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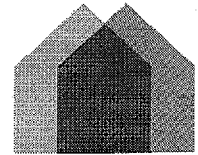
**LONDON RENT ASSESSMENT PANEL**

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**Residential  
Property**  
TRIBUNAL SERVICE

The Leasehold Advisory Service  
70-74 City Road  
London  
EC1Y 2BJ

Your Ref:  
PHM SHB 29080  
Our Ref:  
LON/LVT/1638/03  
Date:  
16 March, 2004

RECEIVED 17 MAR 2004

Dear Sirs

LEASEHOLD REFORM ACT 1967: SECTION 21  
HOUSING ACT 1980: SECTION 142 AND SCHEDULE 22

PREMISES: 649 FULHAM ROAD, LONDON SW6

1. I refer to the Leasehold Valuation Tribunal's decision in respect of the above premises, which was sent to you on 8 March 2004.
2. It has been pointed out that errors were made on the front sheet of the decision concerning the recording of Mr Grainger and Mr Hawkins.
3. I enclose an amended front sheet herewith. I would be grateful if you could substitute this for the front sheet of the decision sent to you on 8 March 2004.
3. Please accept my apologies for any inconvenience caused.

Yours faithfully

for the Leasehold Valuation Tribunal

**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:** Marlin Securities Limited (The Tenant)

**Respondent:** Dugdale Building & Development Co Ltd

**RE:** 649 Fulham Road, London, SW6 5PU

**Date of Tenant's Notice:** 2 June 2003

**Application to Tribunal dated:** 28 August 2003

**Heard:** 20 January 2004

**Appearances:** Mr T Jefferies of Counsel  
Mr P Dyar of Black Graf & Co., Solicitors  
Mr O L Grainger FRICS of Owen Grainger Associates,  
Chartered Surveyors  
Mr K Hawkins FRICS of Marlin Securities Limited  
for the Tenant

Mr M Buckpitt of Counsel  
Mrs M Gorvett of Messrs Wedlake Saint, Solicitors  
Mr N M Maunder Taylor, BSc (Hons) MRICS of Messrs  
Maunder Taylor, Chartered Surveyors  
for the Landlord

**Members of the Leasehold Valuation Tribunal:**

Mrs V T Elvidge BA (Hons)  
Mr F W J James FRICS  
Mrs J Pittaway

**Date of Tribunal's decision** 6 March 2004

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Mr F W J James FRICS  
Mrs J Pittaway

**Date of Tribunal's decision - 6 MAR 2004**

## 1. INTRODUCTION

By a lease dated 28 February 1907 the Property was demised by the Mayor, Aldermen and Councillors of the Metropolitan Borough of Fulham to Alfred Brickell for a term of 99 years from 25 December 1906 expiring on 24 December 2005. The rent payable was a peppercorn for the first 12 months and thereafter £25 per annum.

By a notice dated 2 June 2003 and made pursuant to section 21(1) Leasehold Reform Act 1967 (the 'Act') the then tenant sought to acquire the freehold of the Property from the Respondent. The tenant subsequently assigned his interest (with the benefit of the notice) to the Applicant.

An application was made to the Tribunal on 28 August 2003, Directions were issued on 24 October 2003 and the Hearing was set down for 20 and 21 January 2004.

On 13 January 2004 a joint application to postpone the Hearing was made to the Tribunal but the postponement was not allowed at that time.

## 2. THE HEARING

2.1 During the course of the first morning of the Hearing an application to adjourn the Hearing was made by Mr Buckpitt on behalf of the Respondent. The reason for this application was, he stated, that the Respondent had not been aware until then that the Applicant proposed to produce their planning expert at the Hearing to support their claim that the Permitted User of the 1<sup>st</sup> and 2<sup>nd</sup> floors of the Property is as a House in Multiple Occupation. The Respondent freeholder had prepared their valuation on the basis that the two upper floors could be used either as a maisonette or as two separate flats: they now wished to be able to produce a planning expert in support of their own conclusions as to the Permitted User of the upper floor.

Having considered the Application to adjourn, which the Applicant opposed, the Tribunal determined that in the interests of Natural Justice an adjournment should be granted. It was agreed that the Hearing would resume the following afternoon. The Hearing resumed the following afternoon and concluded on 28 January.

2.2 At the Hearing the following facts were agreed by the parties:-

- 2.2.1 Valuation in accordance with Section 9(1) of the 1967 Act
- 2.2.2 The value of each of the 1<sup>st</sup> and 2<sup>nd</sup> floors as self contained flats would be £230,000
- 2.2.3 The current site value as a percentage of the entirety value is 35%
- 2.2.4 The valuation date is 2 June 2003
- 2.2.5 A yield rate on the ground rent of 7%

2.3 The issues in dispute were:-

- 2.3.1 Permitted User of the 1<sup>st</sup> and 2<sup>nd</sup> floors
- 2.3.2 Residential income
- 2.3.3 Deduction to be applied to residential income for notional outgoings
- 2.3.4 Retail income
- 2.3.5 Retail yield

### **3. INSPECTION**

The Tribunal inspected the Property on the second day of the Hearing, both internally and externally. The Property is mid-terrace, in a small parade of shops fairly close to Fulham Broadway. At the rear, there is a (somewhat obstructed ) alleyway and an overgrown yard. Inside, the ground floor shop comprises the front sales area and a back storage room with wc. Accessed from the front hall (rather than the shop) down steep stairs, and from the rear at basement level, is a good sized (447 square feet) basement storage area .

The 1<sup>st</sup> and 2<sup>nd</sup> floors comprised 3 living rooms with, at each half landing, kitchen and bathroom facilities.

The Tribunal also inspected the exterior of the properties cited by the parties as offering evidence of comparable values. Numbers 653, 645 and 647 Fulham Road were all situated within the same parade as the Property although 653 had a corner frontage and was a significantly better property , as was 645, which had a return frontage.

703 Fulham Road was half a mile further from Fulham Broadway , a grander property in a much more imposing stretch of shops.

### **4. DECISION**

#### **4.1 Permitted user of 1<sup>st</sup> and 2<sup>nd</sup> floor accommodation**

At the Hearing Mr Hawkins for the Applicant gave details to the Tribunal of the actual occupation of the residential element of the Property both at the Valuation Date (so far as he was able) and at the date of the Hearing. The first floor rooms (and the kitchen on the half landing below) have been let to a statutory tenant for about 16 years at the current rent of £276 per calendar month. Since July 2003 (shortly after the Valuation Date) he has sublet one room to Mr Holzt, who had been occupying one of the rooms on the second floor. The second floor is, Mr Hawkins stated, let as separate rooms at £80 per room per week. Prior to the Valuation Date the rent for the second floor occupants had been collected and paid to the freeholder by one of the occupants.

The second floor is now occupied by a father and son (with the smaller front room unoccupied).

Mr Hawkins added that he establishes rates of rent and looks for new tenants in Loot magazine.

The Parties then offered evidence to the Tribunal as to the potential uses of these two floors which would maximise the notional value of the residential element. It was agreed between the parties that were the two floors converted to self contained flats the value of each flat would be in the region of £230,000. Alternatively, the residential elements might be used as a maisonette, as one flat and one floor of rooms or simply as 6/4 rooms.

All the contemplated options would, it was accepted, be subject to the constraints imposed both by the building itself and by planning law and regulations.

Mr Reynolds, planning expert on behalf of the Applicant, contended that the Property having been designated as a House in Multiple Occupation ("HMO") (he referred to two notices both dated 11 February 1994 issued by London Borough of Hammersmith & Fulham) use as either one or two flats or as a maisonette would require consent to change of use. He explained that designation as an HMO brings a property outside the Use Classes Order since it is a "sui generis" use. He did not consider that planning consent for a change of use as contemplated would be forthcoming.

Mr Jefferies, counsel for the Applicant, referred to the decision in *Richmond v Secretary of State for Environment etc* [2001] JPL 84 in support of Mr Reynolds view that conversion of the 1<sup>st</sup> and 2<sup>nd</sup> floors would constitute a material change of use for which planning consent would be required.

Mr Reynolds did accept, however, that it might be arguable either that the 1<sup>st</sup> floor is actually used as a flat or that change of use to a flat would not require consent.

Mr Grainger, valuer expert on behalf of the Applicant, explained that he had valued the 1<sup>st</sup> and 2<sup>nd</sup> floors as 6 separately let rooms (ignoring the prohibition on use as sleeping accommodation of the smallest living room on each floor) with shared use of the 2 kitchens and the bath/shower rooms and wc's.

Mr Job, planning expert on behalf of the Respondent, did not accept the blanket application of the *Richmond* decision in this case. Whether or not a material change of use takes place is a question of degree, he argued. Thus if a flat became self-contained by the installation of a single door this would not, he suggested, constitute a change of use.

Mr Grainger addressed the proposal by Mr Maunder Taylor (valuer expert on behalf of the Respondent) that the 1<sup>st</sup> and 2<sup>nd</sup> floors could easily be converted to 2 flats and/or that the current accommodation could be extended by moving the kitchens to the smallest living room on each floor. The creation of self-contained flats, particularly on the 1<sup>st</sup> floor, would cause great practical difficulties, said Mr Grainger. Not only would it be hard to achieve circulation space and access to all rooms within a contained framework but

also the changes which could be made would be limited by the location of the soil pipe. The galley kitchens contemplated by Mr Maunder Taylor would, he said, be too small to accommodate more than one person at a time which negated the intended goal of increasing the number of potential occupiers of the available accommodation.

The Tribunal concluded that the actual use of the first floor is as an un-self-contained flat while the second floor is used as rooms.

Potentially, the Tribunal considered, the second floor flat could easily be self contained. It would however be extremely difficult physically, on the face of it, to create a fully self contained flat on the first floor. The three current living rooms could, however, be self contained, albeit with the loss of floor space.

The Tribunal then considered the question of planning. Having heard the arguments presented by Messrs Reynolds and Job and without specialist or detailed knowledge of the current or projected planning policies at London Borough of Hammersmith & Fulham the Tribunal concluded that it was reasonably likely that the necessary consents (for the Property to be used as either a maisonette or as a self contained flat on one floor and rooms on the other floor) would be granted.

## 4.2 Residential Income

4.2.1 Use as rooms: Mr Hawkins stated that room rentals were £80 at present and would not, based on his knowledge and on his perusal of Loot magazine, exceed £90 per week even if refurbished. Mr Maunder Taylor presented some evidence of room rentals along the Fulham Road from which he extrapolated rates of £110 per week for a double and £90 for a single room.

The information offered was however limited and the Tribunal relied largely on the actual lettings at the Property and their own knowledge and experience. They decided that on each floor (if both were let as rooms) single rooms would let at £80 and double rooms at £100 per week. In reaching this decision they assumed that the current kitchen on each floor be moved to occupy the undersized front room.

4.2.2 Use as a flat (of one floor): No comparable evidence was offered to the Tribunal of similar lettings. The Tribunal was informed that Mr Demelweek paid £276 per month but it was accepted by both parties that this did not represent an open market rent. Based again on its knowledge and experience of monthly assured shorthold lettings in the area the Tribunal concluded that the rental for a flat let on an assured shorthold letting would be £850 per month.

4.2.3 The Tribunal did not contemplate the grant of a long lease at a premium of a single floor since they considered it improbable that such a transaction would take place whilst the other floor is let as rooms.

4.2.4 In view of the impact on valuation of Mr Demelweek's rights of occupation the Tribunal did not consider that an assumption that the first and second floors were used as a maisonette could achieve the best value for the residential element.

#### 4.3 Deduction for residential outgoings

Referring to the schedule of income and expenditure prepared by Mr Hawkins and contained at Appendix III to his proof of evidence Mr Grainger explained that the notional deductions listed by Mr Hawkins were incomplete in certain areas (no deduction, for example, is made for voids) and that the figures contemplated occupation of 6 rooms despite the prohibition on the use of 2 rooms as sleeping accommodation. Generally the deductions assumed by Mr Hawkins were too low for accommodation of this nature. In particular, he did not consider that the deduction of 15% for management and cleaning (including re-letting costs) was sufficient.

Mr Hawkins' schedule indicates deductions of 39%. In Mr Grainger's experience, deductions of 50% would be more appropriate.

Mr Maunder Taylor considered the deductions from income contemplated in the schedule to be excessive, and did not accept that these figures should be increased to 50%, as proposed by Mr Grainger.

In his professional experience and expert opinion the appropriate notional deduction from income would not exceed 35%.

Drawing upon its own knowledge and experience, the Tribunal accepted Mr Maunder Taylor's representations, that a normal deduction for outgoings is at 35% and applied this figure.

#### 4.4 Retail Income

##### **BASIS OF RETAIL VALUATION**

Mr Grainger contended that a potential tenant of the shop would consider the rent on a unit rather than square footage basis. Mr Maunder Taylor proposed valuation on a square footage basis. Both Mr Grainger and Mr Maunder Taylor presented their comparable evidence for retail accommodation on a square footage basis and the Tribunal accepted Mr Maunder Taylor's proposal that this was the appropriate mode of valuation for retail accommodation of this nature.

##### **COMPARABLES**

The shop on the ground floor was let on a tenancy contracted out of the protective provisions of Sections 24-28 Landlord and Tenant Act 1954 Part II



for a term from 6<sup>th</sup> August 2003 expiring at an annual rent of £12,500 per annum.(£35.31 p.s.f.) . Mr Grainger for the Applicant contended that this letting offered the best evidence of the achievable rent for the premises. In support of the rent achieved at the Property Mr Grainger referred to the rent review at 653 Fulham Road conducted in August 2002 by Mr Clein FRICS whereat he determined a rental figure of £37.95 p.s.f..

Mr Maunder Taylor did not accept the relevance of the actual letting of the Property for 2 reasons: first, the available lettable shop area is not currently maximised and second the shortness of the residue of the headlease term and the consequent exclusion of 1954 Act rights significantly reduced, in his opinion, the rent achieved.

As for the rent determined by Mr Clein at 653 Fulham Road, too little information is offered as to the terms of the letting and the relative negotiating positions of the parties to make this reliable and useful comparable evidence.

Referring to the comparable evidence he himself had offered Mr Maunder Taylor did not accept the challenge levied by Mr Grainger that the premises at 703 Fulham Road (let at £62 p.s.f. ) and 600 Fulham Road (let at £53 p.s.f.) were in a better retail parade, arguing that the subject Property is closer to the new Broadway Centre at Fulham Broadway and therefore preferable.

Commenting generally on his evidence of comparables he explained that he reached a figure of £45 p.s.f. for the subject Property by "weighing up on a broad basis his comparable evidence and the location" without making detailed and precise adjustments to existing rents.

## **RETAIL YIELD**

Mr Grainger indicated that the Property would attract neither an institutional investor nor a retail owner/occupier and therefore adopted a yield of 9%. Mr Maunder Taylor however, applied the evidence of the sale at auction of 638 Fulham Road at a yield rate of 6½% and he adjusted this to 6%.

The Tribunal applied its own knowledge and experience and concluded that a realistic yield for a property of this nature in this location would be 7½%.

## **ALTERATIONS AND USE OF BASEMENT**

Mr Maunder Taylor argued that a full market rent would only be achieved by removing the partition which prohibits access from the shop to the basement storage area and by extending the retail area into ground floor storage. He also suggested that in addition to extending the available shop area by reducing the rear storage area the current rear storage area should be extended with, possibly, use of part of the rear yard.

It was accepted by Mr Grainger that the basement area was more profitably partnered with the shop accommodation. Mr Maunder Taylor contended that

with(as he proposed) reduced storage at the rear of the shop, the basement area would be worth £3 p.s.f. for storage. Mr Grainger claimed that the maximum achievable rent for the basement even without available ground floor storage would be £1.50 p.s.f..

The Tribunal took Mr Klein's determination as a starting point, considered the comparable evidence offered and applied its own knowledge and experience of rents in this location. They accepted that while the letting of the shop at 649 itself would ordinarily offer the best comparable evidence the absence of 1954 Act protection and the partitioning currently in place did not result in the maximisation of the potential rent.

The Tribunal considered the true rent for the ground floor would be in the region of £40 per square foot for Zone A.

They also concluded that it would be reasonable to maximise the potential Zone B rent by converting the current storage area into retail. By the removal of the partitioning dual access to the ample basement storage area would be achieved. Having considered the evidence the Tribunal decided that the rent for the basement storage area was £2 per square foot.

The Tribunal did not believe that an extension into the rear yard would add value.

## 5. DETERMINATION

The Tribunal therefore determined that the price for enfranchisement of the Property should be £118,200 as set out in the attached valuation.

CHAIRMAN..... *Victoria Evidge*

DATE..... *6<sup>th</sup> March 2004*

# VALUATION

Under Section 9 Leasehold

649 Fulham Road, London SW6

## Agreed Facts

Valuation date 2 June 2003  
Ground rent Yield 7%  
Site Value 35% of Entirety Value of New House

## LVT Base Facts

Zone A Rent £40.00 per sq ft  
Basement Rent £2.00 per sq ft  
Retail Yield 7.5%  
Single Room £80.00 per week  
Double Room £100.00 per week  
Flat £850 per calendar month

## 1 VALUE OF PRESENT GROUND RENT

Ground Rent	£25.00 per annum	
YP @ 7% for 2.56 Yrs	<u>2.271936</u>	
		£ 57.00

## 2 VALUATION OF MODERN GROUND RENTS

Value of New House	£396877.00	
Site Value @ 35%	<u>£138907.00</u>	
Modern Ground Rent	£9723.00 pa	
YP @ 7% 14.2857		
PV £1 def 2.56 yrs 0.85048	<u>12.1497</u>	
		<u>£118132.00</u>
		£118189.00
	Say	£118200.00

## Value of New House

### 1 Retail Unit

Zone A £40.00 pfs on 303 sq ft	£12120.00 pa
Zone B £20.00 pfs on 261.50 sq ft	£ 5230.00 pa
Basement £2.00 pfs on 447 sq ft	<u>£ 894.00 pa</u>
Total Retail Unit Rent	£18244.00 pa
YP in Perp @ 7.5%	<u>13.3333</u>
	<u>£243252.72</u>

Say £243253.00

### 2 Upper Parts

Single Room 1 at £80.00 pw	£ 4160.00 pa
Double Room 2 at £100.00 pw	£10400.00 pa
Flat £850 pcm	<u>£10200.00 pa</u>
Gross Income from Upper Parts	£24760.00 pa
Less Outgoings (35%)	<u>£ 8666.00</u>
Net income from Upper Parts	£16094.00 pa
YP in Perp @ 10.5%	<u>9.54545</u>
	<u>£153624.47</u>

Say £153624.00  
£396877.00

### Entirety Value