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LVT 7 (3/94)

Ref LON/LVT/541

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 S21 OF THE LEASEHOLD REFORM ACT 1967

The Trustees of the Eyre Estate
Applicant

Mrs B R Shack
Respondent

RE: 7 QUEENSMEAD, ST JOHNS WOOD PARK, LONDON NW8

RV at date when Tenant's Notice was given: £1,180

Date of Tenant's Notice: 24 July 1992

Application to Tribunal dated: 14 April 1994

Heard: 22 September 1994

Appearances:

Mr J Shack

Mr M A Allen BSc (Hons) MSc ARICS ACI Arb MBAE MHCIMA

Mr S J Martin BSc (Hons) of Steadman Allen Ltd for the Tenant

Mr J E C Briant BA ARICS of Daniel Smith

Mr R P C Dalton BSc ARICS

for the Landlord

Members of the Leasehold Valuation Tribunal:

Lady Fox QC MA

(Chairman)

Mr P F Prior BA FRICS

Mr E P Gudgin FCA ATII

Date of Tribunal's decision = 2 NOV 1994

1. This is a decision made on an application on the part of the freeholder, The Trustees of The Eyre Estate under section 9 (1) of the Leasehold Reform Act 1967 (hereinafter called the Act) as amended, for the determination of the price to be paid for the freehold interest in the house and garden at 7 Queensmead, St John Wood Park, London NW8, hereinafter called the subject premises. The tenant, Mrs B R Shack holds under a lease dated 22 April 1962 from the intermediate landlord, CPK Construction Ltd for a term of 68 years commencing on the 25 March 1962 at a ground rent of £95 per annum. Notice to enfranchise the subject premises was served by the tenant on 24 July 1992 on the freeholder and the intermediate landlord and admitted by the freeholder on 11 January 1993. Accordingly the date of valuation is 24 July 1992 at which date the unexpired term was almost 68 $\frac{3}{4}$ years.

2. Valuation of Mr J E C Briant on behalf of the freeholder as intermediate landlord.

Freehold present interest

Term

Rent receivable	£95 p.a.	
YP 68 $\frac{3}{4}$ years @ 6%	<u>16.36</u>	£1554

Reversion

Freehold entirety value	£433,000	
Present value of £1 in 68 $\frac{3}{4}$ years @ 6%	0.2	£8660

£10214
say £10250

Calculation of "marriage" value
Value of Freehold with vacant possession

£433,000

Less

Value of Freehold interest excluding "marriage" value	£10,250
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Value of leasehold interest excluding "marriage" value
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Gain on "marriage" of interest	<u>£325,000</u>
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<u>£335,250</u>
£ 97,750

Lessors' share at 50%

<u>£48,875</u>
£59,125
say £59,000

3. Valuation of Mr G M Allen and Mr S J Martin on behalf of the tenant.

Freehold present interest

Term

Ground Rent	£95	
YP for 68 years @ 8%	12.433	
Term value		£1,181

Reversion

Freehold vacant possession	£433,500	
Less 10% Landlord and Tenant Act 1954 risk	43,350	
		£390,150
PV £1 for 68 years @ 8%		<u>0.00534</u>
Reversion value		£2,082
Freehold value		£3,263

Marriage value

Freehold vacant possession		£433,500
Less sum of		
Freehold present interest	3,263	
Leasehold interest	<u>400,000</u>	<u>403,263</u>
Marriage value		30,237
Marriage share (50% each)		£15,119
Freeholders Enfranchisement price		£18,382
		say <u>£18,400</u>

4. Mr J E C Briant partner in Messrs Daniel Smith, Chartered Surveyors, gave evidence on behalf of the freeholder and intermediate landlord in accordance with a written proof. He stated that he acted as Surveyor for The Eyre Estate, and The John Lyons Charity Estate in respect of leasehold enfranchisements in St John's Wood. He had also dealt with enfranchisements for Alleyn's College in Dulwich, New Hampstead Garden Trust, Ashdale Land and Property Company and Letchworth Garden City Corporations. Mr Briant said he had instructions to represent CPK Construction Ltd, the intermediate landlord, as well as the freeholder in the present application.
5. He described the location of the subject property, a town house in a terrace of four in a 1960's developed private estate and its accommodation. He said that the parties had agreed the freehold vacant possession value of the subject premises at £433,000 based on the sale of the freehold of 5 Queensmead, a similar house on the same private estate for £438,000 in July 1994. The parties differed as to the value of the leasehold interest. He put forward evidence of transactions in respect of comparable houses in the locality and the allowances he would make for difference to the subject premises to support the figure of £325,000 as follows:-

6 Henstridge Place NW8

A three storey end-of-terrace house sold for £310,000 in October 1994. £15,000 should be added to allow for the lack of a garage and short term of 62 years.

3 Acacia Gardens NW8

A three storey mid-terrace house sold for £280,000 in May 1994. £45,000 should be added to allow for the quieter location, better quality development and longer lease of the subject premises.

32 The Marlowes NW8

A three storey mid-town terrace house sold for £370,000 in January 1994. Deductions totalling £45,000 were made for the poorer quality development, architectural style and lack of off-street parking of the subject property.

He had adopted a capitalization rate of 6% as the rate always agreed by the Eyre Estate on settlements for sales of long leases under the Act. He considered it an appropriate rate for properties in a good location where larger sums were involved.

He made no reduction in the value of the freehold interest for the risk of a tenant claiming under Part I of the Landlord and Tenant Act 1954 as he considered it inappropriate, following the introduction of Schedule 10 of the Local Government and Housing Act 1989. Schedule 10 would apply as the reversion would arise after January 1999 and the tenant was much less likely to remain in occupation at a market rent than at a fair rent, as was the situation in the Lloyd Jones case.

6. Mr M G Allen director of Messrs Steadman Allen, Chartered Surveyors gave evidence on behalf of the tenant with Mr S J Martin. Mr Allen stated that he had considerable experience as an expert witness for private clients, the Company Fraud Department, Metropolitan Police and Crown Prosecution Service in relation to mortgage and other valuations on residential commercial and licensed premises. In cross-examination he said he had no previous experience in leasehold enfranchisement work. Mr Martin stated that he was a research consultant, working with the Property Research Unit of the Department of Land Economy, Cambridge University and had advised Magdalen College Cambridge, The Halifax Building Society and other clients. He specialised in investment valuation, financial viability in housing associations and housing affordability.

The tenant's representatives disputed the figure of £325,000 put forward by the landlord as the value of the leasehold interest. They maintained that due to the rarity of freehold transactions, there was a high demand for leaseholds in the exclusive neighbourhood of St Johns Wood and asking prices for leasehold of fifty years or more were at a similar level to freeholds. In support of their figure of £400,000 for the leasehold interest of the subject premises, they referred to 17 Queensmead which had been on the market at a quoted price of £445,000 in 1994, but was withdrawn unsold. They drew attention to the different dimensions of the reception and bedrooms of the subject property to the comparable properties relied on by the landlord. Taking these and other differences into account they would

make the following adjustments.

6 Henstridge Place £75,000 addition for smaller size (£20,000) inferior architectural style (£20,000) state of repair (£20,000) and inferior location (£10,000)

3 Acacia Gardens
£90,000 for addition for noisier location, less good quality development, lack of repair and no integral garage.

32 The Marlowes
£25,000 addition for better location, condition and longer lease.

They put forward 8% as the appropriate rate for capitalisation, on the basis that past decisions of the leasehold valuation tribunal indicated that the longer the unexpired term the higher the yield should be. They also applied a 10% discount to reflect the risk of tenants exercising their rights under the Landlord and Tenant Act 1954 (Part I), this discount being in line with past decisions.

7. In answer to questions of the tribunal put to the representatives of both parties, Mr Briant on behalf of the freeholder stated that he was not prepared to accept that the agreed freehold price itself reflected all the differences in the comparables, which he had applied to the leasehold value. He accepted that the amounts of the differential applied to the comparables were subjective but in the absence of freehold sales said the parties had no alternative but to value the leasehold interest by reference to comparable leasehold sales. He made no distinction in the market for sales whether transacted at the valuation date or at 1994 and Mr Allen on behalf of the tenant did not dissent from this view. Mr Allen on behalf of the tenant accepted the subjectivity of valuing differences between properties; he maintained that there was a difference in freehold and leasehold values but much less than that put forward by the freeholder's representative. In the present case the tenant had strong personal reasons, independent of financial advantage, in acquiring the freehold and he called on the tenant's husband, Mr J Shack, who confirmed this fact.

8. INSPECTION

The Tribunal inspected the subject property externally and internally on the day of the hearing. It is located on the north side of St John's Wood Park in a 1960s development of four substantial purpose-built blocks of flats and seventeen town houses. The subject property is set back in the centre of the development behind the two large blocks of flats known as Wymondham Court and Walsingham.

The subject property is a mid-terraced town house in a row of four constructed on three floors under a pitched roof. The front elevation has facing bricks to the upper two floors and stucco to the ground floor. There is a balcony to the first floor.

Internally the accommodation comprises:-

Ground floor Entrance, open-plan reception/dining area, kitchen, lobby leading to cloakroom, boiler room.

First floor Reception room, bedroom with en-suite bathroom/w.c.

Second floor Two bedrooms (one previously two rooms), bathroom/w.c.

The house has gas-fired central heating with radiators throughout.

Outside to the rear there is an enclosed patio area leading to brick-built garage and a service road.

To the front the house has a pleasant outlook onto landscaped gardens that are attractively planted and well maintained. There are a number of parking spaces which appeared to be available for residents and visitors.

Although the development was dominated by the multi-storey blocks of flats, the subject property was set back from these blocks and therefore they did not appear to have an overwhelmingly dominant effect on the house. The subject property appeared to enjoy a measure of security and seclusion.

We also inspected externally, 5 and 17 Queensmead, 6 Henstridge Gardens, 3 Acacia Gardens and 32 The Marlowes NW8.

9. Decision and Reasons

In the present case the parties have agreed the value of the freehold interest with vacant possession of the subject property at £433,000 but disagree as to the rate of interest to be applied to the capitalisation of the ground rent and the deferment of the reversion to the deduction, if any, to be made to the freehold interest for the tenants' right under Part I of the Landlord and Tenant Act 1954, and the value of the leasehold interest in the subject premises. Although the landlord's representative contended for 6% as the rate appropriate to the superior location of the subject property, we saw no reason to depart from the 7% which is supported by the general practice adopted by Leasehold Valuation Tribunals.

The tenant's representative invited the tribunal to apply the decision in Lloyd Jones v Church Commissioners for England, (1982) 261 EG 47 and to make a 10% deduction for the risk of the tenant taking a regulated tenancy under Part I of the Landlord and Tenant Act 1954. However both parties accepted that the 1954 Act had been amended by the Local Government and Housing Act 1989, section 189 and Schedule 10, with the result that the tenant's entitlement was to an assured tenancy at market rent, rather than a regulated tenancy at a fair rent, where the long lease at a low rent subsisted after 1999. It therefore seems to us that, with regard to an unexpired term of 68 years, (unlike the 12 year unexpired term in the Lloyd Jones case), and having regard to the change in the law, which gives protection only on payment of market rent, no deduction should be made for a contingency which may not take effect, and in any event is too remote in time to enable any present quantification.

Accordingly, we make no deduction from the value of the freehold reversion for this possibility. Finally, in regard to the value of the leasehold interest the parties presented three transactions relating to leasehold sales of comparable properties in the locality and we have inspected them all, having regard to the differences in size, aspect, architectural design, location, environment, parking and

garage facilities referred to by the parties. We have to say, however, that we are of the view that all these considerations are already reflected in the agreed freehold price. Accordingly it seems to us that the real issue between the parties is the difference in value between a freehold and a leasehold interest in the subject property. However due to the rarity of transactions relating to the freehold interest, the parties were unable to produce any evidence as to what that differential might be. Having regard to differentials arrived at by leasehold valuation tribunals, based on evidence produced by the parties in other section 9 (1) (A) applications, coupled with our own knowledge and experience we determine the value of the leasehold interest to be £360,000.

10. Accordingly, our value of the freehold interest is as follows:-

Term

Rent receivable	£95.	
68 $\frac{3}{4}$ YP @ 7%	<u>14.15</u>	1,344

Reversion

Agreed value of unencumbered freehold interest	£433,000	
Present value of £1 in 68 $\frac{3}{4}$ years @ 7%	.00955	<u>4,135</u>
		<u>5,479</u>
	say	£5,500

Lessor's share of marriage value

Agreed value of unencumbered freehold interest	£433,000
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less:-

(1) Value of lessee's interest excluding prospects of "marriage"	360,000	
(2) Value of lessor's interest excluding prospects of "marriage"	<u>5,500</u>	<u>365,500</u>
Gain on marriage		67,500

50% to the lessor		<u>33,750</u>
Enfranchisement price		£39,250

11. The tribunal, therefore, determines the sum to be paid for the freehold interest in 7 Queensmead St Johns Wood Park, London NW8 pursuant to section 9(1)A of the Act as amended is £39,250 (Thirty nine thousand two hundred and fifty pounds).

CHAIRMAN..... *Agel Fox*
 DATE *2 November 1994*