

LON/LVT/1679/03

LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY
TRIBUNAL SERVICE

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

APPLICANTS:

Mr H Mohsenizadeh

RESPONDENT:

Trustees of the Portman Collateral Settlement

PREMISES:

42 Montagu Square, London, W1H 2LN

Date of Tenant's Notice:

22 January 2003

Date of Counter Notice:

21 March 2003

Application Date:

1 December 2003

Hearing Date:

19 & 20 October 2004

Appearance for the Applicant:

Mr B Denyer-Green of Counsel

Mr P Levy - PS Levy & Co.

Mr J Shingles - Justin Shingles Ltd

Appearance for the Respondent:

Mr R Pryor of Counsel

Mrs S Thomas - Radcliffes Le Brasseur

Mrs S Samios BCs, MRICS - WA Ellis

Members of the Leasehold Valuation Tribunal:

Miss L Tagliavini BA (Hons) DipLaw LLM

Mr C White FRICS

Mr J Tomalin

42 MONTAGUE SQUARE

LONDON W1H 2LN

The Tribunal's Decision

1. This is an application by the lessee Mr H Mohsenizadeh pursuant to section 21 Leasehold Reform Act 1967 seeking a determination of the price payable to purchase the freehold of the subject premises. The head lease is held by the Applicant and made on 17th August 1967 between Portman Trustees (Lessors) and Barry Ross and another (Lessees). It had a term of 37 years from 25th March 1967 at a fixed ground rent of £300 per annum. At the valuation date, the lease has 0.17 years left to run but has now expired. The freeholders and Respondents are the Trustees of the Portman Collateral Settlement.
2. The subject premises comprise a terraced house built circa 1810 arranged into flats on the lower ground (1 bedroom flat, garage including lobby), one bedroom flats on the ground, first and second floors and a 3 bedroom maisonette on the third and fourth floors with exclusive lift access. The property is situated within the residential district of Marylebone and is a Grade II listed building and located within the Portman Estate Conservation Area and faces over a central garden square. During the 1990's the flats were refurbished in an attempt to better utilise the space available and in respect of the upper flat to open up available floor space by moving the lift lobby position.

3. At the hearing the Applicant was represented by Mr Barry Denyer-Green of counsel, instructed by P S Levy & Co, solicitors. Written and oral expert evidence was provided by Mr Justin Shingles. The Respondent was represented by Mr Richard Pryor of counsel instructed by Radcliffes Le Brasseur. Written and oral expert evidence was provided by Seema Samios BSc MRICS of W A Ellis.

4. Agreement having been reached on a number of issues prior to the outset of the hearing the substantive issues that remained for the Tribunal are:
 - (i) the freehold value of the house and premises;

 - (ii) whether the premises should be valued as a series of flats or as a single house;

 - (iii) whether the lift is an improvement that falls to be disregarded under section 9 (1A) (d) of the 1967 Act.

 - (iv) The value of the increased floor area in the 3rd/4th Floor maisonette due to the reorganisation of the lift lobby.

The Applicant's Case

5. It was said on behalf of the Applicant that the building should properly be valued as a series of flats as at the agreed valuation date (22/1/03), that was and remains the configuration. Considerable costs would arise were the premises to be put back into single occupancy which would, it was submitted necessitate a discount off the open market value to reflect that fact. On the basis that the premises should be valued as a series of flats Mr Shingles calculated that an updated figure

of £2,189,200 (disregarding improvements) to be the price payable for the freehold.

6. It was submitted on behalf of the Applicant that the improvement of the lift should properly fall to be disregarded as a tenant's improvement. The subject lease having been granted on 17th August 1967 in consideration of the surrender of a previous lease held by the then tenants, the carrying out of repairs an approved conversion and a premium payable of £4,000. It was submitted that the installation of the lift must have been carried out under the earlier lease and pointed to the letter of 10/2/67 in support. Consequently, the lift installation was not part of the bargain for the surrender and grant of the 1967 lease. Mr Denyer-Green submitted that pursuant to section 3(3) of the 1967 Act the 1967 lease and the previous lease must be regarded as a single tenancy and therefore the improvement of the lift installation was by the tenant's predecessor in title at his expense and must be disregarded for the purposes of the calculation of the freehold purchase price. In support of this argument Mr Denyer-Green relied on *John Lyon Charity v Shalson* [2003] 2 EGLR 49 @ 51 and *Rosen v Trustees of the Campden Charities* [2001] 1 EGLR 59 @ 62F.
7. In the alternative it was submitted that if the lift was not to be disregarded the freehold purchase price as calculated by Mr Shingles is £2,263,800. Works to restore the lift to working order were said likely to be in the region of £60,000.
8. In reaching his valuation Mr Shingles relied on the sale of a number of comparables which included Flat 1, 24 Montagu Square; 42 Montagu Square (uncompleted transaction); Flat 1, 12 Montagu Square; Flat 1, 34 Montagu Square; Flat 1, 47 Montagu Square; Flat 2, and 49 Montagu Square as well as a number of others included in his proof of evidence/expert report.

The Respondent's Case.

9. Mr Pryor submitted on behalf of the Respondent that the subject premises should properly be valued as a house and not as a series of flats. In making a decision as to the proper basis for the valuation the Tribunal were not bound by any hard and fast rules but should be guided by the circumstances of the property to be valued and what the Tribunal considers the most helpful comparable evidence.

10. It was submitted that the circumstance of the subject premises as at the valuation date i.e. an entire unimproved building, vacant, but converted into flats gives the Tribunal the flexibility of adopting either approach mindful of the best advantage to be had from these respective approaches. Mr Pryor submitted that in this case the Tribunal should have regard to the evidence that supported the "whole house" approach adopted by Ms Samios. In her evidence, Ms Samios referred to three types of potential buyers (i) developers; (ii) investors and (iii) owner-occupiers. In addition the rarity value of such a large house fronting onto a garden square in W1 should not be ignored.

11. The comparable evidence relied upon by Ms Samios referred principally to the sale of Nos. 41 and 43 Montagu Square the latter freehold property (without a lift) having been "repurchased" by the Portman Estate in December 2003 for £2.75M who intend to convert the property into three maisonettes and a mews house, for rental purposes.

12. Ms Samios told the Tribunal that No. 41, a freehold house, was sold in August 2002 for £3M. This property has the benefit of a garage and large roof terrace at first floor level but is without a lift. Ms Samios stated that in her opinion No 43 is the most helpful comparable as it is similarly arranged as flats/maisonettes and

offers the potential for conversion and supports the valuation of £2,860,000 for the freehold purchase of the subject premises.

13. In respect of the improvements carried out in the form of the installation of a lift serving the upper flat it was conceded on behalf of the Respondent that work was done by the tenant or the tenant's predecessor in title but disputes that it was done at the tenant's own expense. In support of this assertion, Mr Pryor submitted that the installation of the lift was not done at the tenant's own expense as the installation formed part of the consideration for the grant of the lease on 17th August 1967 which required (i) the surrender of the former lease; (ii) the putting of the premises into repair (iii) and also the conversion of the premises into four self-contained flats and one maisonette and a motorhouse and (iv) the payment of sum of £4,000. It was submitted that the documentary evidence relied upon which included the Articles of Agreement, letters dated 27/5/65, the recital to the 1967 lease and the Specification of Conversion dated December 1965 all supported the argument that the lift works formed part of the consideration for the grant of the new lease.

14. It was said by Mr Pryor in his summary of closing submissions, that the Applicant had not sought to assert that the lift had been installed other than as part of the conversion works. Mr Pryor submitted that the documentary evidence, namely the lease recitals and the letter dated 10/2/67 supported his assertion that the lift formed part of the conversion works. Further, in view of the fact that the lift serves only the top maisonette commonsense dictates that it must have been installed at the time of the conversion otherwise it would have gone to all floors. Mr Pryor submitted that the recitals contained on page two of the 1967 lease are good evidence of the circumstances of the lift installation and in the absence of evidence to the contrary should be accepted as accurate. Mr Pryor submitted that the law clearly states that if works are carried out as part of the consideration of

the grant of the lease they are not carried out at his own expense for the purposes of section 9(1A)(d).

15. In valuing the lift, even one as in this case was out of operation and in need of extensive works of replacement and/or repair an uplift of between 12.5% to 15% to the value of the 3rd/4th floor flat. It was submitted that the evidence of Ms Samios that a lift in a listed building was rare but comparable evidence in respect of flat 4, 11 Montague Square and flat 4 58/59 Montagu Square showed reasonably clearly that lifts would increase the value of a higher flat by 15%.
16. The Respondent asserted that the area incorporated into the third floor by the altering of the lift lobby area should also be considered in regard to the "potential development" and has a value to the tenant calculated at £10,000 in respect of "hassle factor".

The Tribunal's Inspection

17. On 20th October 2004 The Tribunal carried out an external and internal inspection of the subject premises together with an external inspection of the comparable properties at Nos 41 and 43 Montagu Square. On inspection, the Tribunal noted the rather tired exterior appearance of the subject premises and the unfinished works of refurbishment to the ground floor flat and the dampness to parts of the basement flat. In addition, the nature of the décor/fittings to some parts suggested a highly individualised taste that a prospective purchaser might wish to alter.

The Tribunal's Decision

18. The Tribunal accepts the submission made on behalf of the Respondent that in the circumstances of this case the subject premises should properly be valued as a house rather than as a collection of flats. The Tribunal accepts in principle, the methodology of valuing a house as a series of flats as an accurate method of valuing the freehold provided there is a good comparable evidence of sales of

similar flats and there are no other suitable alternative comparables. Although the Tribunal has regard to the comparable evidence put forward on behalf of the Applicant, it does not accept that evidence put forward by Mr Shingles as providing the best evidence of the sale comparable properties. The Tribunal looked at the approach used by another Tribunal in prospect of No 45 Montagu Square. This was a similar application, which was subject to a determination by the LVT in August 2004 ref.: *LON/ENEF/995/03* where a flat by flat approach was adopted. However, in that case the freehold acquired was subject to an assured periodic tenancy of the ground floor flat pursuant to Schedule 10 of the Local Government and Housing Act 1989, and a non-participating tenant who had sought to acquire an extended lease of the first and second floor maisonette. In that instance the property could not be properly valued as a whole house. Those circumstances do not arise here and the purchase of the freehold by the Applicant is effectively with "vacant possession".

19. The Tribunal must have regard to the best evidence available of comparable sales and that which produces the best advantage. The Tribunal therefore, accepts the comparables put forward by Ms Samios in respect of Nos 41 and 43 Montagu Square as providing the best evidence. In any event, whether the would-be purchaser required the premises as a series of flats/maisonettes or intended them for single occupation, significant works of refurbishment are required. Further, the Tribunal has regard to the choice facing a prospective buyer of being able to either restore the premises to its original configuration or alternatively refurbishing the existing flats.

20. The Tribunal also accepts the Respondent's argument in respect of the lift ie its value does not fall to be disregarded in accordance with the 1967 Act. The Tribunal finds that the lift was not installed at the tenant's or his predecessor's in title's expense but as part of the consideration provided by the tenant for the grant of the 1967 lease having regard to the chronology of events and exchange of correspondence leading to the installation of the lift including documents dated 27/5/65 (architect's letter); 23/5/66 (agreement for a new lease); 30/1/67 (drawings and specification); 10/2/67 (letter approving drawings and specification) and 17/8/67 (the new lease). The Tribunal considers that the chronology establishes that the new lease was granted provided that the works of

conversion to flats and the installation of a lift (and other works) as set out in the letter dated 17/5/65 were carried out and completed together with the surrender of the existing lease and payment of £4,000 and therefore this 'improvement' does not fall to be disregarded for the purposes of section 91(1A)(d) of the 1967 Act. Contrary to the submission made by Mr Pryor, the Applicant had sought to assert that the lift had been installed by the previous lessee under the old lease and therefore should be regarded as an improvement by the tenant. However, the Applicant was not able to produce or point to any credible evidence to support this assertion. On the balance of probabilities, therefore the Tribunal finds that the installation of the lift is not a tenant's improvement and is not to be disregarded for the purposes of the calculation of the purchase price of the freehold; s.9(1A)(d) of the 1967 Act.

21. In considering the increased value of the lift to the freehold price, the Tribunal has regard to the extent of the repairs and refurbishment needed and the likely costs of such works. The Tribunal, therefore is of the opinion that the increase in value should be to the extent of 15% of the top flat but only 7.5% of the remainder of the house.

22. Similarly, the Tribunal accepts that there should be some reflection of the improvement resulting from the increased floor area as a result of the redevelopment of the lift lobby area. In this respect it accepts Ms Samios opinion that a figure of £10,000 to reflect "hassle factor" is appropriate but as this is a tenant's improvement it stands to be disregarded for the purposes of the valuation.

23. In conclusion the Tribunal decides that the freehold purchase price of the subject premises is £2,726,516; see Appendix I.

Signed.....



Dated.....

11/1/05

VALUATION OF 42 MONTAGU SQUARE, W.1**In accordance with****Section 90 of the Leasehold Reform Act 1967 (as amended)****COMPONENTS**

Valuation date :	22 nd January 2003 (<i>agreed</i>)
Date of lease :	17 th August 1967
Term :	37 years from 25 March 1966
Expires :	25 th March 2003
Unexpired term :	0.17 years (<i>agreed</i>)
Ground rent :	£300.00 per year
Value of remaining ground rent :	£50.00 (<i>agreed</i>)
Value of tenants current interest :	NIL (<i>agreed</i>)
Value of freehold with V.P.	£2,740,000 allowing for tenants improvements (<i>see decision</i>)

VALUE OF FREEHOLDERS CURRENT INTEREST

Value of ground rent	50.00	
Value of reversion.		
2,740,000.00 deferred 0.17 years		
2,740,000 x 0,99014	<u>2,712,983</u>	<u>2,713,033</u>

MARRIAGE VALUE

V.P Value	2,740,000
Freeholders value	<u>2,713,033</u>
Total marriage value	<u>26,967</u>

FREEHOLD PRICE

50% of marriage value	<u>13,483</u>
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TOTAL PAYABLE**£2,726,516**