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Ref: LON/LVT/1620/03

**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:** Cadogan Holdings Ltd (landlord)  
**Respondent:** Poetglen Properties Ltd (tenant)  
**RE:** 11 Tedworth Square, London, SW3  
**Date of Tenant's Notice:** 24 September 2002  
**Application to Tribunal dated:** 9 July 2003  
**Heard:** Tuesday 10 February 2004  
**Appearances:** Mr R G McDonald LLB MRICS  
The McDonald Partnership for the Tenant  
Mr K S Munro, Counsel  
Mr A J McGillivray, W A Ellis  
Miss L Blackwell, Pemberton Greenish  
Mr J W May, Pemberton Greenish for the Landlord

**Members of the Leasehold Valuation Tribunal:**

Mrs C A Lewis FCI Arb  
Mrs J E Davies FRICS  
Mr D D Banfield FRICS

## INTRODUCTION

1. This is an application by the applicant landlords Cadogan Holdings Ltd to determine the enfranchisement price payable by the respondent lessee Poetglen Ltd for the freehold of the property at 11, Tedworth Square under Section 9(1C) of the Leasehold Reform Act 1967.
2. The respondent is the tenant of the property under a lease commencing 25 March 1954 for a term of 48½ years at a ground rent of £10 per annum initially.
3. The property comprises a red-brick mid terrace Victorian house with accommodation on lower ground and three upper floors with an additional floor level at the rear.

It is currently arranged as three self contained flats.

4. The parties submitted a Statement of Agreed Facts to the Tribunal which is attached to the decision at Appendix I.
5. The remaining issues before the Tribunal were:
  - a. The terms of the Transfer.
  - b. Whether there should be a discount from the freehold value to reflect a 6 month period after the term date to obtain possession.
  - c. The choice of comparables and the adjustments to make for this.
  - d. The unimproved freehold value of the property.
6. The applicant contended for a freehold value for the property of £2,500,000 and the respondent for £2,142,000.

1. **The Terms of the Transfer**

By the time of the hearing the terms of the transfer were agreed save that the respondent wished to add a proviso to paragraph 1 of the Second Schedule with the paragraph reading as follows:-

THE SECOND SCHEDULE

Not without the previous written consent of the Transferor (such consent not to be unreasonably withheld or delayed) to alter or suffer to be altered the external height or elevation of the buildings on the Property or the external architectural appearance or the external architectural decoration thereof and not to erect or permit to be erected any additional building upon the site of the Property **provided that such written consent of the Transferor shall be deemed to have been given if either no planning permission is required from or planning permission has been granted by the local planning authority in respect of any such alteration erection and/or other matter of whatsoever nature contemplated by this paragraph and for the avoidance of doubt the Transferee shall be under no obligation to apply and/or obtain the previous written consent of the Transferor under these circumstances.**

Mr J W May gave evidence on behalf of the applicants and stated that the disputed wording limited the effect of paragraph 1 of the 2<sup>nd</sup> schedule which imposed a limited degree of control on future alterations. The effect of the proposed amendment would be to negate the control over the external decorations and the external appearance of the property set out in paragraph 1. The only time the applicants consent would be required would be to a development which was to be or was being carried out in contravention of planning controls. There was no guarantee that

the planning and conservation procedures could protect the Estate either now or in the future. Furthermore English Heritage had produced a statement dated 9 February 2004 which said that they planned to stop funding conservation in London.

Mr Munro, for the applicant referred to Section 10(4) of the 1967 Act which read:-

As regards restrictive covenants (that is to say any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to Section 8 above shall include:-

- (a) .....
- (b) such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either –
  - (i) restrictions affecting the house and premises which are capable of benefiting other property and .....are such as materially to enhance the value of the other property: or
- (c) Such further provisions (if any) as the landlord may require to restrict the use of the house and premises in anyway which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest.

Section 10(4) is then subject to a reasonableness test in Section 10(5).

Neither the landlord nor the tenant shall be entitled under subsection (3) or (4) above to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view :-

- (a) of the date at which the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and
- (b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses.

Mr Munro went on to refer to the following Lands Tribunal cases:-

Peck v Trustees of Hornsey Parochial Charities (1970)  
22P & C R 789 LT.

Le Mesurier v PITT (1972) 23P & CR 389

Eyre Estate v Jaskel LRA/48/1997

and the following Leasehold Valuation Tribunal Cases:-

Black v Eyre Estate LON/LVT/548

Eyre Estate v Rosenberg LON/1031/98

Eyre Estate v Meller LON/1291/00

Eyre Estate v Rembaum LON/1571/03.

Mr McDonald, for the respondent stated that the transfer could retain some restrictions as to further alterations and use, but pointed out however that as the freeholders had resisted the attempt to acquire the

building as flats this was because they were confident that it was more valuable as a house. It would be unreasonable for internal alterations to be restricted or to require consent. Further with regard to the alteration or development of adjoining properties, the rights granted under the Party Wall Etc. Act should be adequate to define the freeholder's future rights. Any restriction against business use would be dealt with by the Local Planning Authority. Similar comments would apply to the protection of the freeholder's adjoining property. The freehold of No 13 had already been sold and unless the freeholder could show that they retained ownership of adequate properties within the terrace to benefit from the restrictions they were inappropriate and unnecessary.

**The Tribunal** considered that the covenant in Clause 1 of the Second Schedule of the Transfer should be in the form proposed by the landlord, and that it fulfils the requirements of Section 10(4) of the 1967 Act.

In our view relying solely on Local Authority Planning regulations would be insufficient protection to retain the high standards of this prime residential area. The respondent has the protection that under the terms of Clause 1 as specified by the landlord the Estate cannot unreasonably withhold their consent.

2. **Whether there should be a discount from the freehold value to reflect a 6 month period after the term date to obtain possession**

Mr McDonald, asked for a 6 month period to allow for obtaining vacant possession after the valuation date and then deducted 2.5% from the freehold value for vacant possession.

Mr Munro said:-

- (1) The valuation was carried out in the "no Act World".
- (2) The applicant would be entitled to damages for trespass from anyone in the property after the term date of the lease.
- (3) There was nothing in the statutory valuation to justify a deferment or discount.
- (4) No assured periodic tenancy could arise under Schedule 10 of the 1989 Act.
- (5) The respondent had put forward no evidence that there were delays in obtaining possession.
- (6) The notional purchaser would use the period for working up his scheme, obtaining planning permission, going out to tender and tender evaluation etc.

Mr Munro referred to the case of Loder Dyer v Cadogan, 68 Cadogan Place LRA/2/2000, LRA/4/2000, where the same argument now being put forward by Mr McDonald had been rejected and the valuation prepared on the assumption of vacant possession.

**The Tribunal** found that although the Lands Tribunal decision is not binding on this present Tribunal we could see no reason to depart from the principles set out in that determination and therefore do not allow the discount of 2.5% proposed by Mr McDonald.

3. **Choice of comparables and the adjustments and to be made to them**

Both valuers largely relied on the same list of comparables although made their own individual adjustments. They both preferred those examples in Tedworth Square.

Mr McDonald concluded that No 25 Tedworth Square represented the most useful and valid comparable evidence. He adopted a price per square foot of £535.50. By contrast Mr McGillivray stated that he had weighed all the advantages and disadvantages of the various comparables with those of the subject property, while taking into account "any relevant differences". He adopted a rate of £610 per square foot.

**Inspection**

The LVT inspected the interior and exterior of the subject property, and the exterior of all the comparable properties referred to at the hearing.

**11 Tedworth Square, SW3**

A five storey red brick middle terrace house circa 1880 overlooking central gardens. It had an open outlook and benefited from residents parking on the square. At present the property is arranged as three self contained flats. The exterior was in fair condition with some peeling paintwork.



The following comparables were inspected externally:-

1. 13 Tedworth Square, SW3

Sold for £1.85 million in November 1998. This was next door to the subject and appeared well renovated and maintained and to provide identical accommodation to the subject.

2. 25 Tedworth Square, SW3

Sold December 2002 for £3.1 million currently covered in scaffolding and undergoing extensive renovations. It is the largest property in the square, is in a superior corner location and overlooks the gardens.

3. 27 Tedworth Square, SW3

Originally sold in September 1998 for £1.64 million, following refurbishment had been under offer at £3.1 million in December 2001 but the sale had not proceeded. Therefore there was no transaction at that time. It was similar to the subject property but with better views of the gardens and a 6<sup>th</sup> floor conversion, and in good order externally.

4. 29 Tedworth Square, SW3

Sold in March 2000 for £2.375 million. Similar to No 27 and in good order. It overlooked a corner of the gardens.

5. 37 Tedworth Square, SW3

Sold in June 2000 for £1.83 million. A different style of property, somewhat smaller with accommodation on 4 floors and direct garden views. Currently in good order.

6. 42 Leonards Terrace, SW3

Sold March 2003 for £2.6 million. A four storey property in very good order. Smaller than the subject.

7. 9 Cheyne Place, SW3

Sold November 2003 for £2.8 million. A six storey house on very busy road, fair condition and larger than subject.

8. 2 Sloane Court East, SW3

Sold November 2003 for £1.9 million. End terrace three storey plain property with integral garage and crittal windows. Not comparable with subject.

9. 20 Sloane Court East, SW3

Sold April 2002 for £3.85 million. Dutch style property with accommodation on six floors. In good order. Different character from subject property. Not in a garden square.

4. **Valuation and Determination**

Mr McDonald based his valuation on the transaction at No 25 the result of which he felt was supported by the valuation by FDP Savills dated 3

February 2004 of £2 million (indexed to £2,066,500) prepared for the respondent lessee.

**The Tribunal** prefer Mr McGillivray's approach based on a wider basket of transactions and adopt his valuation of £2.5 million.

CHAIRMAN..... CA Lewis

DATE..... 19 March 2004

11 Tedworth Square, London SW3 4DU  
Leasehold Reform Act 1967 (as amended)  
Statement of Agreed Facts

**SITUATION AND DESCRIPTION**

Tedworth Square is a quiet residential garden square situated just to the south of the Kings Road, north of and closer to Royal Hospital Road and to the west of Burton's Court, in a very good location in central London. The area is served by the shopping and transport facilities of the Kings Road and the underground station at Sloane Square is within a 10 minute walk away. The property is situated in the south east corner and has views down Redburn Street. The property comprises a red brick mid-terrace late Victorian house with accommodation on lower ground, ground and 3 upper floors. There is a rear section with an additional floor level. There is a small area below pavement level at the front and a small rear patio garden. It is at present arranged as 3 self contained units comprising:-

**BASEMENT FLAT**

Entrance hall, front reception room with bay window, double bedroom, bathroom, separate WC and kitchen with door to patio.

**GROUND AND FIRST FLOOR MAISONETTE**

Ground - Approached from wide hall and entrance hall and staircase to upper maisonette. Double bedroom, en-suite bathroom with vanity unit and corner bath; shower cubicle and WC; second bathroom with bath, WC and vanity units.

Rear lower level - laundry room/cupboard; a small study/bedroom

Half landing - Includes double bedroom.

First Floor - Comprises a small hall leading to kitchen/breakfast room and L-shaped reception room with bay window.

**UPPER MAISONETTE**

Half landing - Kitchen/Breakfast room.

Second floor - L shaped reception room, landing with cloaks areas.

Half landing - WC with washbasin; bathroom with WC and basin.

Third Floor - Landing with roof light; double bedroom; dressing room/double bedroom.

Upper level (rear) - Laundry cupboard; double bedroom.

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## FLOOR AREA

4,100 sq ft GIA total (381 m<sup>2</sup>).

## PLANNING

There is a potential to reconvert back into a single private dwelling house.

## COMMENCEMENT OF LEASE

25 March 1954

## LICENCES

Licence dated 20 February 1981 grants permission for change of use of the basement to a self contained flat.

Licence dated 19 October 1990 grants permission to retain alterations.

## DATE OF VALUATION

14 November 2002.

## RELEVANT VALUATION PROVISION

Section 9(1C) of the Leasehold Reform Act 1967 (as amended).

## FREEHOLD VACANT POSSESSION VALUE

Disputed.

## LEASEHOLD VACANT POSSESSION VALUE

Contractual Lease Expired – Disputed.

*K.A. & Co*  
9/2/04

For the Cadogan Estate

*Ronald W. Hall*  
9/02/04

For the Tenant