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LON/00AP/OAF/2007/0005

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 9(1) OF THE LEASEHOLD REFORM ACT 1967

Property: **86 Gladesmore Road, London N15 6TD**

Applicant: Maycorp Limited (tenant)

Respondents: Malcolm Thomas Robinson
Heather Diana Lakiss and
Claire Julia Richards (landlords)

Date heard: 22 May 2007

Appearances: Mr S Killen, solicitor, of David Wineman, solicitors
Mr Alan Cohen BSc FRICS IRRV, of Talbots Professional Property Services

for the applicant

Mr B R Maunder Taylor FRICS, Maunder Taylor, chartered surveyors

for the respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D Huckle FRICS
Mrs L Walter MA

Date of the tribunal's decision: 4 July 2007

Background

1. This is a determination under section 9(1) of the Leasehold Reform Act 1967 ("the Act") of the price to be paid for the acquisition of the freehold of 86 Gladesmore Road which is a two storey terraced house. Its rateable value is such that the valuation falls to be made on the original valuation basis set out in section 9(1) of the Act.

2. The property was at the valuation date held on a lease for a term of 78 years which commenced on 24 June 1929 and expired on 23 June 2007, at a fixed annual ground rent of £6. At the valuation date, which is 5 April 2004, 3.22 years remained unexpired.

3. The agreed statement of facts and issues records that it is agreed that the ground rent payable from the valuation date until termination is of negligible value, that the site value for the purpose of arriving at the section 15 ground rent is to be arrived at by adopting the standing house approach, that the capital value of the house and premises is £240,000 and the site value £84,000, which is 35% of the value of the house and premises. It is also recorded as agreed that the section 15 rent is £5040 per annum.

4. The issues between the parties are given in the statement of agreed facts and issues as the capitalisation rate for calculating the capital value of the section 15 rent and the deferment rate to be applied for deferring the ultimate reversion.

5. At the hearing on 22 May 2007 the tenant was represented by Mr S Killen, solicitor, of David Wineman, solicitors who called Mr Alan Cohen BSc FRICS IRRV, of Talbots Professional Property Services to give expert evidence, and the landlords by Mr B R Maunder Taylor FRICS of Maunder Taylor, chartered surveyors, who represented the landlords as an advocate although not, he said, as an expert, since he considered that all valuation matters had been agreed between the parties before the hearing. At Mr Killen's request the tribunal, unaccompanied, inspected the exterior of the property after the hearing.

6. Mr Killen produced a chronology of events and sought to argue that it demonstrated that the landlords had obstructed the enfranchisement by, for example, obliging the applicant to take proceedings in the county court. He invited us to take into account in our determination what he submitted to be the landlords' inequitable conduct in obstructing the proceedings (and Mr Cohen went so far as to suggest that the landlords had gone to "unlawful" lengths to avoid their obligation to enfranchise). However we are quite satisfied that such conduct, even if it were established, is irrelevant to the valuation which has to be made under the Act. Moreover, even if it had been relevant we would certainly not have been satisfied from the material put before us that the landlords had caused the delays, many of which appear from the chronology to have been caused or contributed to by the tenant's previous solicitors.

The issues

i. capitalisation rate

7. Mr Cohen considered that the section 15 rent should be capitalised at 8%. He said that at the valuation date it was customary for valuers to adopt an overall yield of 8%, and that was the rate which would have been adopted if this application had been dealt with expeditiously. He relied on a leasehold valuation decision in relation to *24 Great North Way, Hendon, London NW4* (LON/LVT/1813/04, valuation date April 2004) in which, having adopted a rate of 7% to arrive at the section 15 rent, the tribunal capitalised it at 8%. Mr Cohen, who represented the tenant in that case, said that the two properties which were the subject of that decision and the present case were of the same capital value, but that 24 Great North Way was a more modern property and less subject to obsolescence than the property which is the subject of the present proceedings. He said that he had agreed the section 15 rent in the present case as a final figure and not because it was based on a particular percentage of the site value. He said that he would normally have contended for a section 15 rent based on 7% of the site value, but agreed to a lower figure in the present case because of the property's obsolescence. He agreed that in principle it was correct to decapitalise and recapitalise at the same rate and said that his approach was based on the decision of the tribunal in relation to 24 Great North Way.

8. Mr Maunder Taylor said that the section 15 rent had been calculated at precisely 6% of the value of the site and that, as a matter of principle, exactly the same rate should be used to recapitalise the rent. If, he said, the section 15 rent was to be recapitalised at 8%, it should have been arrived at on the same basis, (which would give a rent of £6270) for to do otherwise would give the tenant an unfair advantage.

9. We agree with Mr Maunder Taylor. The object of arriving at the section 15 rent is to decapitalise the site value and then recapitalise it, subject to deferment, and, as a matter of principle in the absence of any evidence to suggest otherwise, the same rate should be adopted for both parts of the calculation so that an adverse differential is avoided. Since the rate adopted by both valuers to arrive at the rent is 6%, and since such a rate appears appropriate and there is no evidence to suggest that it is not appropriate, we have adopted it.

ii. deferment of the reversion

10. It was agreed that in the present case, where the length of the present term at the valuation date was very short, the deferred value of ultimate reversion should form part of the price as a so-called *Haresign addition.* Neither valuer argued that the value of the addition should have regard to the risk that the tenant might remain in occupation of the house at the expiration of the term.

11. Mr Cohen considered that the value of the reversion should be deferred at 8%, principally on the ground that if the claim had been dealt with expeditiously by the landlords the matter would have been resolved long before the decision of the Lands Tribunal in *Earl Cadogan and Cadogan Estates Limited v Sportelli* (LRA/50/2005), and that such a rate would have been likely to have been agreed or determined at that time. He also considered that, even if the guidelines in *Sportelli* should be applied, the subject property was obsolescent and that its obsolescence provided compelling evidence to justify a departure from the rates given in the guidelines.

12. Mr Maunder Taylor considered that the deferment rate should be 4.75% because the guidelines given in *Sportelli* should be followed. He said that Mr Cohen had in

his written submissions concluded that the structural condition of the property was sound and that there was no material upon which the tribunal could conclude that the guidelines should not be followed. (He also submitted that the tribunal was required to assume that the property was in repair but it does not appear that such an assumption is appropriate in a valuation under section 9(1) of the Act.)

13. It was apparent from our external inspection that the property is well maintained. It appears to be in good structural condition and is in a pleasant suburban residential area. We do not accept from the evidence and from our inspection that the property is any more obsolescent than the vast majority of the housing stock in Greater London and elsewhere. While we accept that, prior to the decision in *Sportelli*, a higher deferment rate would have been applied, we accept that we must follow the guidelines given in *Sportelli* and, there being no persuasive evidence or compelling reasons to the contrary, the value of the reversion should be deferred at 4.75%.

Determination

14. The price to be paid for the freehold is thus £85,800, as appears from our valuation which is attached to this decision.

CHAIRMAN.....

DATE.....

LEASEHOLD VALUATION TRIBUNAL'S DECISION

86 Gladesmore Road, London, N15 6TD

Lease for 78 years from 24 June 1929 at £6 p.a. without review
Valuation under Section 9(1) Leasehold Reform Act 1967

Valuation Date: 5 April 2004
Capitalisation Rate: 6%
Deferment Rate: 4.75%

Elements of valuation agreed between the parties:

- Value of house with vacant possession £240,000
- Site value £ 84000
- S.15 ground rent £ 5040

1. **The Term**

		£	£
Ground Rent £6 p.a. No discernible value		0	0

2. **S.15 Ground Rent**

Value of house with vacant possession.		240000	
Site value at 35%		84000	
S.15 ground rent @ 6% p.a.		5040	
YP 50 years @ 6%	15.762		
PV £1 in 3.22 years @ 6%	0.8291637	13.069	65868

3. **Reversion**

Value of house with vacant possession	240000	
PV £1 in 53.22 years @ 4.75%	0.0831438	19955
		£ 85823
Enfranchisement price	**Say**	**£ 85800**