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London Leasehold Valuation Tribunal File Ref No.

LON/00AY/OCE/2010/0052

Leasehold Valuation Tribunal: Full reasons for decision.

Leasehold Reform, Housing and Urban Development Act 1993 section 24

Address of Premises

84 Palace Road,
Fulham,
London SW2 3JY

The Committee members were

Mr Adrian Jack
Mr Colin White FRICS

The landlord: Maqbool Ahman

Nominee purchaser: Compton Arlington Davis

Background and procedural

1. The property is a large detached Victorian house converted into three flats:

Flat A, a three bedroom flat on the first and second floor, held on a 99 year lease from 19th April 1982;

Flat B, a two bedroom flat on the ground floor, held on a 99 year lease from 30th October 1981; and

Flat C, a studio apartment on the mezzanine, held on a 99 year lease from 30th October 1981.

There is also a cellar area.

2. Between March and September 2008 there was correspondence between England Palmer, the tenants' solicitors, and Duffield Harrison LLP, who were instructed by the freeholder, regarding a purchase of the freehold by the tenants. By letter of 15th September 2008 Duffield Harrison LLP informed England Palmer that "despite numerous letters seeking instructions from Ms Khan on behalf of Mr Maqbool Ahman, we have not received any further instructions... We suggest that you write to Mr Ahmad at the address on the title."

3. Despite there being no evidence beyond that to show that the landlord could not be found, the County Court on 30th October 2009 made a vesting order pursuant to section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 on the application of the tenants of Flats A and C, so that those tenants could (via a nominee purchaser) acquire the freehold on terms to be settled by this Tribunal.
4. By application dated 15th March 2010 Mr Davis, one of the tenants nominated to be the nominee purchaser, applied to the Tribunal to fix the terms of the acquisition at a price of £9,200. That valuation was supported by reports from Mr S O Nkenmena MRICS dated 18th January 2008 and 24th October 2009.
5. The Tribunal gave directions for this matter to be determined on paper without a hearing and the matter came before the Tribunal on 28th April 2010. After inspecting the property externally, the Tribunal considered that there were matters which needed to be addressed, and had the following letter sent to England Palmer, Duffield Harrison LLP and the last known address of Mr Ahmad at 46 Coopersale Road, Hackney:

“Dear Sirs,

The Tribunal (Mr Jack and Mr White FRICS) has inspected the property externally today. I am directed to inform you of the following.

The valuation reports which you have obtained from S O Nkemena MRICS are defective.

Firstly, the report does not set out Mr Nkemena’s qualifications and experience. Nor are they addressed to the Tribunal. Nor do they include a declaration modelled on CPR Part 35 setting out his duties and that Mr Nkemena understands his duties to the Tribunal. Secondly, the valuation date is stated to be 16th January 2008. It is unclear why the valuation date is not the date of the vesting order, which was made on 30th October 2009.

Thirdly, the report does not address the value of the reversion to Flat B. It is true that the lessee of Flat B does not wish to take part in the enfranchisement and that no marriage value will be payable. However, the reversion to that flat and the capitalised ground rents will still have a value.

Fourthly, Mr Nkemena cites no comparables for any of the flats. Fifthly, he takes the discount rate on the freehold reversion as 7 per cent. This is much higher than Sportelli, which fixed a discount rate of 5 per cent and which the Tribunal would ordinarily follow. He needs to explain his reasoning for taking a higher rate of discount and adduce appropriate evidence.

Sixthly, he does not address the issue of development value. In particular, it may be that the cellar area can be converted.

Seventhly, he does not explain why he takes 97 per cent as the relativity. Given the length of the leases a lower figure would be normal.

In addition, you have included only the lease of Flat A in the bundle. The Tribunal requires sight of all the leases.

The Tribunal intends to reconvene on Wednesday 16th June 2010 to determine this matter finally. The parties need not attend on that date unless they give notice of their intention to do so prior to the reconvene.

You should provide the further materials by Wednesday 9th June 2010.

Yours etc”

6. In the event on the morning of 16th June 2010 a further report was received from Mr Nkemena, which we consider below.

Sportelli, hope value, deferment rates and capitalisation rates

7. In general the aggregate of the value of the landlord’s interest in a property and the value of the tenants’ interest in a property is less than that of the two interests combined, as occurs when the tenants enfranchise. The increased value generated is called the “marriage value”. In the current case, the leases on the property had less than 80 years to run when the vesting order was made. By statute we have to take the marriage value of Flats A and C into account.
8. The marriage value in respect of Flat B is to be ignored, save insofar there is some prospect of an extra-statutory lease extension being granted to the lessee of Flat B: see the House of Lords decision in *Earl Cadogan v Sportelli* [2009] 2 WLR 12. In the current case there is no evidence that there is any prospect of flat B seeking to enfranchise otherwise than under the statute, so we ignore any hope value in respect of Flat B.
9. The price in this case therefore comprises four elements. Firstly, there is the value of the ground rents which the landlord is entitled to receive. These need to be capitalised using “the capitalisation rate” to give the current value of the ground rents. Mr Nkemena proposes 7 per cent for this rate. We agree.
10. Secondly, there is the value of the landlord’s interest at the termination of the existing leases, discounted by “the deferment rate” for the length of the term remaining. Mr Nkemena in his new report proposes 5 per cent for this rate. This is the rate fixed by the Lands Tribunal in *Sportelli* (as

upheld by the Court of Appeal and the House of Lords) and we agree that it is appropriate.

11. Thirdly, there is the marriage value on Flats A and C. Fourthly there is the value of the parts not demised to the tenants, in practice the cellar.

Valuation

12. Mr Nkemena now accepts that the relevant valuation date is 30th October 2009, the date of the vesting order.
13. His valuation misstates the starting dates of the three leases and in consequence misstates the length of the outstanding lease as at the valuation date. The relevant figures are as follows:
 - Flat A: 99 years from 19th April 1981, so 71½ years remaining;
 - Flat B: 99 years from 30th October 1981, so 71 years remaining;
 - Flat C: 99 years from 30th October 1981, so 71 years remaining.
14. In each case the rent payable in respect of each flat is £50 per annum for the first 33 years, £100 for the next 33 years and £150 for the last 33 years. The calculation of the value of the ground rents is attached.
15. The value of Flat A with vacant possession Mr Nkemena says should be £250,000. This does not accord with the comparables which he has obtained. A two bedroom flat at 60-62 Palace Road sold for £275,000 in November 2009. In his earlier reports, Mr Nkemena (who says he is very familiar with the locality) suggested Flat A would be worth £295,000 as at January 2008. (In fact, he said Flat C would be worth that, but he has clearly confused the two flats, since his value for Flat A was only £140,000. The studio flat is obviously the lower figure.)
16. In our judgment Mr Nkemena's original valuation as at January 2008 is more in accordance with the comparables which he has produced. However, it stands to be adjusted to reflect the drop in property values between January 2008 and October 2009.
17. The property market peaked in the summer of 2007 and went into a decline. The market made a modest recovery in 2009. In our judgment the appropriate figure for October 2009 is £285,000.
18. For Flat B, Mr Nkemena suggests £220,000. Again this is lower than the comparables he has produced, which have a range from £223,000 to £275,000. It is also very much lower than the value we have put on Flat 3. In our judgment a value of £230,000 should be put on Flat B.

19. Flat C was sold in November 2007 for £125,000. We agree with Mr Nkemena that this is the best comparable. He suggests that a 15 per cent adjustment should be made to reflect “plummeting capital values” and the fact that “the price paid in 2007 was high and at the peak of [the] Housing Market.” We agree that some adjustment stands to be made, but we disagree that November 2007 was at the peak of the market. On the contrary, the peak of the market was in the summer; by November 2007 the decline was well established. There is simply no evidence that the price paid for Flat C was “high”. On the contrary there is strong demand in London for small pieds-à-terre, such as this flat. Mr Nkemena makes no allowance for the recovery in the market which took place in 2009. In our judgment a valuation of £120,000 is appropriate for Flat C.
20. On relativity (the difference in value between a flat with vacant possession and the flat with the existing lease) Mr Nkemena now proposes a figure of 92 per cent. We agree that for flats of this type with this length of lease that is an appropriate figure for relativity.
21. The cellar has a footprint of 210 square feet. Mr Nkemena says that it has a head room of less than 3.0 metres. That, however, is sufficient headroom for a flat. He says that there have been two floods in the past which would impact on the development value. He says the current cost of basement conversions of £1,200 per square foot would make this uneconomic. He also points to issues with easements which the lessees might have. He suggests that the value of the cellar for storage should be assessed at £10 per square foot, or £2,100 per annum.
22. We do not agree that the cellar has no development value whatsoever. A headroom of 3 metres or ten feet is ample for a flat, so there might well be no need to dig out the basement. We did not accept his figure of £1,200 per square feet for any development, which is far too high for a modest development as this would be. The other matters would be an obstacle, but not necessarily an insuperable obstacle.
23. The approach we consider appropriate is to consider the value of the cellar as storage and then make adjustments. A return of 7 per cent equates to 14 years purchase, which might be appropriate for a pure financial investment. In fact however some discount from that would be given to reflect the cost of management and the problem of voids. An adjustment in the other direction would be made by a prospective purchaser to take into account the development value.
24. This exercise cannot be simply a mathematical one. In our judgment weighing the competing considerations, an adjustment to give 12 years purchase is right. That gives a value for the cellar of £25,200.

Conclusion

25. Our workings are shown in the schedule attached to this decision.
26. The TR1 attached to this decision is approved, subject to the insertion of £57,341.00 as the consideration for the transfer.

DECISION

The Tribunal accordingly:

(a) determines that the purchase price payable is £57,341.00 divided as follows:

Flat 84A	£16,379.00
Flat 84B	£8,436.00
Flat 84C	£7,306.00
Cellar	£25,200.00

(b) approves the Form TR1 attached hereto.

Adrian Jack, chairman

22nd June 2010

VALUATION FOR THE LEASEHOLD VALUATION TRIBUNAL

of

THE FREEHOLD of 84 PALACE ROAD, SW2 3JY

under

Section 48 of The Leasehold Reform, Housing and Urban Development Act 1993

COMPONENTS

Existing leases:	84A	Unexpired	71.5 years
	84B & 84C	Unexpired	71 years
	Ground rents		£50 for 33 yrs
			£100 for 33 yrs
			£150 for 33 yrs
Deferment rate	5.0%		
Ground rent rate:	7%		
Relativity	Freehold to short lease – 92%		<i>Agreed by tribunal</i>
Values used			
	Long lease -	84A £285,000	<i>Fixed by tribunal</i>
		84B £230,000	<i>Fixed by tribunal</i>
		84C £120,000	<i>Fixed by tribunal</i>
	Current lease -	84A £262,000	<i>92% relativity</i>
		84C £110,400	<i>92% relativity</i>
Rental income used:	Cellar	£2,100 per year	<i>Agreed by tribunal</i>

84A

1. VALUE OF FREEHOLDERS INTEREST

i)	Current.	Ground rent:		
		£50 for 5.5 years @ 7%		
		50 x 4.63	231	
		£100 for 33 yrs def'd 5.5 yrs		
		100 x 12.754 x 0.0689	879	
		£150 for 33 yrs def'd 38.5 yrs		
		150 x 12.754 x 0.073	140	1,250
ii)	Reversion.	£285,000 def'd 71.5 years @ 5%		
		285,000 x 0.03055	8,707	
	Total current value of freehold			9,958

2. MARRIAGE VALUE

Future value			285,000	
Current values	Freehold	9,958		
	Leaseholder	<u>262,200</u>	<u>272,158</u>	
Total marriage value			<u>12,842</u>	
50% of the marriage value				<u>6,421</u>

3. AMOUNT PAYABLE **£16,379**

84B

1. VALUE OF FREEHOLDERS INTEREST

i)	Ground rent:			
		£50 for 5 yrs @ 7%		
		50 x 4.1002	205	
		£100 for 33 yrs def'd 5 yrs		
		100 x 12.5318 x 0.7131	909	
		£150 for 33 yrs def'd 38 yrs		
		150 x 12.538 x 0.07646	143	1,257
ii)	Reversion	£230,000 def'd 71 yrs @ 5%		
		230,000 x 0.031011	7,199	

2. AMOUNT PAYABLE **£8,456**

84C

1. VALUE OF FREEHOLDERS INTEREST

i)	Ground rent:	AS 84B	1,257
ii)	Reversion	£120,000 def'd 71 yrs @ 5%	
		120,000 x 0.0313	<u>3,756</u>
			5.013

2. MARRIAGE VALUE

i)	Future value		120,000
ii)	Current values.	Freehold	5,013
		Leaseholder	<u>110,400</u>
			<u>115,413</u>
	Total marriage value		<u>4,587</u>
	50% of marriage value		£2,293

3. AMOUNT PAYABLE **£7,306**

VALUE OF CELLAR

1.	Rental value	£2,100	
	Years purchase	12 yp	<i>Allowing for management, letting costs and voids.</i>
	£2,100 x 12	= £25,200	
2.	AMOUNT PAYABLE		<u>£25,200</u>

TOTAL AMOUNT TO BE PAID FOR THE FREEHOLD

84A	£16,379
84B	£ 8,456
84C	£ 7,306
Cellar	<u>£25,200</u>
TOTAL	<u>£57,341</u>

need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

blank if not yet registered.

address including postcode (if any) or description of the property, for the land adjoining 2 Acacia

name(s).

State as appropriate where the transferee is a company.

name(s).

State as appropriate where the transferee is a company. Also, for an individual transferee, unless an agreement with Land Registry exists, attach a certificate in Form 7 in accordance with rule 3 to the Land Registration Rules 2003 or a certified copy of the title in English or Welsh, or other language permitted by rule 183 of the Land Registration Rules 2003.

The transferee may give up to three addresses for service, one of which must be a postal address whether or not in the United Kingdom (including the postcode, if any). The address may be any combination of a postal address, a UK DX box number or an electronic address.

State the currency in the appropriate box. State the amount in the appropriate box. State the unit if other than sterling. If none of the above boxes apply, insert an appropriate amount in panel 11.

	<p>1 Title number(s) of the property:</p> <p>LN205594</p>
	<p>2 Property:</p> <p>84 Palace Road, London SW2 3JY</p>
	<p>3 Date:</p>
	<p>4 Transferor:</p> <p>Maqbool Ahmad</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in England and Wales including any prefix:</p>
	<p>5 Transferee for entry in the register:</p> <p>Compton Arlington Davis</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in England and Wales including any prefix:</p>
	<p>6 Transferee's intended address(es) for service for entry in the register:</p> <p>22 Rommany Road, London SE27 9PX</p>
	<p>7 The transferor transfers the property to the transferee</p>
	<p>8 Consideration</p> <p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures): £..... (..... pounds)</p> <p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>

in any box that applies.

modifications.

transferee is more than one
place 'X' in the appropriate box.

as necessary.

any required or permitted
certificate or application and
covenants, declarations and

transferor must execute this transfer
using the space opposite. If
more than one transferor, all must
Forms of execution are given in
9 to the Land Registration
13. If the transfer contains
covenants or declarations or
an application by the transferee
(or a restriction), it must also be
by the transferee.

9	<p>The transferor transfers with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p>
10	<p>Declaration of trust. The transferee is more than one person and</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p> <p><input type="checkbox"/> they are to hold the property on trust:</p>
11	<p>Additional provisions</p> <p>This transfer is made with full title guarantee but for the purposes of section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994, excluding from that guarantee not only, any matter which was either within the actual knowledge of the buyer or was a necessary consequence of fact that were within the actual knowledge of the buyer but also all matters now recorded in the registers open to the public are to be deemed within the actual knowledge of the Transferee and the parties apply to the District Land Registrar to note the register accordingly.</p> <p>This conveyance is executed for the purposes of Chapter 1 of the Leasehold Reform, Housing and Urban Development Act 1993.</p>
12	<p>Execution</p> <p>Signed as a Deed by</p> <p style="text-align: right;">.....</p> <p>In the presence of</p> <p>Witness signature</p> <p>Witness Name</p> <p>Witness Address</p> <p>Signed as a Deed by</p> <p>Compton Arlington Davis</p> <p>In the presence of</p> <p>Witness signature</p> <p>Witness Name</p> <p>Witness Address</p>

honestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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