

LON/00BK/OCE/2007/0101**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER SECTION 24 OF
THE LEASEHOLD REFORM, HOUSING & URBAN
DEVELOPMENT ACT 1993**

Address: 8 Lees Place & 8 Shepherd's Place, London, W1K
6LJ

Applicant: Lees Place Property Limited

Respondents: (1) Grosvenor (Mayfair) Estate
(2) Lees Place Management Limited
(3) Grosvenor West End Properties

Application: 13 March 2007

Inspection: 17 October 2007

Hearing: 16 October 2007

Appearances:**Tenants**

Mr N Smith BSc FRICS ACI Arb
Ms C Hurley

Surveyor
Solicitor, Brian Harris & Co
For the Applicant

Landlord

Mr T Dutton
Mr J Turton
Mr Julian Clark BSc MRICS
Mr Peter Wetherell
Ms E Southwell

Counsel (for First Respondent)
Solicitor, Boodle Hatfield
Surveyor, Gerald Eve
Estate Agent, Wetherell & Co
Grosvenor Estates

For the First Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr D Banfield FRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BK/OCE/2007/0101

**IN THE MATTER OF 8 LEES PLACE & 8 SHEPHERD'S PLACE, LONDON,
W1K 6LJ**

**AND IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING & URBAN DEVELOPMENT ACT 1993**

BETWEEN:

8 LEES PLACE PROPERTY LIMITED

Applicant

-and-

**(1) GROSVENOR (MAYFAIR) ESTATE
(2) LEES PLACE MANAGEMENT LIMITED
(3) GROSVENOR WEST END PROPERTIES**

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This application is brought by the Applicant, as nominee purchaser, pursuant to s.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to acquire the freehold interest in the subject property. The First Respondent is the freeholder. The Second and Third Respondents are intermediate landlords.
2. By a s.13 initial notice dated 16 June 2006 served on the First Respondent, as freeholder, the participating tenants exercised their right to collectively

enfranchise and acquire the freehold interest in the subject property. The proposed purchase price was £1,785,000.

3. By a s.21 counter notice dated 24 November 2006, the First Respondent admitted, *inter alia*, the Applicant's right to collectively enfranchise and counter proposed a purchase price of £3,860,400 to be divided between it and the Third Respondent. A further sum of £201,400 was to be paid to the Second Respondent for its intermediate interest.
4. It seems that the parties were unable to reach complete agreement on all of the issues and on 13 March 2007 the Applicant made this application to the Tribunal. The issues upon which the Applicant sought a determination were:
 - (a) the proposed purchase price for the freehold interest.
 - (b) the First Respondent's reasonable s.33 costs.
 - (c) the terms of the Transfer.

The Issues

5. Prior to the hearing the valuers instructed by both parties had, helpfully, prepared a statement of facts that were agreed and those issues still in dispute. The matters agreed were:

- (a) the relevant valuation date was 16 June 2006.
- (b) the deferment rate was 5%.
- (c) the value of the capitalised freehold income was capped at £5,089.
- (d) the value of the capitalised head leasehold profit rent was capped at £1,680.
- (e) the agreed areas were as follows:

Basement	380 sq ft
GF Front Rooms	174 sq ft
Flat A	1,518 sq ft
Flat B	2,315 sq ft
Flat C	2,262 sq ft
Flat D	1,708 sq ft

6. At the hearing, the Tribunal was told that the terms of the Transfer had also now been agreed. It was a matter of common ground that the Tribunal could not make a determination in relation to the First Respondent's costs in this application.
7. The only matter, therefore, to be determined by the Tribunal was the purchase price to be paid for the freehold interest. In relation to this matter, two issues were disputed by the parties. These were:
 - (a) the long lease value of the respective flats.
 - (b) the relative value of the flats with an unexpired term of 25.5 years compared to the long lease values ("relativity")

Each of these issues is considered in turn below.

Inspection

8. The Tribunal inspected the subject property together with a number of the other comparable properties on 17 October. The property is situated in a first class residential area facing Lees Place but with returns to both Shepherd's Close and Shepherd's Place and was constructed on 4 floors over a basement in the mid 1930's. There are four flats, one on each floor, accessed from a common hall, lift and staircase. There is also a guest studio on the ground floor together with a double integral garage. In the basement are situated plant rooms and dilapidated living accommodation all accessed from a separate staircase leading from Shepherd's Place. To the rear is a garden demised to the lessee of the ground floor flat. The other flats have either balconies or roof terraces. The property appears generally well maintained with the exception of the basement, which has suffered from flood damage in the recent past and remains in poor order.

Hearing

9. The hearing in this matter took place on 16 October 2007. The Applicant was represented by Mr Smith who also gave evidence as its expert witness on the valuation issues. The First Respondent was represented by Mr Dutton of Counsel.

10. Mr Smith's valuation evidence was set out in his report dated September 2007. To calculate the capital values of the 4 flats, the basement and ground floor rooms, he relied on market evidence of sales achieved for comparable properties located within a half mile of the subject property. These are set out in Appendix F of his report and each produce varying amounts calculated on a pounds per square foot basis. In relation to the subject property, Mr Smith then adjusted for factors such as location and the unexpired terms of the leases.

11. Mr Smith also had regard to the poor layout of certain flats and the tenants' improvements carried out. He contended that all of the flats had improved living accommodation. The communal heating and hot water system had been replaced by self-contained systems for each flat. The basement flat was originally a storage area and boiler room. This had been converted into a porter's flat. The original porter's accommodation was located adjacent to the ground floor entrance. The front two rooms immediately to the left had been converted into living accommodation. The original porter's bathroom and bedroom immediately to the right of the entrance had been converted into a kitchen for the ground floor flat.

12. In chief, Mr Smith said that he considered generally that the first floor flat had the highest value. When adjusted from his comparable evidence, this produced a figure of £900 per sq ft for this flat. Discount rates were then applied to the other flats, the separate living accommodation on the ground floor and the basement porter's flat.

13. In addition, both the ground and first floor flats had the benefit of a car parking space. Mr Smith said he had been advised that in 2006, a car parking

space with a 117 year lease in a Mayfair car park on Park Lane had sold for £85,000. Having regard to the superior location of Park Lane, he made an allowance for location and valued the two car parking spaces each at £75,000.

14. Having made the necessary adjustments set out above, Mr Smith concluded that the present freehold value or long lease value of the flats was £6,743,260¹. This he deferred for 25.5 years at 5% giving the value of the freeholder's existing interest at £1,946,473. The underleases held by the Second and Third Respondents expired 10 days after the term of the leases held by the tenants expired. Mr Smith was of the opinion that the underleases had no reversionary value save for the capitalised rent, which had been agreed at £1,680, being the total value of the intermediate interest. The total value of the Respondents' existing interest was therefore £1,948,153.

15. As to the relative value of the flats with the existing unexpired term of 25.5 years, Mr Smith simply contended that a relativity figure of 58% should be applied to the freehold values thereby producing a total existing value of £3,911,091. The figure of 58% was based on an analysis of several relevant LVT decisions and a relativity graph produced by LEASE, which was based on LVT determinations from 1994-2007². When the marriage value calculation was carried out, he valued the purchase price of the freehold interest as being £2,390,000.

16. The evidence on capital values was given on behalf of the First Respondent by Mr Wetherell in his report dated 12 October 2007. He too adopted the same valuation approach taken by Mr Smith. Mr Wetherell valued the four flats variously between £2,300,000 and £1,500,000 thereby producing an average figure of £993 per sq ft. He placed the total value of the four flats at £7,750,000 inclusive of the parking spaces enjoyed by the ground and first floor flats valued at £100,000 each. The ground floor separate living accommodation was valued at £100,000/£575 per sq ft. The basement

¹ see App. K of his report

² see para. 8.2 and App. J of his report

porter's flat was £150,000/£394 per sq ft. Mr Wetherell arrived at these valuations by reference to relevant comparable properties³ and then largely applying the same discounts made by Mr Smith for size, location, improvements and unexpired term. After excluding the unit at Upper Fielde as being inconsistent with the other comparables this produced an average of £966 per sq ft. The main difference in valuation approach was that Mr Wetherell's comparables were based on the sale values as at the date of exchange and not completion. In his view, often delayed completions do not reflect the market as accurately as the date of exchange. Mr Wetherell then made a further adjustment for time to reflect the valuation date using Savills PCLSW (Appendix 8) Flats Index.

17. On the issue of the existing lease values or relativity, the First Respondent called Mr Clarke of Gerald Eve, Surveyors. His report is dated 12 October 2007. Essentially he contended that the use of earlier LVT determinations when calculating relativity has been specifically disapproved of by the Lands Tribunal and the Court of Appeal⁴. Instead he relied on the John D Wood & Co (1996) Graph produced by his firm based on settlement data from the Grosvenor and Cadogan Estates when there was a significant supply of non-enfranchisable leases. These are now virtually non-existent and there is very little open market evidence of their values. To use other evidence would run the risk of over valuing the existing leases because this was likely to take place in the "Act world" and value the benefits conferred by the Act. The authors of the graph had first hand knowledge of negotiating most of the settlements appearing in it. Moreover, there are no reasons why relativities would have increased over the last 11 years. In conclusion, Mr Clarke contended for a relativity rate of 50.60%.

³ see para. 7 and App. 6 of his report

⁴ see Arbib and Arrowdell

Decision

(a) The Basement Flat

18. In closing, Mr Dutton raised a legal point as to how the basement flat should be valued, if at all. He submitted that the number of participating flats could not include the basement flat if it was appurtenant to the ground floor flat. The creation of the basement flat cannot be claimed as an improvement to the ground floor flat⁵. Accordingly, it does not fall to be disregarded. The value of the basement flat should be included when valuing the freehold interest but should be disregarded when valuing the tenant's interest because it was not a participating flat. Mr Smith made no submissions on this point.
19. It is a matter of common ground that the basement flat was originally part of the ground floor flat and is, and remains demised by the main lease of that flat dated 24 May 1983 ("the 1983 lease")⁶. Although the description of the demise does not refer to any basement premises, the lease plan appears to include the basement flat. Pursuant to a licence to alter dated 10 January 1986, the caretaker's accommodation was moved into the basement included in the 1983 lease. This was in turn subject to a sub-underlease dated 1 April 1996 ("the 1996 lease") granted by the tenant of the 1983 lease to the immediate landlord, the Second Respondent, and which presently subsists.
20. The first issue to be decided by the Tribunal was whether the basement flat, as at the valuation date, could be said to be appurtenant to the ground floor flat. Under s.1(7) of the Act, "appurtenant property" in relation to a flat is defined as:

"...any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat."

⁵ see Hague p. 434 at para. 27-05

⁶ see p.81 of the trial bundle

In *Cadogan v McGirk* [1996] 4 AER 643, the Court of Appeal considered the meaning of appurtenant property under the Act. The test applied in that instance was whether the (appurtenant) property belonged to or usually enjoyed with the flat let with it, being within the curtilage of the flat or the building containing it. It is implicit, therefore, that the appurtenant property must be demised by the lease of a flat held by a qualifying tenant. Whilst the basement flat is demised under the 1983 lease, it cannot be said that if the lease of the ground floor flat was assigned, the basement flat was usually enjoyed with the flat because it was subject to the 1996 lease, which created a separate legal interest and granted exclusive occupation to the Second Respondent. Furthermore, if the appurtenant property is subject of a separate lease, as the basement flat is here, then *prima facie* it does not fall within the test of appurtenant property applied in *Cadogan*.

21. However, s.7(6) of the Act provides an exception that where, in the case of a flat, there are at any time two or more separate leases, with the same landlord and the same tenant and:

“(a) the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without any appurtenant property), and

(b) the property comprised in every other lease consists of either a part of the flat (with or without any appurtenant property) or appurtenant property only.

then in relation to the property comprised in such of those leases as are long leases, this Chapter shall apply as it would if at that time:

(i) there were a single lease of that property, and

(ii) that lease were a long lease.”

22. It is clear that the basement flat forms part of the ground floor flat and was demised under the 1983 lease. It is, therefore, part of the ground floor flat

and, as such, appears to come within s.7(6) of the Act. It is also clear that under the 1983 and 1996 leases, the parties are the same landlord and tenant. Although, neither s.7(6) or the Act generally defines whether the relationship between landlord and tenant is one of privity of contract or estate, it must, as a matter of construction, be the latter. The reason being, that at the time the right to collectively enfranchise is exercised, invariably, the participating tenants and the relevant landlord against whom the right is claimed are not the original contracting parties when the leases were granted. To do otherwise would lead to an absurd result.

23. Accordingly, for the purposes of this application, the 1983 and 1996 leases in relation to the basement flat are to be regarded as a single long lease. The Tribunal, therefore, agrees with the submission made by Mr Dutton that the basement flat is appurtenant to the ground floor flat and has no independent value. In addition, the creation of the basement flat pursuant to the licence to alter dated 10 January 1986 cannot improve a flat and do not fall to be disregarded. It follows from this that the full value of the basement flat should be included when valuing the freehold interest but when valuing the tenant's interest, it is not a participating flat and should be disregarded.

(b) Freehold/Long Lease Values

24. In considering the comparable evidence submitted by the parties it was noted that whilst Mr Wetherall adjusted for time based on the Savills PCLSW index and for relativities, the Savills 2003 graph Mr Smith took a more "broad brush" approach. (e.g. March 2003, October 2003 and April 2004 receive the same 10% adjustment) Likewise in adjusting for lease length Mr Smith made no allowance for leases of 81 years or more. Whilst all adjustments must be considered to be subjective the Tribunal generally prefers the more detailed approach adopted by Mr Wetherall.

25. As is usual, both valuer's evidence contained details of transactions on properties with significant differences to the subject. In general terms the Tribunal considered that flats above shops were less attractive than self-contained residential buildings. They agreed the adjustment for location applied by both valuers in respect of Hereford House and the 10% adopted by Mr Wetherall for Upper Feilde. The adjustments applied by Mr Smith for South Street, Upper Grosvenor Street, Mount Street and Carlos Place were not however accepted as being reasonable in that whilst attractive locations they were subject to significantly more traffic disturbance than Lees Place. Shepherd's House whilst having the advantage of being nearby was so different in character with flats being some 25% of the size of the subject as to be of little assistance.
26. The Tribunal has therefore taken the average of the comparables supplied by Mr Smith where adjustment is not required for time or lease length together with Mr Wetherall's comparables arriving at a figure of £963 as shown on appendix A.
27. In applying the average figure to the subject flats the Tribunal were not convinced that adjustment was needed to reflect floor levels. The agreed areas of each flat did not necessarily reflect all of its features. Flat A had the benefit of a garden, the remaining flats had varying amounts of balcony or roof terrace space. The top floor whilst having slightly lower ceiling heights had bright accommodation and a very private terrace. As such they have applied the rate of £963 throughout the four flats.
28. The only actual evidence presented of transactions in respect of garages was the sale achieved in Park Lane at £85,000. It is not considered this figure requires adjustment and is therefore adopted for each of the garage spaces.

29. In valuing the studio and basement flat they were more convinced by Mr Wetherall's evidence and have adopted his figures.

30. This gives the freehold values as shown on appendix A.

(c) Relativity

31. The issue of relativity proved to be a somewhat more straightforward matter to decide. It is clear from the dicta of the Court of Appeal and the Lands Tribunal in *Arbib* and *Arrowdell* that the use of earlier LVT determinations relied upon by Mr Smith and the LEASE graph, which is exclusively based on such determinations, is an unsatisfactory method of assessing relativity largely because each case turns on its own facts. Whilst those august bodies did not go so far as to entirely discount the use of such evidence, they indicated where other more reliable evidence was available, it should be preferred.

32. The perennial difficulty for Tribunals on this issue is caused by the almost complete absence of any real market evidence because of the almost complete absence of no-enfranchiseable leases today. Market evidence of settlements achieved in the current market is often tainted by factors such as they do not take place in the "no Act" world. In this case, the best evidence on relativity was given by Mr Clark and his reliance on the John D Wood & Co (1996) Graph. Whilst it cannot be said that the settlements upon which the graph was based were not also tainted, for example, by the *DeLaforce* effect, nevertheless, the Tribunal preferred that evidence for the following main reasons:

- (a) that the subject property was located in the Prime Central London, which is generally acknowledged is not subject to the same market forces that may affect the general market.

- (b) that the John D Wood & Co (1996) Graph is based entirely on settlements reached in Cadogan and Grosvenor Estates, of which the subject property forms part. In other words, it was area specific and, therefore, more likely to be more accurate on relativity than a more generic rate provided by reference to settlements reached elsewhere generally.
- (c) that it was based on settlements reached in a “no Act” world, which is one of the express statutory assumptions to be made under Schedule 6 of the Act when determining the purchase price.

33. Accordingly, for the reasons set out above, the Tribunal determines that the purchase price to be paid for the freehold interest in the subject property is **£3,089,850** . The Tribunal’s valuation in annexed to this Decision.

Dated the 8 day of January 2008

CHAIRMAN.....



Mr I Mohabir LLB (Hons)

Leasehold Reform Housing and Urban Development Act 1993

Schedule 6 valuation - 8, Lees Place, London W1

Intermediate lease expires 25/12/2031			25.52 unexpired	
Underlease expires 15/12/2031			25.00 unexpired	
 <u>Valuation of freeholder's interest</u>				
Capital value of rental income agreed at				5,089
Capital value of reversion to freehold				
 Participating flats				
FHVP as above			7,784,289	
Deferred	25.52 yrs	5.00 %	0.28790492	
				2,241,135
 Non participating flat				
FHVP as above			150,000	
Deferred	25.52 yrs	5.00 %	0.28790492	
				43,186
Value of freeholder's interest				2,289,410
 <u>Valuation of intermediate landlord's profit rent</u>				
Capital value agreed at				1,680
Value of both landlords' interests				2,291,090
 <u>Marriage value</u>				
Value of virtual freeholds of participating flats as above			7,784,289	
Less				
Freeholders existing interest in participating flats				
Rental income			5,089	
Reversion			2,241,135	
Intermediate landlords interest			1,680	
Participating underlessees existing interest				
Total as above			3,938,850	
			6,186,754	
Marriage value			1,597,535	
Landlords share	50%			798,767
Other loss				0
Enfranchisement cost				3,089,857
		Say		<u>£3,089,850</u>

Apportionment

Apportionment of Premium

Freeholder

Diminution of freeholder's interest 2,289,410

Share of M.V. 2,289,410 x 798,767 798,182

2,291,090

3,087,592

Freeholder's premium

say 3,087,585

Intermediate Leaseholder

Diminution of intermediate lessee's interest 1,680

Share of M.V. 1,680 x 798,767 586

2,291,090

2,266

Head lessee's premium

say 2,265

Total premium payable

£3,089,850