

**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: Cadogan Holdings Limited (Landlord)

Respondents: Richard Penrhyn Pockney and Antoinette Elizabeth Pockney (Tenants)

Re: 57 Shawfield Street, London SW3

Application to Tribunal by Cadogan Holdings Limited: 13 September 2002

Hearing date: 6 & 7 March 2003

Appearances: Mr. K.S. Munro (Counsel)
Miss L. Blackwell of Pemberton Greenish, Solicitors
Mr. A.J. McGillivray of W.A. Ellis
Mr. K.D. Gibbs FRICS of Gerald Eve

for the Applicant

Mr. T. Harry (Counsel)
Mr. S. Wortley of Pinsent Curtis Biddle, Solicitors
Mr. J. Shingles of Justin Shingles Limited

for the Respondents

Members of Leasehold Valuation Tribunal:

Mr. P.D. Wulwik LLB (Chairman)
Mr. J.R. Humphrys FRICS
Mrs. C.A. Lewis FCI Arb

Date of notice of tenants' claim: 11 June 2002

Date of notice in reply to tenants' claim: 26 July 2002

Landlord's proposed price (as amended): £495,850

Tenants' proposed price (as amended): £366,500

Agreed valuation date: 11 June 2002

Leasehold Valuation Tribunal's determination: £462,854

Date of Tribunal's decision: 03 APR 2003

~~2003~~

Ref. No. LON/LVT/1521/02

57 Shawfield Street, London SW3

A. Introduction

1. This is an application by the Applicant landlord Cadogan Holdings Limited to determine the enfranchisement price payable by the Respondents Mr. and Mrs. Pockney for the freehold of the property at 57 Shawfield Street, London SW3 under Section 9(1C) of the Leasehold Reform Act 1967.
2. The Respondents are the tenants of the property under a Lease dated 16 December 1971 for a term of 65 years less 3 days from 25 December 1969 until 22 December 2034 at a fixed rent of £225 per annum.
3. There is a head Lease dated 29 September 1971 relating to 49-57 (odd) Shawfield Street for a term of 65 years from 25 December 1969 until 25 December 2034 at a fixed rent of £1,000 per annum. By a Deed dated 18 April 1986 the head Lease was determined as to 55 Shawfield Street and the rent was reduced to £800 per annum. The intermediate landlords are the Earl and Countess of Chichester.
4. The property comprises a modern end of terrace house built about 1970 on basement, ground and three upper floors (including an attic floor) with an integral garage and a walled east facing rear garden.

5. There was a Licence for Alterations dated 8 March 1993 relating to the internal reorganisation of the basement, ground, first, second and third floors together with the provision of a new rear dormer window which had extended the overall GIA by approximately 40 sq. ft. or 3.74m². The GIA including the garage but excluding tenants' improvements is 2,605 sq. ft. or 242 m².

6. On 11 June 2002 the tenants gave notice of their claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 26 July 2002 the landlord Cadogan Holdings Limited served notice in reply admitting the tenants' right to acquire the freehold. On 13 September 2002 the landlord issued the present application to determine the enfranchisement price payable for the freehold of the property. The landlord's application proposed a price of £693,000. Directions were given by the Tribunal on 17 October 2002.

B. Hearing

7. The hearing took place on 6 and 7 March 2003. The Applicant landlord was represented by Mr. K.S. Munro of Counsel instructed by Pemberton Greenish, Solicitors. The landlord's experts were Mr. A.J. McGillivray of W.A. Ellis and Mr. K.D. Gibbs FRICS of Gerald Eve. The Respondent tenants were represented by Mr. T. Harry of Counsel instructed by Pinsent Curtis Biddle, Solicitors. The tenants' expert was Mr. J. Shingles of Justin Shingles Limited.

8. The parties had agreed a statement of facts, including the following matters:-
 - (1) The valuation date was 11 June 2002. At that date, the Lease had 32.54 years unexpired.

(2) The parties were agreed as to the alterations carried out, the value of which was to be disregarded.

(3) The capitalisation and tax rates of the head lessee's profit rent were 7.5%/3.5%/40% tax. The value of the head leasehold interest was £242.

(4) The capitalisation rate of the head rent was 6.5%.

(5) The marriage value was to be apportioned equally between the freeholder and the tenants.

9. The matters in issue between the parties were the following:-

(1) The unimproved freehold vacant possession value.

(2) The unimproved leasehold vacant possession value.

(3) The deferment rate.

10. The experts gave evidence in accordance with their respective proofs of evidence including supplemental proofs, which they added to in their oral evidence. The landlord now proposed an enfranchisement price of £495,850. The tenants proposed an enfranchisement price of £366,500.

C. Inspection

11. The Tribunal inspected the subject property at 57 Shawfield Street on 10 March 2003.

12. The property is a 1970's town house on 5 floors including basement and with the top floor being in the mansard. There is an integral garage, and a small lightwell to the basement at the front. There is a small amount of stucco rendering to the ground floor, three Georgian style windows on first and second floor levels, and decorative balconies on the first floor. At the rear, there is a pleasant walled east facing garden. The property was in good decorative condition throughout and in good repair.

13. The Tribunal considered that the property provided a reasonable amount of accommodation and was well proportioned for its size. It has a good location in a quiet road.

14. The Tribunal inspected externally the comparables at 24, 26A and 36 Shawfield Street and 53, 59 and 61 Flood Street. The Tribunal have the following comments on the comparables:-
 - (1) 36 Shawfield Street is situated diagonally opposite the subject property. It comprises 4 floors including basement, there being no mansard. It is of a similar age. There is an integral garage and a parking area outside. The property has a less imposing exterior. It is a more modern style. There are three large paned windows at first floor level and two windows at second floor level.

 - (2) 24 and 26A Shawfield Street are situated further down Shawfield Street on the opposite side to the subject property. They comprise 4 floors, and are of a similar age and style to the subject property. There are two windows at first and second floor levels, and a mansard. There were different windows in the mansard of 24 and 26A Shawfield Street.

There was quite a steep slope down to the integral garage, unlike the subject property where the garage was at ground floor level.

- (3) 59 and 61 Flood Street comprise 4 floors including basement, there being no mansard. They are similar in external appearance to 36 Shawfield Street. There are two windows at first and second floor levels. The windows are rather plain.
- (4) 53 Flood Street is on the same side as 59 and 61 Flood Street. It is a similar property to 59 and 61 Flood Street.
15. The Tribunal considered that Flood Street is not as attractive as Shawfield Street. There is a greater mix of buildings in Flood Street, not all of which are residential. The Flood Street comparables are opposite quite a large local authority estate, and they are not far from a public house. Flood Street is the busier road.
16. The Tribunal also looked at Addison Road, Somerset Square and Woodsford Square, all of which were mentioned in the evidence. Addison Road is a busy road with some large detached properties, about 2-3 miles away from Shawfield Street. Somerset Square is off Addison Road. It is quite an attractive, secluded square of 1970's Georgian style 4 storey town houses, with integral garages. Woodsford Square is again off Addison Road and comprises 1970's 4 storey town houses, with integral garages. It is not as attractive as Somerset Square.

D. Decision

(1) Unimproved freehold value

17. Mr. McGillivray for the landlord looked at the comparables in both Shawfield Street and Flood Street, analysing the comparables on a price per sq. ft. He arrived at an unimproved freehold value of £1,750,000 which he described as conservative.

18. Mr. Shingles for the tenants placed considerable emphasis on the Flood Street properties. He considered that they were more helpful from the point of view of condition, albeit in a less well regarded street, though nevertheless enjoying an arrangement of similar accommodation. He believed that Mr. McGillivray's analysis of the comparables by way of a price per sq. ft. did not reflect the approach that the market would take. Mr. Shingles' unimproved freehold value was £1,700,000.

19. Both valuers agreed that little weight should be attached to 61 Flood Street because of the adjustments that were required to be made to that comparable.

20. The Tribunal considered that the comparables in Shawfield Street provided the best evidence. As between the subject property and 36 Shawfield Street which was diagonally opposite, the Tribunal preferred the more attractive facade of the subject property. 36 Shawfield Street had better bedroom and bathroom accommodation (5 bedrooms and 4 bathrooms) and off street parking for at least one vehicle. It had a better garden in terms of sunlight, facing west. 24 and 26A Shawfield Street were similar to the subject property, but there was quite a steep drop down to the integral garage. Neither 24 nor 26A Shawfield Street had a basement.

21. The Flood Street properties were similar to 36 Shawfield Street. However, the Flood Street properties suffered the disadvantage of location opposite local authority flats and being close to a public house. The Flood Street properties were in a mixed use street and a busy through road. Shawfield Street was considered to be more attractive than Flood Street.

22. The evidence before the Tribunal suggested that 24 and 26A Shawfield Street were modernised and 36 Shawfield Street unmodernised, that 53 Flood Street was modernised and that 59 Flood Street and 61 Flood Street were unmodernised.

23. In the case of 26A Shawfield Street, the freehold had been purchased in April 2002 at £1,675,000 and resold in July 2002 at £1,800,000 when the vendor purchased instead the leasehold interest in 36 Shawfield Street for £1,350,000. He subsequently bought the freehold of 36 Shawfield Street for a further £537,500, giving a total purchase price of £1,887,500. If one adjusts the April 2002 purchase price of 26A Shawfield Street for the passage of time to the valuation date of the subject property of June 2002, it gives a figure of £1,716,546, say £1,716,500 or £780 per sq. ft.

24. Looking at the range of rates per sq. ft. for Shawfield Street, they went from £696 per sq. ft. for the leasehold and freehold purchase of 36 Shawfield Street without any adjustment for profit in the marriage value and unmodernised, up to £844 per sq. ft. based on the sale price of 24 Shawfield Street which was modernised. Both 36 and 24 Shawfield Street were on the better side of the street.

25. The Flood Street comparables produced a figure of £655 per sq. ft. for 53 Flood Street which was modernised and £670 per sq. ft. for 59 Flood Street which was unmodernised. The Tribunal noted that 59 Flood Street with about 80 sq. ft. less than the subject property and in a less attractive road sold for £1,700,000 in July 2002.
26. The Tribunal considered that Mr. McGillivray's approach of analysing the comparables at a price per sq. ft. was a useful guide, though it was necessary to stand back and look at what one was actually getting for the money before arriving at the final valuation, taking into account matters such as the number of rooms and the layout of the accommodation.
27. The Tribunal considered that the evidence, particularly that of 36 Shawfield Street and 59 Flood Street, pointed to an unimproved freehold value for the subject property of at least £1,750,000 in June 2002. The Tribunal agree with Mr. McGillivray's description of this figure as conservative.
28. The figure of £1,750,000 reflects the unimproved freehold value of the subject property, based as it is largely on the unmodernised comparables at 36 Shawfield Street and 59 Flood Street. It is unnecessary for the Tribunal in the circumstances to attribute a specific value to improvements, with the Tribunal arriving at the unimproved freehold value based on unmodernised comparables.
29. The question then is whether anything should be added for the ability to instal a dormer and create additional space on the third floor of the subject property. The Tribunal

consider that there should be no addition. It is a fairly minor alteration and largely a matter of personal preference. The Tribunal are not convinced that the ability to instal a dormer and create additional space on the third floor would add anything to the freehold value of the property over and above the figure of £1,750,000.

30. With regard to Mr. Shingles' attempt to obtain an amount for additional development value in the case of both the freehold and leasehold interests for the potential to carry out other improvements and internal alterations, the Tribunal are of the view that because they are attaching weight to unmodernised comparables their values must already reflect the same ability to carry out alterations and improvements as the subject property. If there was to be an increment for additional development value for the subject property as argued by Mr. Shingles, this would in the Tribunal's view be double counting. In answer to questions from the Tribunal, Mr. Shingles did in fact appear to accept that this was so.

(2) Unimproved leasehold value

31. Mr. McGillivray's unimproved leasehold value for the landlord was £1,024,000, whereas Mr. Shingles' figure for the tenants was £1,150,000.
32. Both Mr. McGillivray and Mr. Shingles were of the view that the sale of the leasehold interest of the subject property 57 Shawfield Street for £800,000 in May 1999 was of little assistance because the adjustments required to be made were too great particularly having regard to the passage of time between May 1999 and the valuation date in June 2002 and there being a lack of reliable information relating to the 1999 transaction.

33. There was nevertheless evidence of a leasehold sale namely 36 Shawfield Street where the leasehold interest had been purchased for £1,350,000 in July 2002. 36 Shawfield Street is of a similar age to the subject property and diagonally across the street. It is not of a wholly dissimilar style to the subject property.
34. Mr. Shingles dealt with the leasehold sale of 36 Shawfield Street in his initial report, whereas Mr. McGillivray only dealt with it in the addendum to his proof of evidence. Mr. McGillivray's approach had been to have regard to the John D. Wood & Co./Gerald Eve 1996 graph of relativities, which showed a relativity for a lease with 32.54 years unexpired at a nominal ground rent of 58.5%. This gave a leasehold value of £1,023,750, say £1,024,000, which was Mr. McGillivray's leasehold value.
35. Mr. Shingles adjusted the sale price of 36 Shawfield Street by 7½ % for rights under the Act to get down to a figure of £1,248,750. No adjustment was needed for time since the transaction date of 36 Shawfield Street was July 2002 and within one month of the valuation date of June 2002 for 57 Shawfield Street. Mr. Shingles took off approximately a further £100,000 since he was of the view that 36 Shawfield Street was a better property because of its additional bathroom accommodation, west facing garden and off street parking in addition to the integral garage that both properties had, thereby arriving at his leasehold value of £1,150,000.
36. The Tribunal's approach was to start with the figure of £1,350,000, being the sale price of the leasehold interest of 36 Shawfield Street. The sales particulars of 36 Shawfield Street expressly referred to the vendor's ability to enfranchise the lease and assign their

rights to acquire the freehold interest, which is what the purchaser did. The Tribunal consider that Mr. Shingles' adjustment of 7.5% for rights under the Act was too low in these circumstances.

37. The Tribunal accept from the calculations produced by Mr. McGillivray and Mr. Gibbs that there was a marriage value of about £500,000 to be shared between the freeholder and leaseholder on the enfranchisement of 36 Shawfield Street. The Tribunal consider it unlikely that a properly advised purchaser would pay more than one half of the half share of marriage value when acquiring the leasehold interest with the right to enfranchise.
38. Mr. McGillivray in his analysis of 36 Shawfield Street valued those rights at £243,275 or 18.02%. Mr. Gibbs in his analysis of the transaction valued those rights at £210,500 or 15.59%. Mr. Gibbs' figure of 15.59% for rights under the Act is more in line with the Tribunal's own thoughts on 36 Shawfield Street.
39. Therefore starting with the figure of £1,350,000 for the sale of 36 Shawfield Street and taking off 15% for rights under the Act or £202,500, that produces a figure of £1,147,500.
40. However, it is then necessary to adjust for the differences between 36 Shawfield Street and the subject property.
41. The Tribunal's freehold value for the subject property 57 Shawfield Street is £1,750,000 or £672 per sq. ft. Mr. McGillivray's analysis of 36 Shawfield Street based on the

indexed freehold sale price of £1,925,000 produced a rate of £707 per sq. ft. This gave a difference in the rate per sq. ft. for the two properties of 5%, representing the fact that 36 Shawfield Street is a larger property in a better position, with additional bathroom accommodation, a west facing garden and off street parking in addition to an integral garage.

42. Taking off 5% from the Tribunal's figure of £1,147,500 for 36 Shawfield Street gives a deduction of £57,375 and produces a figure of £1,090,125, say £1,090,000, for the unimproved leasehold value of 57 Shawfield Street.
43. The Tribunal would add that they consider Mr. Shingles' deduction of approximately £100,000 for the differences between 36 Shawfield Street and the subject property is arbitrary and too high.
44. As regards the use of graphs and tables, the John D. Wood & Co./Gerald Eve 1996 graph of relativities relied on by Mr. McGillivray gave a relativity of 58.5% between freehold and leasehold values for a lease of a term of 32.54 years unexpired at a nominal ground rent. Mr. Shingles included by way of a cross-check what he referred to as a "graph of graphs", including the rival graphs to that of John D. Wood/Gerald Eve. The range of relativity for a lease of 32.54 years unexpired was shown as 56%-70%.
45. The tenants produced a letter from Mr G. Hollamby ARICS of John D. Wood & Co. to Mr. R. Dalton of the Grosvenor Estate dated 9 March 2000, which in fact cast doubt on the reliability of the John D. Wood/Gerald Eve graph.

46. The relativity between the Tribunal's unimproved freehold and leasehold values is 62.28%. The Tribunal consider that this is fairly close to the relativity of 58.5% shown on the John D. Wood/Gerald Eve graph for this length of unexpired lease, and that the relativity of 62.28% is well within the range of 56%-70% shown by Mr. Shingles' graph of graphs.
47. The use of graphs is best as a cross-check only. The evidence from graphs is otherwise to be treated with caution.
- (3) Deferment rate
48. The conventional deferment rate for a prime location in Central London is 6%, as argued by Mr. Gibbs for the landlord.
49. Mr. Shingles for the tenants suggested a deferment rate of 6.5% to reflect what he described as the unappealing utilitarian modern nature of the subject property. He sought to support his figure of 6.5% by reference to the decision of the Lands Tribunal relating to 65 Addison Road (Ref. No. LRA/21/2001) and the use of 6.5% in Woodsford and Somerset Squares. He also referred to the decision of the Leasehold Valuation Tribunal relating to 13, 14 and 19 Beaumont Street (Ref.Nos.LON/LVT/1340/00, LON/LVT/1417/01 and LON/LVT/1382/01) where the deferment rate adopted was 6.5%.
50. Mr. Gibbs' schedule showed that in the case of 57 Flood Street a 6% deferment rate was agreed for a valuation date of 4 May 2000. A 6% deferment rate was also shown as part of Mr. Gibbs' analysis for 17 Flood Street with a valuation date of 24 January 2001 and

38 Shawfield Street with a valuation date of 11 November 1997. For 36 Shawfield Street, Mr. Gibbs' analysis showed a 6% deferment rate.

51. The Tribunal do not accept Mr. Shingles' description of the subject property as unappealing and utilitarian. The Tribunal are satisfied on the evidence produced by the landlord that the deferment rate for the subject property should be 6%. Furthermore, the Tribunal are not satisfied on the evidence that an investor in the market would distinguish between period and modern properties in this location for this type of investment.

E. Determination

52. The Tribunal determine the enfranchisement price payable by the tenants to be £462,854 in accordance with the Tribunal's valuation annexed to the decision at Appendix 1.

Chairman *P. Wulwik*
Peter Wulwik

Date: 03 APR 2006 ~~2003~~

LEASEHOLD VALUATION TRIBUNAL'S VALUATION

VALUATION IN ACCORDANCE WITH SECTION 9 (1C) OF THE LEASEHOLD REFORM ACT
1967 (AS AMENDED)

Property: 57 Shawfield Street, London SW3

Date of Valuation 11th June, 2002

Unexpired term of lease: 32.54 years

1. Value of Lessor's interest excluding marriage value		£	£	£
2. <u>Compensation to Head Lessee -</u>				
Ground Rent received			225.00 p.a.	
Head Rent apportioned to House and Garage			<u>200.00</u> p.a.	
Profit Rent			25.00 p.a.	
Capitalised for	32.54 years @	7.50% tax	3.5% 40%	
			<u>9,6828</u>	242
3. <u>Compensation to Freeholder -</u>				
For remainder of term -				
Rent currently payable			200	
Capitalised for	32.54 years @	6.50%	<u>13,402</u>	2,680
For reversion to -				
Value of freehold in possession			1,750,000	
Deferred	32.54 years @	6.00%	<u>0.1502</u>	<u>262,786</u>
				265,708
4 Add Lessor's share of marriage value				
Value of freehold in possession				1,750,000
<u>Less</u>				
Value of lessor's interest exclusive of marriage value			265,708	
Value of lessee's interest exclusive of marriage value			<u>1,090,000</u>	<u>1,355,708</u>
Gain on marriage				394,292
Attributed to lessor at		50%		<u>197,146</u>
6 ENFRANCHISEMENT PRICE				<u><u>462,854</u></u>