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**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)**

Leasehold Reform, Housing and Urban Development Act 1993 section 24

Property: 28 Effra Road, Wimbledon, London SW19 8PP
Applicant/nominee purchaser: Effra Road No 28 Ltd
Respondent/landlord: Paul Equide de Vos, Richard Ronald Haughton,
John Trouw

Tribunal Members:
Mr Adrian Jack (Chairman)
Mr R Potter FRICS

Ref : LON/00BA/OCE/2007/0355

1. The applicant applied to the Tribunal by application dated 30th October 2007 for the determination of the terms on which it could purchase the freehold of the property.
2. The Tribunal held a hearing on 11th March 2008. The applicant was represented by Mr O'Keeffe of Buy Your Freehold Ltd. The respondent was represented by Mr Struth MRICS.
3. In the event, the parties were able to agree almost all the outstanding issues. The value of the four flats in the block with a long lease and a share of the freehold was agreed at £245,000, £240,000, £235,000 and £225,000 for flats 1, 2, 3 and 4 respectively. The relativity was agreed at 94 per cent. The relevant capitalisation rate for the ground rents was agreed at 7.25 per cent.
4. There was an issue as to the reversionary rate. Mr Struth MRICS said that the Tribunal should apply the Lands Tribunal decision in *Sportelli*, as affirmed by the Court of Appeal. Mr O'Keeffe said that 6 per cent was appropriate.
5. Mr O'Keeffe supported his argument by saying that property prices in Prime Central London (PCL) had increased since 1992 more strongly than in Merton. Therefore an investor would expect a greater return on Merton property. He said that in the long term Merton properties would have performed worse the

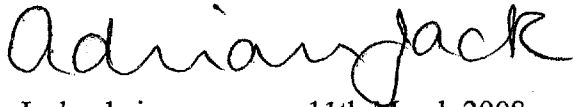
- PCL properties, but he had no evidence to support this. The Halifax index only went back to 1992 with sufficient detail to make a comparison.
6. Mr Struth said that he had checked Land Registry figures between 2000 and 2007. These showed Merton property increasing by 82.7 per cent whereas Westminster in PCL only increased 75.9 per cent. He disputed, however, that an index can assist in determining the reversionary rate. This was because an investor would be forward looking. It was wrong to rely on past growth.
 7. The Tribunal agrees with Mr Struth. The current market value reflects investors' collective views of future growth. As the Lands Tribunal recognised in *Sportelli* this should not vary across the country. It will only be in rare cases that any variation will manifest itself. There are no special circumstances here. Accordingly the Tribunal fixed the reversionary rate at 5 per cent.
 8. The parties also agreed the terms of the transfer as at pages 61 to 66 of the applicant's bundle.
 9. There was an issue as to the valuation fee to be paid. It appears that prior to the tenants' serving their notice seeking to enfranchise there were discussions with the landlords with a view to agreeing a price. Mr Equide de Vos, one of the landlords, has a knowledge of the property market (whether he is a surveyor or not is unclear). He asked the tenants to pay him £700 to do the work involved in the landlords' determining a price. This the tenants did.
 10. The parties were not, however, able to agree terms and the tenants issued their formal notice under the Act. The landlords then instructed Mr Struth as an independent expert. Mr O'Keeffe did not challenge Mr Struth's fees of £1,200 plus VAT, but he said that the landlords should give credit for the £700 which the tenants had already paid Mr Equide de Vos.
 11. In our judgment, in the absence of any special agreement (and none was alleged) the landlord is entitled to the valuation fees incurred after the service of the notice seeking enfranchisement. Mr O'Keeffe suggested that the work done by Mr Equide de Vos could be used by Mr Struth, but this is not in the Tribunal's judgment a proper position for an expert such as Mr Struth to adopt. In preparing a professional valuation, Mr Struth had to be satisfied himself of the matters in his valuation. There was thus no scope for reducing the work to be done by Mr Struth. Accordingly we allow the claim for £1,200 plus VAT (a total of £1,410) in full.
 12. Mr Struth said that the applicants were guilty of unreasonable behaviour. He relied on three matters. Firstly, the tenants, when they served their original notice seeking to enfranchise, sought to purchase land at the back of the property which was not part of the demise. Secondly, Buy Your Freehold Ltd took an unreasonably long time to respond to correspondence. Thirdly, in breach of the Tribunal's direction that the experts meet before 20th December 2007, Mr O'Keeffe had failed to respond to any contact made by Mr Struth and in consequence no meeting had been held.
 13. Mr O'Keeffe accepted that there was no legal basis on which the tenants might have been entitled to purchase compulsorily the land at the back. (The notice was prepared by Buy Your Freehold Ltd.) He had no answer to the point that Buy Your Freehold Ltd failed to correspond diligently or to his own personal failure to meet Mr Struth.
 14. The matters of which Mr Struth complains are all examples of unreasonable behaviour. The Tribunal has a discretion whether to make an award of costs

under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The cumulative effect of the behaviour alleged is such that in the Tribunal's view an award of costs should be made.

15. The Tribunal notes that some of the additional costs incurred by the tenants' unreasonable behaviour (for example obtaining counsel's advice on the validity of the original notice) are already included in the agreed figure for legal costs of £1,600 plus VAT. In our judgment a figure of £130 (including any VAT payable) is appropriate

DECISION

- (a) **The parties have agreed the purchase price of the freehold should be £41,114 in accordance with the valuation attached to this decision.**
- (b) **The parties have agreed the legal fees payable by the applicant to the respondent at £1,600 plus VAT.**
- (c) **The Tribunal determines that the valuation fees payable by the applicant to the respondent should be £1,200 plus VAT.**
- (d) **The parties have agreed the terms of the transfer in the form at pages 61 to 66 of the applicant's bundle.**
- (e) **The Tribunal orders the applicant to pay the respondent £130 under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.**



Adrian Jack, chairman

11th March 2008

Valuation
LRH&UD Act 1993 (as amended)

28 Effra Road, London SW19

Notice Date - 27 Feb 2007 - 77.58 years unexpired

Ground Rents

Up to Sept 2018	£200
Up to Sept 2051	£400
Up to Sept 2084	£600

Flats on long lease with share of Freehold

Beds	Flat no	Location	Freehold
1	1	Ground	£245,000
1	2	Ground	£240,000
1	3	First	£235,000
1	4	First	£225,000
			<u>£945,000</u>

Flats on Existing Leases - 99 years from 25 Sept 1985

Beds	Flat no	Location	77.58 years
1	1	Ground	£230,300
1	2	Ground	£225,600
1	3	First	£220,900
1	4	First	£211,500
			<u>£888,300</u>

Existing Interests

Freeholder

Term 1

Net	Income	receivable	£200.00		
Years Purchase	77.58	years @	7.25%	13.732647	£2,747

Term 2

Net	Income	receivable	£200.00		
Years Purchase	66	years @	7.25%	13.657134	
Present Value of £1 in:	11.58	years @	7.00%	0.444631	£1,214

Term 3

Net	Income	receivable	£200.00		
Years Purchase	33	years @	7.25%	12.423638	
Present Value of £1 in:	44.58	years @	7.00%	0.044146	£110

	Reversion		£945,000		
Present Value of £1 in:	77.58	years @	5.00%	0.022706	£21,457

Total

£25,528

Tenants' (from above)

£888,300

Proposed Interests

Freeholder	nil
Lessees	£945,000

Marriage Value

Proposed	£945,000
Existing (less)	<u>£913,828</u>

Marriage value	£31,172
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50%=	<u>£15,586</u>
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Premium Payable

Existing Interest	£25,528
Share Marriage value	£15,586

Total	<u>£41,114</u>
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