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Ref: LON/LVT/1607/03

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

Leasehold Reform Act 1967

Housing Act 1980

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

Applicant Howard de Walden Estates Ltd

Respondent Wispers Ltd

Re: Nightingale House,
90A Harley Street, London, W1

Date of the Tenant's Notice: 10 October 2002

Application to Tribunal dated: 2 July 2003

Heard: 9 March 2004

Appearances:

Mr S Burrell of Counsel
Ms V Watson of Stephenson Harwood Solicitors
Mr G Pope FRICS
Mrs J Akle of Wispers Ltd

for the Tenant

Miss K Holland of Counsel
Mr J Hudson & Miss C Armitage of
Speechly Bircham Solicitors
Mr K P Ryan FRICS of Carter
Jonas Property Consultants
Mr J Godliman of Howard de Walden Estates Ltd

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs V T Elvidge BA (Hons) (Chairman)
Mr W J Reed FRICS
Mr B H Hord FRICS

Date of Tribunal's decision: 17 April 2004

NIGHTINGALE HOUSE, 90a HARLEY STREET, LONDON W1

1. THE FACTS

The Tribunal finds facts as follows, in addition to those set out on Page 1.

(1) The Property, Nightingale House, fronts the north side of Weymouth Street and is close to its junction with Harley Street and adjoins the property known as 90 Harley Street. It is a double-fronted building planned on four floors including basement, and provides four reception rooms, five bedrooms together with a kitchen, a servery, kitchenette, two bathrooms, shower room, two cloakrooms, roof terrace, dark room, store and a two-car garage. There is also an office, a waiting room and an examination room on the ground floor.

(2) By a lease dated 25th March 1987 the subject property (the 'Property') was demised by Howard de Walden Estates Limited (the 'Applicant') to Mr C.A.Akle for a term of 75 years from 29th September 1986, expiring on 28th September 2061, at an annual rent of £500 (reviewable every 15 years). The 1987 lease was granted upon the surrender of the lease dated 29th August 1910 and made between Baron Howard De Walden and Seaford (1) and Charles Edmund Peczenik (2) the term of which had been extended to expire on 6th April 2006 by a deed dated 5th May 1947 and made between General Real Estates Investment Trust Limited (1) and Anthony Harold Charles (2).

(3) At the date of the claim for the freehold, the lease had 59 years unexpired.

(4) The current annual rent of £8,125 results from the lease provision for rent reviews every 15 years, the first having been at 29th September 2001. This rent reflected the value of the tenants' improvements, but the parties had agreed that the value of the improvements fell to be disregarded at all stages of the calculation of the enfranchisement price.

(5) The rent reviews are upwards only to ¼% of the capital value of the the Property for sale on a lease for a term equal to that unexpired of the actual lease on the relevant valuation date at a peppercorn rent. Thus the rent review at 29th September 2001 was based on the capital value of a leasehold interest with 60 years unexpired in the Property at a peppercorn rent.

(6) The lease is on full repairing and insuring terms. It forbids structural and external alterations and requires the Landlord's consent to non-structural internal works, which may be given conditional on reinstatement when the lease terminates.

(7) The lease restricts the Property to use as a private dwelling house in the occupation of one family only.

(8) By a Licence dated 25th March 1987 the Tenant, C.A. Akle, was granted the right to use the ground floor east room for his personal use for consulting purposes subject to the payment of an annual licence fee of £250.

(9) By a Licence dated 25th March 1987 the Tenant was granted the right to construct a garage and basement extension as shown on drawing numbered 6206 4C.

(10) The lease was assigned by Mr Akle to Wispers Limited in February 2002, and by a notice dated 10th October 2002 and made pursuant to section 21 Leasehold Reform Act 1967 (the 'Act') Wispers Limited sought to acquire the freehold of the Property from the Applicant.

(11) An Application was made to the Tribunal on 2nd July 2004. Directions were issued on 2nd September 2003 and the Hearing was initially set down for 18th and 19th November, subsequently postponed to 9th and 10th March 2004.

(12) The basis of valuation to accord with Section 9(1C) of the Leasehold Reform Act 1967 as amended.

(13) The Tenant's improvements to the Property, which are to be disregarded in the determination of the enfranchisement price are:

(a) The extension of the basement.

(b) The construction of a garage above the basement extension.

(c) The extension at the rear of the first floor and the creation of a roof terrace.

(14) The Valuation Date was agreed at 10th October 2002.

(15) The Subject House extends to an agreed total gross internal floor area of 6,100 sq. ft. (567 sq. m.)

(16) Excluding the Tenant's improvements, the Subject House comprised a gross internal floor area of 4,870 sq. ft. (452 sq. m.). The agreed Tenant's improvements are the extension of the basement, the construction of a garage above the basement extension, the extension at the rear of the first floor to provide a kitchen and the creation of a roof terrace.

(17) The extent of the Property as originally built is as shown by the floor plans of Sydney J Tatchell, Architect, "Shewing Accepted Scheme".

(18) The parties had agreed a skeletal valuation, which required the determination of the open market value of the freehold interest of the Property disregarding the tenant's improvements.

(19) A valuation prepared by Mr Ryan, Expert Witness on behalf of the Applicant, is attached to this decision (Appendix A) and a valuation prepared by Mr Pope, Expert Witness on behalf of the Respondent, is attached to this decision (Appendix B).

(20) Mr Ryan assessed the value of the freehold interest with vacant possession disregarding tenants improvements at the Valuation Date at £3,475,000 and a premium of £479,500 based on the skeletal calculation.

(21) Mr Pope assessed the value of freehold interest with vacant possession disregarding tenant's improvements at the Valuation Date at £2,635,000 and a premium of £363,000 based on the skeletal calculation.

2. THE TRIBUNAL'S CONSIDERATION OF DISPUTED MATTERS

(1) It was established at the outset that the only issue between the parties was the value of the freehold interest in the Property at the Valuation Date with vacant possession and disregarding the value effect of the tenant's improvements.

(2) Mr Ryan and Mr Pope, expert valuer witnesses on behalf, respectively, of the Applicant and the Respondent, gave evidence to the Tribunal as to the usefulness of the comparable properties and the adjustments, which needed to be made to them. In this connection, Mr

Ryan produced a schedule of six comparable properties, which comprised Appendix F of Mr Ryan's proof of evidence. With the exception of 17 Upper Wimpole Street, Mr Pope agreed that the list of properties in this schedule was of benefit in assessing the value of the Property. Although Mr Pope accepted the usefulness of five of Mr Ryan's the comparable properties he had not been able to view the interiors of same. The comparable properties were:-

13 Devonshire Place W1
14 Upper Wimpole Street W1
57 Upper Wimpole Street W1
17 Upper Wimpole Street W1
16 Devonshire Place W1
59 Harley Street W1

(3) Mr Pope also relied on evidence and an LVT decision (LON/LVT/1476/02) relating to 95 Harley Street W1.

(4) Due note had been made of the fact that the Property was a wide, low rise double fronted architecturally attractive house planned on four floors, whilst all the comparable properties were terrace houses with five/six floors with much smaller frontages. It was also recognised that it was necessary to make appropriate allowances for size, style, location, and condition, particularly having regard to the fact that a number of the comparable properties were in need of repair and or refurbishment. In his Appendix F, Mr Ryan had made a series of adjustments to respect these criteria.

(5) The development potential of the Property was considered including the question of whether the space currently occupied by the garage and basement extension could, in practice and subject to consents, be otherwise developed to add greater value to the Property.

3. INSPECTIONS

(1) The Tribunal inspected the Property on the afternoon of the second day of the Hearing, both internally and externally. The Property is situated in Weymouth Street which is, albeit, a busy central London street, noticeably (as had been stated at the Hearing) less busy than Harley Street itself. Both internally and externally the Property appeared to be in reasonable condition and decorative order. Inside, the Tribunal noted the impact on the accommodation of light, the degree of

modernisation, the layout of the rooms and the effect on all of these of the improvements carried out by the Tenant.

(2) The Tribunal also inspected the exterior of each of the properties cited by the expert valuers as offering evidence of comparable freehold value.

13 Devonshire Place W1

A mid terrace house planned without lift on five floors and basement, which has a gross internal area of approx. 8,571 sq ft. (including mews property providing a two bedroom mews flat at first floor level and garaging below). The property was undergoing refurbishment at the time of inspection. The house including the mews house with an unexpired leasehold interest of 912 years, was sold in November 2001 for £4,100,000

14 Upper Wimpole Street W1

A corner terrace house planned without lift on four floors and basement, which has a gross internal area of approx. 5,859 sq. ft. This property appeared to be in good condition externally. This freehold property was sold in March 2002 (6 months before the Valuation Date) for £3,300,000

57 Wimpole Street W1

A mid-terrace house planned without lift on five floors and basement, which has a gross internal area of approx. 4,415 sq. ft. This property appeared to be in good external condition with fair external decoration. This leasehold property with 913 years unexpired was sold for £2,450,000 in April 2002.

17 Upper Wimpole Street W1

A mid-terrace house planned without lift on five floors and basement, which has a gross internal area of approx. 6,224 sq. ft. At the time of inspection this property was in the process of major refurbishment and restoration as a single residence following earlier conversion to flats. The leasehold interest with 900 years plus was sold for £2,450,000 in May 2002.

16 Devonshire Place W1

A mid-terrace house planned without lift on five floors and basement, which has a gross internal area of approx. 9,202 sq. ft. This property appeared to be in good external condition and the freehold was sold in September 2002 for £4,400,000.

59 Harley Street W1

A mid-terrace house with lift planned on five floors and basement, which has a gross internal area of approx. 7,799 sq. ft. This property appeared to be in good external condition and incorporated an indoor pool, gymnasium and sauna at basement level. The freehold interest was sold for £4,800, 000 in December 2002.

4. DECISION

(1) The value of the unimproved freehold interest

In regard to the six properties which he had offered as comparables Mr Ryan made a series of adjustments. These related to the sale prices (or determined values) to reflect the differences in value between long leaseholds and freeholds, for movements in the market between the dates of sale (or determination) and the Valuation Date, and for differences of condition, style and location to arrive at an average adjusted rate of £633 per square foot of gross internal area (GIA) and his valuation of £3,082,710, excluding the value of the Tenant's improvements and any potential development value. Mr Ryan's adjustments were set out in tabular form as an appendix to his proof of evidence.

(2) Mr Pope placed considerable importance on an earlier Leasehold Valuation Tribunal decision in respect of 95 Harley Street, which he regarded as an important comparable. In that case Mr Ryan had used an adjusted value of £324 per square foot of GIA for residential use, which Mr Pope had updated to £349 per square foot as at October 2002. The Tribunal had based its determination in that case on a value of £220 per square foot for a property of 9,100 square feet, which Mr Pope had updated to £237 per square foot at October 2002. He also compared the Tribunal's determination in respect of 95 Harley Street with the sale of 16 Devonshire Place, at an agreed adjusted rate per square foot of £478, in support of his view that the difference between the unimproved values and the refurbished values for this type of property at the Valuation Date was £200 per square foot.

(3) Mr Pope also relied upon five of the comparables offered by Mr Ryan. He excluded 17 Upper Wimpole Street, but commented on the others in his proof of evidence, and after adjustments arrived at an adjusted rate of £500 per square foot of GIA to produce a valuation of £2,435,000 for the freehold interest for the subject property at the Valuation Date, excluding the value of the Tenant's improvements and any potential development value.

(4) Having read and listened to the evidence offered by Mr Pope and Mr Ryan and having inspected the subject Property and the exteriors of all the comparables the Tribunal concluded that the sales of 14 Upper Wimpole Street and 57 Wimpole Street offered, subject to the appropriate adjustments, the closest, most relevant and helpful evidence of comparable freehold values.

(a) The freehold interest in 14 Upper Wimpole Street had been sold with vacant possession in March 2002 (6 months before the Valuation Date) for £3,300,000. This property is a terrace house on the corner of Upper Wimpole Street and Devonshire Street, and comprises a basement and 4 upper floors. It was advertised and sold as a single dwelling-house, which had been stylishly and comprehensively refurbished to create an extremely comfortable and elegant home.

Mr Ryan's adjusted sale price, before adjustments for condition etc, was £588 per square foot, to which he had made further adjustments for condition (-10%), for style (+15%) and for location (+5%) to arrive at an adjusted rate of £647 per square foot. Mr Pope arrived at an adjusted sale price of £589 per square foot, before deducting £200 per square foot for refurbishment, and adding 25% for style and location to arrive at an adjusted value of £500 per square foot.

(b) The leasehold interest in 57 Wimpole Street, with 912 years unexpired, had sold in April 2002 for £2,450,000. This property is a mid-terrace house comprising a basement and five upper floors. It was advertised and sold as a single dwelling-house which had been meticulously refurbished and restored to its true period splendour, and had once been the home of Paul McCartney. Both valuers had adjusted the sale price, before adjustments for condition etc, to arrive at a value of £580 per square foot. Mr Ryan had made further adjustments for condition (-10%), for style (+10%) and for location (+5%) to arrive at an adjusted rate of £638 per square foot. Mr Pope referred to an earlier sale of this property in April 2000 at an adjusted rate of £382 per square foot as at October 2002 in support of his adjustment of £200 per square foot for refurbishment and his basic rate of £400 per square foot, and added 25% for style and location.

In his oral evidence Mr Ryan explained that while the standard of refurbishment of this property was, in his opinion, fairly basic he had made the same adjustment for condition in respect of this property as for 14 Upper Wimpole Street to take account of the fact that some refurbishment had taken place here .

The other comparables included on Mr Ryan's appendix were as follows -

- (c) 13 Devonshire Place and 13 Devonshire Mews West, W1
The leasehold interest with 912 years unexpired was sold in March 2001 to a relocation company for £4,400,000, and was resold in November 2001 for £4,050,000. The total GIA of the two properties was 8,571 square feet - much larger than the subject Property, and adjustments of the sale price would include allowances for size, from leasehold to freehold, for market movement and for marriage value. At the time of the Tribunal's inspection both properties were undergoing substantial refurbishment.

- (d) 17 Upper Wimpole Street, W1
The leasehold interest with 900 years unexpired had been sold in May 2002 for £2,250,000. The property had a GIA of 6,224 square feet, and the Tribunal had been provided with a coloured photograph of the front elevation and copies of floor plans, but not with a copy of the sale particulars. According to the floor plans the ground and first floors, and part of the basement had been used for medical purposes, and there were three self-contained flats in the basement and on the second and third floors. At the time of the Tribunal's inspection substantial works were being carried out.

- (e) 16 Devonshire place
The freehold interest had been sold in September 2002 for £4,400,000. The property had a GIA of 9,202 square feet - the largest of the comparables and very much larger than the subject Property, and the sale price devalued to an adjusted value of £478 per square foot. It was described in the particulars of sale as having a "stunning contemporary interior", but Mr Ryan made no allowance for its condition and Mr Pope made no adjustment for the much larger size. On inspection the property appeared to be in good condition and to be occupied as a family residence.

- (f) 59 Harley Street, W1
The freehold interest had been sold in December 2002 for £4,800,000. This property had a GIA of 7,799 square feet, and according to the particulars of sale had been re-built behind a Georgian façade and equipped with the latest technology for the ultimate in luxurious 21st Century living. The basement comprised a fitness complex which included a swimming pool, gym, sauna, steam shower and changing facilities. On inspection this property

appeared to be in immaculate condition and occupied as a single private residence.

(5) For the reasons stated above, the Tribunal considered that 14 Upper Wimpole Street and 57 Wimpole Street, both being nearer in size to the subject property and both having been sold as private dwelling-houses, offered the best evidence of value. The Tribunal, therefore, took as its starting point an adjusted sale price of £585 per square foot. It then made further adjustments for condition (-20%), style (+15%), and location (+5%), to arrive at a final adjusted value of £565 per square foot and a valuation of £2,751,550 as representing the value of the freehold interest at the valuation date, excluding the value of tenants' improvements and any development value.

(6) Potential Development Value: the extent of the improvements made to the Property by the Tenant (kitchen on flat roof, roof terrace, the garage and the basement extension below it) were agreed at the outset. Mr Ryan argued that the entire Property, including the kitchen, the garage and basement extension, should be valued at the same rate per square foot, ie at £633 per square foot.

(7) Mr Pope contended that the value of the garage/basement extension was less per square foot than the remainder of the Property. Valuing the garage as a single entity, Mr Pope proposed a maximum value for the garage of £100,000.

(8) Referring to the basement extension, Mr Pope again disagreed with Mr Ryan's valuation on the basis that the room could be used for games or as low-grade accommodation for staff. Mr Pope did not accept that the area was properly described as residential accommodation since the ceiling was low, the room was (in relative terms) small and there was only very limited natural light.

(9) Having inspected the Property and considered all the evidence the Tribunal concluded that the garage and basement extension were neither integral to the Property nor did they offer the same value. It considered that the appropriate value for this part of the Property was 50% of the value per square foot attributed to the remainder of the Property, and accepted that the kitchen should be included at the full value. On this basis it calculated the value of the tenants' improvements at £408,000, as follows -

Garage and basement - 1030 sq ft @ £282.50 = £290,975

Kitchen - 200 sq ft @ £585

say £291,000
= £117,000
£408,000

(10) Both valuers had agreed that an apportionment of 50% should be made to reflect the value of the site of the Tenant's improvements on a standing house basis. The Tribunal therefore added the sum of £204,000 to its earlier valuation of £2,751,550 to arrive at a total value at this stage of £2,955,550.

(11) Mr Ryan contended for the Applicant that the actual improvements to the property did not maximise its development potential. He argued that the notional development of the side area to its best potential value would add value of £780,000 to the property (excluding the actual development of the side area, a tenant's improvement). A photograph of the conservatory style extension of the property opposite in Weymouth Street was provided and it was argued that use such as this indicated the range of unexplored possibilities.

(12) The Tribunal accepted Miss Holland's suggestion that the actual improvements should be disregarded when considering the redevelopment potential of the property. They also accepted that (subject to relevant consents) a different use could be made of the area currently developed as a garage and basement extension.

(13) Given the size, location and style of the house, as well as the limitations on use imposed by light, and by planning and building legislation as well as the fact that this is a listed building, the Tribunal concluded that a redevelopment such as the existing side extension is likely, broadly, to make the best use of the development potential, but rounded up its valuation to **£3,000,000** to include any small amount of additional development value that may be realisable.

(14) On the basis of the above-mentioned freehold value, and an adjusted annual rental value which excludes the value of the Tenant's improvements of £ 5,790, the Tribunal completed the skeletal valuation agreed by the Parties and determines the premium to be paid at **£414,000**, the calculation for which is set out in (Appendix C).

CHAIRMAN... *Nichola Eridge*

DATE..... *17th April 2004*

LEASEHOLD REFORM ACT 1967 AS AMENDED

90A Harley Street, London W1

VALUATION IN ACCORDANCE WITH SECTION 9(1C)

at 10th October 2002

<u>Valuation of Freeholder's interest exclusive of marriage value</u>	£	£	£	£
For remainder of term-				
Current rent payable adjusted to exclude effect of tenants improvements				
Value of freehold interest with vacant possession disregarding effect of tenants improvements at 10/10/2002		3,475,000		
Adjust to lease of 60 years at peppercorn rent		0.81		
Backdate from 10/10/2002 to 29/09/2001		0.953		
At 0.25%		<u>0.0025</u>		
		6,706		
(Next rent review w.e.f 29/09/2016 & after every subsequent 15 years)				
Years Purchase for 59 years @ 5.5%		<u>17.41</u>		
			116,754	
Value of freehold interest with vacant possession disregarding effect of tenants improvements		3,475,000		
Deferred 59 years @ 6.0%		<u>0.0321</u>		
			<u>111,548</u>	
				228,301
<u>Add Freeholder's share of marriage value</u>				
Value of freehold interest with vacant possession			3,475,000	
<u>Less</u>				
Value of Freeholder's interest exclusive of marriage value		228,301		
Value of Leaseholder's interest exclusive of marriage value				
Value of freehold interest with vacant possession		3,475,000		
Apply agreed relativity for 59 years at rent of no more than 0.05% of FHVP value at (i)		80.4%		
		2,793,900		
Deduct for higher rent liability at 10 times adjusted rent above 0.05% of FHVP value	6,706.00			
	<u>1,737.50</u>			
	4,968.50	<u>49,685</u>		
		2,744,215		
			<u>2,972,516</u>	
Gain on marriage			502,484	
Landlord's share @ 50%				<u>251,242</u>
Enfranchisement price				479,543
			Say	479,500

LEASEHOLD REFORM ACT 1967 AS AMENDED
90A HARLEY STREET, LONDON W1
VALUATION IN ACCORDANCE WITH SECTION 9(1C)
At 10th October 2002

<u>Valuation of Freeholder's interest</u>	£	£	£	£
<u>Exclusive of marriage value</u>				
For remainder of term-				
Current rent payable adjusted to exclude effect of tenants improvements				
Value of freehold interest with vacant possession				
Disregarding effect of tenants improvements at 10/10/2002		2,635,000		
Adjust to lease of 60 years at peppercorn rent		0.81		
Backdate from 10/10/2002 to 29/09/2001		0.953		
At 0.25%		<u>0.0025</u>		
		5085		
At rent review w.e.f 29/09/2016 & after every subsequent 15 years)				
Years Purchase for 59 years @ 5.5%		<u>17.41</u>		
			88,530	
Value of freehold interest with vacant possession				
Disregarding effect of tenants improvements		2,635,000		
Deferred 59 years @ 6.0%		<u>0.0321</u>		
			<u>84,584</u>	
				173,114
<u>Add Freeholder's share of marriage value</u>				
Value of freehold interest with vacant possession			2,635,000	
<u>Less</u>				
Value of Freeholder's interest exclusive of marriage value		173,114		
Value of Leaseholder's interest exclusive of marriage value				
Value of freehold interest with vacant possession	2,635,000			
Apply agreed relativity for 59 years				
At rent of no more than 0.05% of FHVP 80.4%	2,118,540			
Deduct for higher rent liability				
At 10 times adjusted rent above 0.05% of FHVP	<u>37,670</u>			
{5085 - (0.05% x 2,635,000)} x 10		2,080,870		
Gain on marriage			<u>2,253,984</u>	
			381,016	
Landlord's share @ 50%				<u>190,508</u>
Enfranchisement price				<u>£363,622</u>

Appendix C

Nightingale House, 90a Harley Street, London W1

Valuation in accordance with s.9(1A) and s.9(1C) of the Leasehold Reform Act 1967, as amended, as at 10 October 2002 - the date of the Notice of Claim.

A. Value of landlord's freehold interest

Ground Rent 10/10/2002 to 28/9/2061, adjusted to exclude value of tenant's improvements -

Value of freehold interest with vacant possession excluding value of tenant's improvements	£3,000,000	
Adjust to lease of 60 years at peppercorn rent	0.81	
Backdate from 10/10/2002 to 29/9/2001	0.953	
At 0.25%	<u>0.0025</u>	
	£5,789,475	
	Say £5,790	
YP 59 yrs @ 5.5%	<u>17.41</u>	£100,804
Reversion to freehold with vacant possession excluding value of tenant's improvements	£3,000,000	
PV £1 59 yrs @ 6%	<u>0.0321</u>	£96,300
		£197,104

B. Marriage Value

Value of freehold interest with vacant possession, excluding value of tenant's improvements £3,000,000

Less

Value of freehold interest before enfranchisement £197,104

Value of leasehold interest before enfranchisement (80.4% relativity) £2,412,000

Less

Deduction for higher rent liability at 10 times adjusted rent above 0.05% of FHVP value -

Adjusted rent	£5,790		
0.05% of FHVP value	<u>£1,500</u>		
	£4,290	<u>£42,900</u>	£2,369,100

Marriage value £433,796

50% of marriage value £216,898

C. Premium

Value of landlord's freehold interest £197,104
50% of marriage value £216,898

£414,002

Say £414,000