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LON/NL/1053/99

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

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

Applicant: Mansfield Estates Limited

Respondent: Sir Charles and Lady Powell

Address: 1 Caroline Close, London W2 4RW

Tenant's Notice of claim: 21 September 1997

Application to the Tribunal dated: 5 November 1998

Date of hearing: 28 September 1999

Appearances:

Mr A Ford ASVA (Cluttons Daniel Smith Chartered Surveyors) for the Applicant

Sir Charles Powell)
Mr Fancourt - Counsel) for the
Mrs H Harper (Hunters, Solicitors)) Respondent
Mr M Parsley FRICS, FSVA, MAE (Parsley, Chartered Surveyors))
for the Respondent

Inspection: 8 November 1999

Members of the Leasehold Valuation Tribunal:
Mr J C Sharma JP FRICS
Mr J C Avery BSc FRICS
Mrs S E Baum JP

Date of the Tribunal's decision: 30 December 1999

30 DEC 1999

INTRODUCTION

1. By a Notice dated 21 September 1997, the Respondent tenant claimed to exercise the right under Part 1 of the Leasehold Reform Act 1967 (the Act) to acquire the freehold of 1 Caroline Close, Bayswater, London W2 4RW.
2. The Applicant freeholder, did not serve a formal Notice in reply but acknowledged the Respondent's right to claim.
3. The parties could not agree the price payable for the freehold. Accordingly, the Applicant applied to the Leasehold Valuation Tribunal, on 5 November 1998, for a determination of the consideration payable in accordance with Section 9(1)(c) of the Act as amended by Leasehold Reform, Housing and Urban Development Act 1993.

FACTS

4. No 1 Caroline Close forms part of a modern development constructed about 40 years ago. It is a detached three-storey house of conventional construction with brick elevations beneath a tiled roof. There are substantial tenant's improvements including:-

Single storey extensions

Conservatory

Alterations to layout of kitchen, living room areas and master bedroom suite

Electrically operated gates.

The gross external area of the original house was 3012ft² and 300ft² for separate garage.

5. The Tribunal were presented with a schedule of agreed facts which included:-

(a) The valuation date: 21 September 1999.

(b) Yield for calculation of the freehold term and reversion: 7%.

(c) An uplift from leasehold to freehold of 27% reflecting a discount from freehold to leasehold of 21.5%. (i.e. leasehold value 78.5% of freehold value).

(d) Annual rate of price increase of relevant properties: 20% per annum over the period of 12 months preceeding the valuation date and 12 months following calculated pro-rata.

(e) Unexpired term of lease at date of valuation: 55 years. Ground rent: £60 per annum fixed for the duration of the unexpired terms.

(f) Rateable value as at 1 April 1973 = £2472

Rateable value as at 1 April 1963 = £834

(g) Marriage value: 50%

(h) Matter of disagreement is the valuation of the unimproved freehold with vacant possession.

6. The only issue to be determined by the Tribunal therefore, in arriving at the price to be paid for the freehold, is the value of the unimproved freehold with vacant possession at the valuation date.

INSPECTION

7. The Tribunal inspected the subject premises internally and also all the comparables, referred to by the parties, externally on 8 November 1999.

8. Caroline Close is a small private road directly off Bayswater Road. It is a convenient location with good access to the West End and within a few minutes walk of Queensway's shopping facilities and underground station.

9. No 1 Caroline Close is overlooked by high rise residential blocks particularly Caroline House on its southern boundary and a Victorian block to the east. It was well maintained internally and externally, although there were some signs of leakage from the central heating

system. In addition to the tenant's improvements mentioned in paragraph 4 above, it was evident that substantial internal refurbishment had also been carried out by the tenant.

10. Caroline Close forms part of the Applicant's estate which is the subject of a Scheme of Management approved on 14 October 1971 in accordance with the Leasehold Reform Act 1967.

HEARING

11. At the hearing on 28 September 1999 (the hearing of a similar application regarding No 2 Caroline Close was heard at the same time):

The Applicant was represented by Mr A Ford ASVA of Messrs Cluttons Daniel Smith, Chartered Surveyors.

The Respondent was represented by:-

- (a) Mr Fancourt of Counsel
 - (b) Mrs H Harper of Messrs Hunters, Solicitors
 - (c) Mr M Parsley FRICS FSVA MAE of Messrs Parsley, Chartered Surveyors
- Sir Charles Powell was also present.

12. Mr Ford emphasised the convenient location of the property benefiting from a private cul-de-sac patrolled by the portage staff of Caroline House although the cul-de-sac also provides rear access to the flats and their parking areas. He regarded being overlooked by high rise blocks as a London phenomenon and did not adjust his valuation for this.

13. He said that 1 & 2 Caroline Close were regarded as prime properties within the development due to their size and location and having been built to a higher specification than the surrounding houses.

14. Although Mr Ford regarded properties in the immediate vicinity as not directly comparable, he provided details of sales, analyses and adjustments of 5 such properties namely:-

2, 4 & 7 Caroline Place Mews

4 Lombardy Place

12 Bark Place

15. He preferred to rely on sales evidence of properties similar in size to the subject property on the nearby Hyde Park Estate. He did not regard this as a more valuable area and properties within this area provided good comparable evidence to the subject property. He referred the Tribunal to the sales of:-

46 Hyde Park Square

23 Hyde Park Street

20 Somers Crescent

5 Gloucester Square

16. From his analyses of 23 Hyde Park Street and 20 Somers Crescent, adjusted for size, detachment, garden etc, he arrived at a unit price of £321.75 per ft², £1,065,000 (as amended at the hearing) for the unimproved freehold vacant possession value and £128,000 (as amended at the hearing) as the price payable for the freehold in accordance with Section 9(1)(c) of the Act. His valuation (unamended) is attached as Appendix A and 1A to show his approach.

17. Mr Ford made reference to the price paid by the Respondent for the lease in 1992 and sought to demonstrate that it supported his opinion of value of the freehold vacant possession.

The Tribunal did not find this evidence of any real assistance because of the number of adjustments needed to be made to such a historic price.

18. Mr Parsley said that Nos 1 and 2 Caroline Close are set within the development of Caroline House, right behind this 8 storey block of flats which lies to the south, putting the houses permanently in the shade and making the environment dark and austere.
19. The properties are completely dwarfed by Caroline House and the backs of the tall buildings in Queensway affording no privacy to the garden which are completely overlooked and overshadowed.
20. The distribution of the accommodation is to some extent "top heavy", i.e. the amount of living accommodation is proportionately small in relation to the total accommodation.
21. He said that these negative aspects of the properties make a big impact upon their marketability and value. The negative aspects completely outweigh any perceived advantages that might otherwise be attributable to the properties; such as physical differences of overall size etc or that they are detached.
22. He referred to 6 comparables, 4 of which were included in Mr Ford's list namely 2,4 & 7 Caroline Place Mews and 12 Bark Place. The other 2 comparables are 34 Bark Place and 14 Princes Mews.
23. He did not think it necessary to look for comparables beyond the immediate vicinity. He regarded the Hyde Park Estate as more central, larger and a totally different area where values are generally higher.
24. He arrived at a unit price of £202 per ft², £670,000 for the unimproved freehold vacant possession value and £80,000 as the price payable for the freehold in accordance with Section 9(1)(c) of the Act. His valuation is attached as Appendix B, 1B and 2B.
25. Mr Fancourt submitted that Mr Parsley's valuation approach was accurate, cohesive and sensible, Mr Ford could not establish similar level of values in the Hyde Park Estate and Caroline Close by relying on a single transaction.

26. He thought that the comparables in the immediate vicinity of the subject property were good evidence capable of being adjusted for size, garden and detachment. Mr Ford should have issued these as his prime evidence adjusted for negative aspects in the locality.

DECISION

27. The Tribunal find that the comparable properties referred to in the immediate locality are much smaller and of a terraced "mews" type and therefore were of little assistance in valuing a largish detached house. However the evidence demonstrated a freehold vacant possession value of between £425,000 and £500,000 for small houses in the locality which constitutes a "floor value" that is likely to be exceeded quite substantially by the subject house.

28. In the Tribunal's opinion greater proximity to the West End does not necessarily confer additional value; areas a similar distance out, such as Notting Hill, Holland Park and Kensington which are fashionable, do not apparently suffer. Areas much closer in but which are unfashionable do not benefit. Important criteria include good local shops and other facilities, transport and the ambience of the immediate locality. The subject house is just across the Bayswater Road from Kensington Gardens, close to Queensway Tube Station and Notting Hill shopping. Although the two areas have different attributes, the Tribunal consider the Hyde Park Estate a comparable locality.

29. The Tribunal find 23 Hyde Park Street and 46 Hyde Park Square to be helpful comparables. These houses lack the space round them enjoyed by Caroline Close but are not dominated by high rise flats. They are closer to the West End but their local shops in Edgware Road are less attractive than Notting Hill. Caroline Close does suffer from the dominating flats and an entrance that might be considered unattractive but these factors can be taken into account in the application of the comparable evidence.

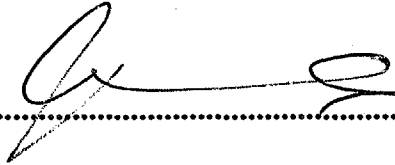
30. The Tribunal are of the opinion that the positive aspects of Caroline Close outweigh its negative aspects and would result in an uplift of about 10% over the unit price per ft² for the two comparables on the Hyde Park Estate mentioned in para 29 above.. We therefore

concluded that the unimproved freehold value with vacant possession at the valuation date for the subject property was £967,000

DETERMINATION

31. Accordingly, the Tribunal determined that the price to be paid for the freehold is £116,000 as set out in the valuation attached as Appendix C.

CHAIRMAN



DATE 30 December 1999

30 DEC 1999

Leasehold Reform, Housing and Urban Development Act 1993

Enfranchisement Price

Enfranchisement - House

Subject to Contract & Without Prejudice

1 Caroline Close London W2

Valuation SummaryLease Data

Lease Expires: 25/12/2052

Rent Review:

Basis:

fixed

Facts

Date of Claim: 21/9/1997

Existing lease: 55 years unexpired

Ground Rent: £60 per annum

Reviews: 55 yearly

Years to 1st Review: 55

Estimated Rental Value (ERV): £60

Capitalisation rate: 7 %

Landlord's % of marriage value: 50 %

Leaseholder's improvements: £0

Market value of:-

Existing lease: say £876,000

Freehold in possession: say £1,116,000

Valuation Summary

(see Second page for detail)

Para 2 (a) Diminution in landlord's interest £27,848

Para 2 (b) Landlord's share of marriage value £106,076

Para 2 (c) Compensation payable to landlord £0

Premium payable by tenant = £133,924

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Leasehold Reform, Housing and Urban Development Act 1993

Premium payable by tenant

Enfranchisement - House

Subject to Contract & Without Prejudice

1 Caroline Close London W2

Valuation

Para 2 (a) Diminution in value of landlord's interest:

Term of existing lease:

Loss of rental income				60		
YP	55 yrs @	7 %		13.94		836
	<i>plus</i>					
ERV				60		
YP	0 yrs @	7 %	0.00			
PV £1 in	55 yrs @	7 %	0.02	0.00		0
	<i>plus</i>					
Reversion to capital value				1,116,000		
Less: Leaseholder's Improvements				0		
				1,116,000		
PV £1 in	55 yrs @	7 %		0.0242	27,012	<u>£27,848</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	1,116,000	
	(b) Less: Leaseholder's Improvements	0	
2.	Value of landlord's interest in tenant's house once new lease is granted	0	1,116,000

less

Existing interests

1.	(a) Value of tenant's interest under existing lease	876,000	
	(b) Less: Leaseholder's Improvements	0	
2.	Value of landlord's existing interest	27,848	903,848

Difference (marriage value) = 212,152

CLUTTONS DANIEL SMITH

Landlord's share, @

50 % = £106,076

Chartered Surveyors - Property Consultants

12. Valuation for Enfranchisement.

Basis of Valuation under Section 9 (1 C) of the Leasehold Reform Act 1977 as amended.

No 1:

Valuation of Freehold Interest.

Term: *100 years from the date of the lease*

Ground Rent: £60.00

YP for 55 years @ 7%: 13.94
 Capital Value of Term: £836

Reversion:

Capital value of vacant possession freehold ignoring
 tenant's improvements £670 000

PV of £1 in 55 years @ 7% .0242

Capital value of reversion: £16 204

Capital value of freehold interest: £17 050

Valuation of Leasehold Interest (ignoring tenant's
 improvements and assuming tenant has no right to acquire
 the freehold).

By direct comparison 55 year lease in "no
 enfranchisement" world - no comparables.

Therefore it is agreed to take 78.5% of the freehold value
 with vacant possession ignoring tenant's improvements as
 at the valuation date, reflecting an uplift from leasehold to
 freehold of 27%.

Leasehold value: £525 950

Aggregate of existing freehold
and leasehold values: **£543.000**

Value of vacant possession freehold (ignoring tenant's
improvements): £670 000

Less aggregate of current values: £543 000

Gain on marriage of interests: £127 000

Divide marriage gain by 2

50% of marriage value: £63 500

Add value of existing freehold interest: £17 050

Sum to be paid to acquire Freehold Interest: **£80 550**

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say **£80 000**
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No 1 Caroline Close

Appendix C

Landlord's present interest

Existing rental income		£60	
YP 55 years @ 7%	13.94		£836
Reversion to capital value (unimproved)		£967,000	
PV of reversion in 55 years @ 7%	0.0242		<u>£23,401</u>
Landlord's freehold subject to lease			£24,237

Marriage Value

Freehold house with VP		£967,000	
Leasehold house with VP (78.5%)		-£759,095	
Landlord's freehold subject to lease		<u>-£24,237</u>	
		<u>-£783,332</u>	
Marriage value		£183,668	
Divide 50/50			<u>£91,834</u>
			<u>£116,071</u>
Price to be paid for the freehold			say <u>£116,000</u>