

LON/LVT/1827/04

LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

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

Applicant: Trustees of Simon J Day Settlement (landlord)

Respondent: Sophie Brewster Bevan (tenant)

Re: 12 Wetherby Place, London SW7 4ND

Application to Tribunal 3 November 2004

Hearing date: 26 and 27 April 2005

Appearances: Mr Mark Sefton, Counsel
Mr Patrick Waters BSc MRICS
For the Applicants

Mr E Johnson of Counsel
Mr M Boyle FRICS
Mr Dennis Pope BA (Hon) Dip T P BSc
For the Respondent

Members of Leasehold Valuation Tribunal:

Mrs C Lewis FCI Arb
Mr D D Banfield FRICS

Date of notice of tenant's claim: 15 October 2003

Date of notice of reply to tenant's claim: 9 September 2004

Landlord's proposed price: £857,255

Tenant's proposed price: £403,080

Agreed valuation date: 15 October 2003

Leasehold Valuation Tribunal's determination: £517,829

Date of Tribunal's decision: 27 June 2005

12 Wetherby Place, London SW7 4ND

A. Introduction

1. This was an application by the freeholder the Trustees of the Simon J Day Settlement of 22B Rosary Gardens SW7 4NT, in respect of the claim for the freehold purchase of the property under the provisions of Section 9(1C) of the Leasehold Reform Act 1967 as amended, ("the Act"), by the respondent tenant, Sophie Brewster Bevan.
2. The tenant holds the property under a lease dated 26 September 1951 for a term of 70 years, at a yearly rent of £40 per annum and insurance rent. The property is occupied as a House in Multiple Occupation (HMO), incorporating two self contained units.
3. On 15 October 2003 the tenant gave notice of their claim to acquire the freehold.
4. On 9 September 2004 the landlord served a counter notice admitting the tenant's right to purchase the freehold and proposed a premium of £975,000.
5. On 3 November 2004 the landlord made an application to the Tribunal for determination of the purchase price and the terms of the transfer. The terms of the transfer were agreed by the parties after the hearing.
6. Directions were issued by the Tribunal dated 2 February 2005.

B. The Inspection

The Tribunal inspected the property on the morning of the 29 April. We found it to be a substantial brick built terraced house situated on lower ground, ground and 3 upper floors. It was located just off Gloucester Road between Hereford Square and Rosary Gardens. We noticed that a number of houses in the terrace had been extended at roof level.

We were able to view the interior of all rooms except 6, 7/8, 9, 10 and 11, together with the shared bathrooms and lavatories. The rooms varied in size and facilities with the three basement rooms being somewhat dark. All areas inspected were in fair condition.

We also viewed externally the properties in Hereford Square and Astons Apartments in Rosary Gardens as referred to by Mr Waters. 34 Harrington Gardens and 31 Brechin Place referred to by Mr Boyle were also inspected externally. The Hereford Square properties were situated in a garden square and appeared somewhat grander in style. We also visited 133 Notting Hill gate an HMO referred to by Mr Waters.

We inspected the common parts and one room. The property seemed more conveniently laid out with more modern kitchen fittings.

D Hearing and Decision

The parties had agreed a Statement of Facts which is attached at Appendix A.

The following valuation details had not been agreed:-

- (i) The yield rate for capitalisation of ground rents and deferment of the reversion.
- (ii) The value of the freehold reversion and of any hope value for the change of use.
- (iii) The leasehold value of the property.

1. Investment Yields

Mr Waters, for the Applicants approach to the valuation was to capitalise the existing ground rent at 6.5% and then add his estimate of the net rental income capitalised and deferred for 17.2 years again at 6.5%. In adopting a capitalisation and deferment rate of 6.5% he had considered both settlements and the Tribunal determinations. He provided details of 24 settlements which he analysed to reflect rates of between 5.5% and 7.25%. He then made allowances for the trend to lower interest rates and that the majority of settlements are on flats, and arrived at 5.75% which he then adjusted by 0.75% to reflect the use of the property as an HMO.

Mr. Boyle, for the tenant, initially used a slightly different approach in that he assessed vacant possession values for the 2 self contained flats within the property, which he then reduced by 20% to reflect that they were in an HMO, and deferred at 6.75% as opposed to the 8% which he had used elsewhere. On the second day of the hearing he produced a second valuation on a similar basis to Mr Waters, but capitalised and deferred at 7%. In adopting this rate he reflected the difference in quality of the investment in the self contained flats (previously capitalised at 6.75%) and the non-self contained rooms (which he had previously capitalised at 8%).

There was little between the valuers in respect of the capitalisation and deferment rates. Mr Waters' evidence largely related to single houses and flats, and although he made an adjustment to reflect the additional risk of an HMO, his starting point of 5.75% was at the lower end of the evidence given. Mr Boyle did not support his adoption of a rate of 7% by way of evidence, but merely referred to discussions with other agents and his research on the Internet.

Decision

The Tribunal took the view that both valuers figures fell within an acceptable range, but that Mr Waters did not sufficiently reflect the additional risk associated with this particular type of investment. We therefore adopted the rate of 7%.

2. Open market value of freehold reversion

Mr Waters estimated the net rental income achieved for the property by taking the existing rents passing under the various Assured Shorthold Tenancies totalling £90,192, and making a deduction of 25% for running costs. In making this deduction he had used his own knowledge and experience of managing another HMO at 133 Notting Hill Gate.

Mr Boyle had provided the Tribunal with details of the gross rental income with deductions of 40.45% to arrive at a net rental income of £53,683 per annum.

Decision

The Tribunal accept that the most appropriate method of valuation is the capitalised rental income plus additions for hope deferred until vacant possession can be obtained. In considering the deductions to be made from the gross income they gained more assistance from Mr Boyle's rather more structured approach, which was supported by accounts, than Mr Waters' largely unsupported assertion. The Tribunal therefore adopted a deduction of 40%.

Hope Value

Evidence of the value of potential development of the 4th floor of the property was included in the written submissions, but a figure of £42,500 was agreed between the parties before the hearing.

Both valuers agreed that there was a significant difference between the investment value of an HMO and a house in single use. Mr Waters gave evidence of sales of nearby houses in a range of £1.8m-£4.25m and considered that the value of the subject property in single use was £2,205,000. Mr Boyle, while providing details of transactions involving single houses did not consider that it was relevant to come to a figure for the subject property.

In valuing the freehold interest, Mr Waters said that he was bound to consider what extra bid would be made to reflect the possibilities of realising additional value should the house be returned to single occupancy at some time in the future. He further considered that the property was under managed at present, and not realising its full income potential. He said that with a little expenditure, even within the

restriction of the HMO legislation, the rental income could be significantly increased.

Mr Boyle took the view that the property was producing a full rental income, and that any expenditure on improvements would not significantly increase the income.

In assessing the value of the possibility of obtaining single use of the property, and an enhanced rental value, Mr Waters adopted £232,809, or 20% of the difference between the potential value of (£2,205,000) and his capitalised current income, (£1,041,000) as a reflection of what an investor would pay for these possibilities.

Decision

In considering the potential for change of use at an indefinable time in the future, the Tribunal have borne in mind the expert evidence provided on behalf of the tenant which suggested that while it was most unlikely that consent could be obtained in the long term, in any event nothing could be contemplated until after the expiry of the existing lease.

The Tribunal took the view that there was clearly some hope value in respect of the significant (but unquantified) increase in capital value that may occur should planning controls change in respect of HMOs. They have some sympathy with Mr Waters' suggestion that housing standards are subject to change over the years, and that non-self contained accommodation may become unacceptable in years to come, thereby allowing a consequent improvement in standards and income at the property. The hypothetical purchaser of the freehold would be unable to undertake any improvements until the expiry of the leasehold interest in 17 years or so, and if it was possible to calculate an appropriate figure to reflect the increase in value it would fall to be deferred.

In view of the significant differences in the existing and potential use value, the Tribunal recognise that there is some element of hope value to be assessed. In the absence of any accurate calculations it has done the best it can by adding the sum of £100,000 as a spot figure.

3. The value of the existing lease

In valuing the existing lease, which expires in 17.20 years, Mr Waters had taken the evidence of the July 2001 sale price to the tenant of £290,000 and reduced it to £263,636 to reflect a "No Act" world. Mr Boyle had taken a relativity of 47.5% based on his settlement with Mr Waters in respect of Flat D. 9 Brechin Place SW7. He considered that the actual purchase of the subject property was not helpful as the details of its marketing were deficient.

Decision

The Tribunal's view was that while there was some uncertainty with regard to the sale of the existing lease, it was nevertheless evidence of an actual sale in recent years. While having some reservations relating to this evidence, they found themselves reluctant to depart from it in the absence of anything better.

In producing his figure of 47.5% for relativity, Mr Boyle was unable to provide any supporting evidence relating specifically to HMOs, and was therefore less persuasive.

The Tribunal recognise that some allowance should be made to reflect the "No Act" world, and in this instance adopt Mr Waters figure of 10%.

Mr Boyle made deductions for tenant's improvements in respect of separation of services and central heating to one floor. The Tribunal consider that in the light of the age of the works the value is minimal, and therefore make no reduction.

Determination

The Tribunal determine the enfranchisement price payable by the tenant to be **£517,829**, in accordance with their valuation annexed to this decision at Appendix B.

CA Lewis

27 June 2005

Ref: LON/LVT/1827/04

**THE LEASEHOLD VALUATION TRIBUNAL
IN THE MATTER OF
THE LEASEHOLD REFORM, ACT 1967**

**THE DETERMINATION OF THE PRICE
IN RESPECT OF**

**12 WETHERBY PLACE
LONDON SW7 4ND**

STATEMENT OF AGREED FACTS

PREPARED AND AGREED BY:

PATRICK H WATERS MRICS

FOR THE APPLICANT

MICHAEL R BOYLE FRICS

FOR THE RESPONDENT

1.0 INTRODUCTION

This matter concerns a claim for a freehold purchase under the provisions of the Leasehold Reform Act 1967 (as amended). In this document this Act is referred to as 'the 1967 Act'.

2.0 SCHEDULE OF OWNERSHIP AND LEASE TENURE

The freeholder is:

The Trustees of the Simon J Day Settlement of 22B Rosary Gardens, London SW7 4NT

The lease details are:

Date: 26th September 1951

Term: for 70 years from 25th December 1950

Rent: £40 per annum and insurance rent

Parties:

1. John Adam Day and Roland Day
2. Shula Doniach

This lease is now vested in Sophie Brewster Bevan.

The sub tenancy details as at December 2003 are set out below as follows:-

Room 1. Let to Ms Camina for six months from 27th June 2003 at £693 per month.

Room 2. Let to Ms Mittelstaedt for six months from 24th November 2003 at £377 per month.

Room 3. Let to Ms Theron for six months from 20th June 2003 at £585 per month.

Room 4. Let to Mr Bigas and Ms Alsina for six months 1st August 2003 at £693 per month.

Room 5. Let to Ms Ostermeiser for six months from 30th July 2003 at £476 per month

Room 6. Let to Stephen Hansen for six months from 19th September 2003 at £650 per month

Room 7/8. Let to Ms Yi for six months from 18th August 2003 at £1018 per month.

Room 9. Let to Mr Crockett for six months from 1st November 2003 at £490 per month.

Room 10. Let to Mr Harstad and Ms Stanfield for six months from 25th September 2003 at £780 per month.

Room 11. Let to Mr Botting for six months from from 15th July 2003 at £563 per month.

Room 12. Let to Ms Thalmann and Ms Gomes for six months from 1st November 2003 at £1191 per month.

All the above lettings were on Assured Shorthold Tenancies and supplied by the Respondent's solicitor in December 2003.

3.0 DETAILS OF CLAIM

The tenant served a Notice of Tenant's Claim to Acquire the Freehold on 15th October 2003.

The Landlord's Notice in Reply to the Tenant's Claim was served on 9th September 2004 in which the tenant's claim was admitted.

On 3rd November 2004 the landlord made an application to the Leasehold Valuation Tribunal for determination of the purchase price and the terms of the transfer.

The following valuation issues have not been agreed between the Landlord's surveyors and the Tenant's surveyor:

The investment yield for capitalisation of ground rents and the present value of the reversion.

The value of the freehold reversion and of any hope value

The leasehold value of the property

The loss of development value for the possibility to another floor was agreed at the hearing.

4.0 THE PROPERTY

4.1 Location of the Property

Wetherby Place is in South Kensington and is close to Old Brompton Road and Gloucester Road. Gloucester Road and South Kensington underground stations are close by. Shopping facilities are located on Gloucester Road and Old Brompton Road. A Waitrose supermarket is located nearby in the Gloucester Arcade, a Tesco Metro has recently opened on Gloucester Road and a Sainsbury supermarket is located on Cromwell Road; all these shopping facilities are within five minutes walk. Most of the buildings in the immediate locality have been converted into flats and maisonettes. There are two schools in Wetherby Place.

- 4.2** The Property is arranged on basement, raised ground and three upper floors. The roof space at fourth floor level has not been developed. The Property was built in the 1880's. The whole building has been converted into two self-contained flats and nine bed-sitting rooms. The building has a London stock brick and red brick elevation under a flat roof. The front of the building faces south and is opposite the Primary school at No 5 Wetherby Place. The rear elevation looks onto a rear area, and the rear of a hotel beyond.

Entry to the building is via steps. There is a single staircase and no lift. The common parts of the building are in fair condition but basic in style of decoration.

The building's use and internal layout has been altered. There is a series of Deeds dated 26th September 1951, 29th November 1965 and 24th February 1966. The first of these consented to subletting part of the premises as furnished letting rooms and to charge the premises with a mortgage. The 1965 Deed permitted works to the building to be converted into bed-sitting units. These works were evidently carried out in accordance with plans and a brief schedule of works attached to the license. The layout of the building has changed little since these works were carried out. The third License dated 24th February 1966 seems to have clarified that the works carried out in the 1965 License enabled the building to be let as furnished rooms with the exception of one room which was to be occupied by the lessee or a resident house keeper.

4.3 Accommodation of self-contained flats and letting rooms with shared facilities.

Lower ground level

Room 1. (includes kitchen, lavatory and shared use of bathroom – 301 sq ft)

Room 2. (includes kitchenette and shared use of bathroom – 148 sq ft)

Room 3. (includes small separate kitchen and shared use of bathroom – 266 sq ft)

Ground Floor Level

Room 4. (includes kitchenette and shared use of bathroom – 295 sq ft)

Room 5. (includes kitchenette and shared use of bathroom – 144 sq ft)

Room 6. (includes kitchenette and shared use of bathroom – 240 sq ft)

First Floor Level

Room 7/8 (self-contained flat includes kitchen and bathroom and small balcony over portico – 563 sq ft)

Room 9. (includes kitchenette and shared use of bathroom – 143 sq ft)

Second Floor Level

Room 10. (living room with kitchenette, bedroom and shared use of bathroom – 337 sq ft)

Room 11. (includes kitchenette and shared use of bathroom – 175 sq ft)

Third Floor Level

Unit 12 self-contained flat (apart from fire escape) with two bedrooms, kitchen within sitting room and bathroom – 525 sq ft

5.0 BASIS OF VALUATION

The purchase price should be calculated in accordance with section 9(1C) of the 1967 Act.

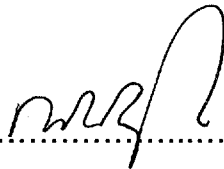
The valuation date is the date of the Notice of Tenant's Claim which is 15th October 2003.

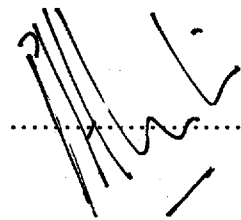
6.0 COSTS

The valuation fee of the Landlord's Valuer has been agreed at £2000 plus VAT.

7.0 Declaration

This statement of Agreed Facts has been prepared and agreed by:

Michael Boyle  dated 26th April 2005

Patrick H Waters  dated 21st April .05

Leasehold Reform Act 1967 as amended
Section 9(1C) Valuation

Appendix B

12 Wetherby Place SW7

Existing interests

Occupational lease	17.2 yrs unexpired	
Ground rent	£40 pa	
Sub leases (from Statement of agreed facts)		
11 AST s, rent totalling	£90,192	

Agreed matters

Valuation date	15/10/2003
Hope value for development of 4th floor	£42,500

Determined by Tribunal

Deductions from gross rent	40%
Capitalisation and deferment rate	7%
Hope value for change of use	£100,000
Value of tenant's existing interest	£263,636

Diminution in value of freeholders interest

Term			
Ground rent		£40	
YP 17.2 yrs @	7.00%	8.668	£347
Gross rent		£90,192	
less deductions @	40%	<u>£36,077</u>	
Net rent		£54,115	
YP in perp. @	7%	<u>14,286</u>	
Capitalised rent		£773,090	
PV £1, 17.2 yrs @	7%	0.312	
Deferred capitalised rental income			£241,204
Hope value 4th floor			£42,500
Hope value COU			<u>£100,000</u>
Freeholders interest			£383,704
Leaseholders present interest			£263,636

Marriage value

Value of freeholders proposed interest	nil
--	-----

Freehold value

Capitalised rental	£773,090
Hope value	<u>£142,500</u>
Value of tenants proposed interest	£915,590
Less	
Current interests	<u>£647,340</u>
Marriage value	£268,250
Share @	50%
	<u>£134,125</u>

Total freeholders claim

Current interest	£383,704
50% of marriage value	£134,125
Other losses	nil
Total enfranchisement price	<u>£517,829</u>