by the perpetuity value of the fetter which he calculated at a total of £4789.

Mr Ford stated that no deduction should be made on account of the EMS.

The Tribunal pointed out to Mr Dayer that the EMS was determined by the LVT on 8 September 1998, almost a year after the valuation date of 17 October 1997, and that at the valuation date therefore, any effect of the EMS could not be taken into account.

(d) The Landlord's agent's fees

Mr Dayer said that his own advisory fees had been £550, charged on an hourly basis, for advice on:-

Eligibility to enfranchise

preparing and submitted an enfranchisement claim

an indicative valuation, which had included an inspection of the subject property

LVT procedures and processes

The landlord's agent had requested a fee of £2300 based upon a scale rate; and Mr Dayer considered this to be excessive, and that the freeholder's agents fees should be no greater than his own.

Mr Ford said that his fees were on the basis of a tender to the Hyde Park Estate, and based at 0.25% of the freehold value, (which in this instance worked out at £2312.50 plus VAT, a total of £2717.19).

The Tribunal considered the fee charge basis of the Landlord's agent to be excessive, and considered an hourly charge basis of £175 + VAT to be more appropriate. They considered a

time of 4 hours to be allowable for the work involved, which resulted in a fee charge of £700 + VAT.

VALUATION

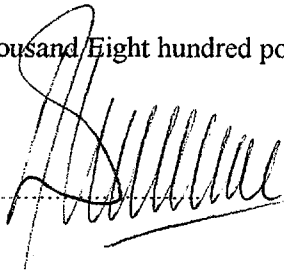
Mr Dayer's valuation is attached as Appendix A, with his agent, Mr Radford's valuation as Appendix A1.

As to Mr Dayer's final figure of £6,300, it was pointed out to him by the Tribunal that the matter of any Ground Rents paid since 17 October 1997 would be dealt with at completion by Solicitors, and hence his amended price was £7,800.

As to Mr Radford's valuation, the Tribunal pointed out to him that there was a mathematical error in the calculation, in so far as he had deducted 0.2% of the freehold value to arrive at the existing leasehold interest, rather than deducting 2%. The marriage value should therefore have been £10,673, which divided equally would give an amount of £5,336.50.

Mr Ford's valuation is attached as Appendix B. The Tribunal determines the sum to be paid for the freehold interest in 37 Connaught Square, W2 is £21,800 (Twenty one thousand Eight hundred pounds) and their valuation is attached as Appendix C.

CHAIRMAN.....



DATE.....

6 April 1999.



The resultant maximum valuation would amount to.....

● Ground rents at 10%	£12,592
● marriage value	-
● less: perpetuity value of the fether	(£4,789)
● Resultant value	£7,803
● say,	£7,800
● less ground rents paid since 17/10/97	(£1,500)
● Maximum amount due	£6,300



valuation as Appendix E. The valuation shows that the leasehold value equated to 98% of the freehold value.

3.11 With all the above in mind, I would respectfully ask that the Tribunal determine that there is no difference between the value of the freehold interest, and that accordingly no marriage value is payable.

3.12 In the alternative, if the Tribunal determine that there is an uplift in value from the leasehold interest to the freehold interest, I would ask that they accept that this is no more than a 2% uplift. In the event, based upon my client's submission on the matters of the value of the freeholder's reversionary value I have calculated the following:

Unimproved freehold vacant possession value	£925,000.00
Less value of freeholder's interest ¹	£7,827.00
Less value of existing leasehold interest	<u>£923,153.69</u>
Marriage value	(£5,980.69)

Therefore there is nil marriage value to be apportioned.

¹ I have added the deferred value of the freehold interest in 109.75 years at 10% to my client's figure of £7,803.00 to arrive at a total value of £7,827



Section 9 (1A)

Valuation under Section 9 (1A) of the Leasehold Reform Act 1967					
Date of Valuation:		17-Oct-97			
SUBJECT TO CONTRACT AND WITHOUT PREJUDICE					
Property: 37 Connaught Square					
Surveyor: Anthony Ford					
Freehold vacant possession value:	£925,000.00	Current Ground Rent:	£1,000.00		
Existing Leasehold Value: 96.5%	£892,500.00	Rent Review Factor:	0.00		
Ground Rent:	£1,000.00	Rent Review Period:	25		
Years to Expiry:	110.00	Yield:	7.00%		
Years to Review:	19.75	No. of Years in Final Review:	15.00		
Years to Expiry after Review:	90.00	Years to 1st Review:	19.75		
Discount for 1954 Act Rights:	0.00%	Years to 2nd Review:	44.75		
Yield:	7.00%	Years to 3rd Review:	69.75		
Marriage Value:	50.00%	Years to 4th Review:	94.75		
Term 1:					
		£	£	£	£
Ground Rent		£1,000.00			
YP for	19.75 @	7.00%	10.5310		
					£10,531.04
Term 2:					
Ground Rent		£2,000.00			
YP for	25.00 @	7.00%	12.7834		
					£25,566.80
PV of £1 in	19.75 @	7.00%	0.2628		
					£6,719.65
Term 3:					
Ground Rent		£4,000.00			
YP for	25.00 @	7.00%	11.6536		
					£46,614.33
PV of £1 in	44.75 @	7.00%	0.0484		
					£2,257.33
Term 4:					
Ground Rent		£8,000.00			
YP for	25.00 @	7.00%	11.6536		
					£93,228.67
PV of £1 in	69.75 @	7.00%	0.0089		
					£831.82
Term 5:					
Ground Rent		£16,000.00			
YP for	15.00 @	7.00%	9.1079		
					£145,726.62
PV of £1 in	94.75 @	7.00%	0.0016		
					£239.57
					£20,579.41
Reversion:					
Freehold vacant possession value		£925,000.00			
Less risk for rights under 1954 Act Part 1 @		0.00%	£0.00		
					£925,000.00
PV of £1 in	109.75 @	7.00%	0.00060		
					£551.15
Freeholders Interest					£21,130.57

37 CONNAUGHT SQUARE, LONDON, W2

VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL

Valuation Date: 17 October 1997

Unexpired term of lease: 110¼ years

Agreed Open Market Unimproved Freehold Vacant Possession Value - £925,000

Value of the Freeholder's Present Interest:Term 1 (17.10.97 - 29.9.2017)

Ground Rent		£1,000.00	
YP for 20 years @ 7%		<u>10.594</u>	
			10,594.00

Term 2 (29.9.2017 - 29.9.2042)

Ground Rent		£2,000.00	
YP for 25 years @ 7%	- 11.654		
PV of £1 in 20 years @ 7%	- <u>0.258419</u>	<u>£3.0116</u>	6,023.20

Term 3 (29.9.2042 - 29.9.2067)

Ground Rent		£4,000.00	
YP for 25 years @ 7%	- 11.654		
PV of £1 in 45 years @ 7%	- <u>0.476135</u>	<u>0.5549</u>	2,219.60

Term 4 (29.9.2067 - 29.9.2092)

Ground Rent		£8,000.00	
YP for 25 years @ 7%	- 11.654		
PV of £1 on 70 years @ 7%	<u>0.0087727</u>	<u>0.102237</u>	844.30

Term 5 (29.9.2092 - 25.12.2107)

Ground Rent		£16,000.00	
YP for 15¼ years @ 7% -	9.195		
PV for £1 in 95 years @ 7% -	<u>0.00161164</u>	<u>0.014819</u>	237.10
			19,918.20
		<u>c/f</u>	<u>£19,918.20</u>

	b/f	£19,918.20
<u>Reversion</u>		
Freehold Value (with vacant possession)	£925,000.00	
PV of £1 in 110¼ years @ 7%	<u>0.000576</u>	<u>532.80</u>
<u>Freeholder's Present Interest</u>		£20,451.00
<u>Marriage Value</u>		
Freehold Vacant Possession Value	£925,000.00	
less Freeholder's Interest - £20,451.00		
Leaseholder's Interest - <u>901,875.00</u>	<u>922,326.00</u>	
Marriage Value	2,674.00	
50% of Marriage Value		<u>1,337.00</u>
<u>Enfranchisement Price</u>		£21,788.00
	Say	£21,800.00

REF: LON/LVT/822/98

RENT ASSESSMENT COMMITTEE (ENGLAND & WALES) (LEASEHOLD VALUATION TRIBUNAL) REGULATIONS 1993

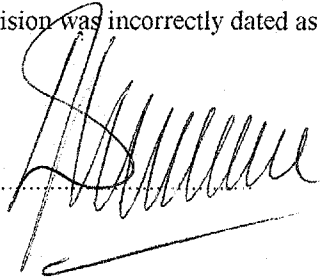
Correction certificate under regulation 11 (2) of the above Regulations.

RE: 37 CONNAUGHT SQUARE, LONDON W2.

As Chairman of the Leasehold Valuation Tribunal which determined the application in respect of the above premises, I hereby correct an clerical error in the decision of the Tribunal dated 6 April 1999. I hereby correct that clerical error and certify that the decision should be read and construed as follows.

The Tribunals decision was incorrectly dated as 6 April 1999. The date of the Tribunals decision is 4 June 1999.

CHAIRMAN.....



DATE.....

5 July 1999