

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Richard George Frankel (tenant)

Respondent: Castle Lane Securities Limited (landlord)

Re 135 Church Road, Barnes, London SW13 9HR

Date of tenant's notice and valuation date: 7 November 1995

Application to tribunal dated: 24 February 1997

Date of hearing: 16 July 1997

Date of inspection : 1 August 1997

RECEIVED
30 SEP 1997

Appearances:

Mr A Bird (counsel)
Mrs M Seabrook (Pearson Lowe, solicitors)
Mr R Doncom BSc ARICS (Marsh and Parsons, chartered surveyors)

for the applicant

Mr P H Marr-Johnson ARICS (Marr-Johnson & Stevens, chartered surveyors)

for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson (Chairman)
Mr E R Tarry FRICS
Mr D Myer-Smith

Date of the tribunal's decision: 29 SEP 1997

The facts

1. 135 Church Road is a terraced building which dates from the turn of the century. It has shop premises on the ground and basement floors and a self contained maisonette on the first, second and third floors. The shop premises are agreed to have a Zone A area of 379 square feet and storage space totalling 591 square feet. The maisonette, as currently arranged, has four rooms, kitchen/breakfast room, bathroom, shower room and wc. There is off street parking for one car, but no garden. The whole building is held by the tenant under a lease for a term of 99 years from 24 June 1904, expiring on 23 June 2003 and thus with 7 years and 7 months unexpired at the valuation date, which is agreed to be 7 November 1995, the date of the tenant's initial notice. The tenant pays an annual ground rent of £22 (although the lease, which is difficult to decipher, appears to provide for a rent of £25). The shop premises are subject to an underlease to a firm of estate agents, expiring on 21 June 2003 at a rent which is currently £12,500 per annum, payable to the tenant and subject to review on 24 June 1998. The county court has determined by consent that the tenant is entitled to acquire the freehold of the whole premises.

2. The parties have agreed that the property is to be valued under section 9(1A) of the Act, that for the purpose of the enfranchisement the full open market rent of the shop premises as at the valuation date is £14,000 a year, and that the marriage value should be divided equally between them.

3. The issues are:

- (i) the nature and value of the tenant's improvements to the maisonette;
- (ii) the value of the freehold reversion;

- (iii) the value of the tenant's existing lease;
- (iv) whether any discount should be made from the value of the freehold reversion in respect of the tenant's rights to remain in possession of the property as an assured tenant at a market rent under Part 1 of the Landlord and Tenant Act 1954 as amended by the Local Government and Housing Act 1989;
- (v) yield.

4. Two valuations prepared on alternative bases by Mr Doncom for the tenant are attached to this decision marked A, and a valuation prepared by Mr Marr-Johnson for the landlord as attached marked B. Mr Doncom's proposed enfranchisement price if the property is valued on a rental basis is £106,424, and, if it is to be valued on a capital basis, £126,135. Mr Marr-Johnson values the property only on a capital basis and proposes a price of £170,627.

5. On 1 August 1997 the tribunal internally inspected the premises and externally inspected all the comparables in the locality of Barnes which were relied on by Mr Doncom and/or by Mr Marr-Johnson.

Decision

(i) the value of the tenant's improvements to the maisonette

It is not disputed that the tenant has carried out a number of improvements, including the installation of central heating and of a shower room, and the modernisation of the kitchen and bathroom. In addition he has rewired and treated dry rot at the property. Mr Doncom says that the tenant has spent over £50,000 on improvements, but the list he puts before us appears to include every penny the tenant has spent on items which

include carpets and paint. Mr Marr-Johnson said in his written proof that the only improvement which he accepted was the central heating, the value of which is no greater than £5000.

In our view the installation of central heating and the shower room, and the modernisation of the kitchen and bathroom are improvements within section 9(1A)(d) of the Act, and the other works listed by Mr Doncom are merely performance of the tenant's repairing obligations under the lease. We have sought to value the property as it was at the commencement of the lease in 1904, without the improvements we have identified but in good repair and decorated as required by the lease.

(ii) the value of the freehold reversion

Both valuers agree that the shop part of the premises is to be valued as an investment and that the rental value at the valuation date to be assumed on reversion is £14,000, and the only issue between them on this aspect of the valuation is the yield rate to be used, as to which, see below.

Valuing the maisonette, Mr Doncom argues that the mixed commercial and residential nature of the property categorises the whole property as an investment which would be purchased for its income stream, and that it is therefore, he says, more appropriate to value not only the shop but also the maisonette on the basis not of its capital value, but its potential income from assured shorthold tenancies. He relies on a letting of a maisonette next door and on a letter from the estate agents who occupy the shop at the subject premises and suggests that the letting value of the maisonette, unimproved, is £11,400 a year, capitalised at the same rate (12½%) as for the shop premises, which produces a value of £91,200.

In the alternative he proposes a capital value of £120,000 for the unimproved maisonette, based on six sales of flats in the locality, (49 Castelnau Gardens, 40A Lonsdale Road, 3/40 Lonsdale Road, 21 St Anne's Road. 234 Fairacres and 39 Rocks Lane) none of which was over commercial premises, and on a letter from Boileau Braxton, the estate agents occupying the shop premises in the subject property, which says that in their opinion a long lease of the maisonette would be worth £125,000 at the date of the letter (July 1995).

Mr Marr-Johnson relies only on the conventional capital value approach, and proposes a value of £130,000 for the unimproved maisonette. He relies on sales of flats at 17A St Anne's Road and 55 Madrid Road, neither of which was over commercial premises, and on two valuations (one at £230,000 and one at £215,000) of a flat over a restaurant at the nearby 147 Church Road in March 1997 which he adjusts for passage of time at an annual inflation rate of 40%. He says that the rental basis of valuation is unreliable because the rent has to be estimated on the assumption that the property is unimproved, and deductions must be made from the profit rent to cover repairing, decorating and maintaining the property, for management, and for void periods between assured shorthold tenancies.

In our opinion the use of a rental basis of valuation for the freehold in possession has drawbacks, and we prefer to adopt the, in our view more reliable, capital value approach in valuing the freehold reversion of the residential part of this property. In our opinion the value of the unimproved freehold maisonette, based on the comparables drawn to our attention, is £120,000. In our view the valuations of the flat at 147 Church Road are unhelpful, not only because they were not followed by a sale, but also because of the major adjustments which have to be made to compensate for passage of time. We have taken some account of the letter from Boileau Braxton, but have borne in mind that they

have not given evidence, that they appear to have valued the property in its existing improved state, and that their valuation is of a long lease, which is clearly worth less than the freehold. (Mr Marr-Johnson says the long lease is worth 5% less than the freehold, but we think that may be an over estimate).

(iii) the value of the tenant's existing lease

Mr Doncom values the tenant's existing interest only on a rental basis, using a capitalisation rate of 16%, allowing for repayment of capital by way of a sinking fund at 4% out of income taxed at 40%. He thus puts it at £70,815, which is the total of (i) the existing rent of the shop for 2½ years at a dual rate of 16¼% (£15,375); (ii) the agreed current market rent of the shop for 5 years, deferred for 2½ years, at 16¼% (£23,520); and (iii) his estimated market rent of the maisonette for 7½ years, at 16¼% (£31,920).

He relies for his yield rate on an agreement with the District Valuer on the disposition of a 15 year lease of a shop in the Brompton Road and on the sale in the open market of the 10 year lease of the same shop 5 years later, in July 1996.

Mr Marr-Johnson deprecates the rental basis of valuation for the reasons set out under (i) above, and says that if it were to be adopted at all, a higher dual rate should be adopted to take into account the differences from the Brompton Road property, namely the shorter unexpired term of the present lease, the inferior location of the subject property, and the earlier valuation date. He prefers to argue from statistics extracted from settlements on the Grosvenor Belgravia and Cadogan estates that a lease of 7½ years has a value of 14% of the freehold on those estates, which he adjusts to 12½% to reflect the inferior location of the property with which we are concerned.

We had no reliable evidence of the vacant possession value of the short lease. In our

view Mr Marr-Johnson's approach is not soundly based, and we have therefore adopted a rental basis for this aspect of the valuation. In our view Mr Doncom's rental valuation of the maisonette is on the high side for the unimproved property and parking space, and we consider £7,800 per annum (£150 per week) a more realistic estimate. We agree with Mr Marr-Johnson that deductions should be made from that estimated rental value to take account of outgoings such as repairs and insurance, and we have made a deduction of 15% for those items. We do not consider that a purchaser would make deductions for outgoings for the shop and basement. We accept that the use of a dual rate is appropriate in the circumstances of this case, but we do not consider it appropriate to adjust for the effect of taxation on the income for sinking fund purposes. (In *86 Tooting High Street* (LON/LVT/513), another case concerning mixed residential and commercial use, the tribunal made no allowance for tax on the sinking fund). We accepted Mr Marr-Johnson's argument that the capitalisation rate should be higher than the 16% suggested by Mr Doncom given the risk involved with a 7½ year term in what is essentially a secondary investment with possible vacancies and/or dilapidations at the end of the term, and we have adopted a rate of 18%. We considered 3% to be the appropriate rate to adopt for the sinking fund.

(iv) Discount for the tenant's rights to remain in possession of the property as an assured tenant at the expiry of his lease

Mr Doncom argues that the value of the reversion to vacant possession is affected by the possible exercise of the tenant's rights to hold over at a market rent at the end of his lease under Part 1 of the Landlord and Tenant Act 1954 as amended by the Local Government and Housing Act 1989, and contends that this reduces the value of the reversion by 10%. Mr Marr-Johnson makes no allowance for this factor. In our view, bearing in mind particularly that the market rent payable on such holding over would be

likely to be reduced significantly by a rent assessment committee to take account of the improvements carried out by the tenant or his predecessors in title, and would therefore not be a full market rent, a purchaser would be likely to assume that the tenant has an incentive to hold over at a discounted rent. In the circumstances we consider a discount of 5% from the value of the freehold reversion is appropriate.

(v) Yield

We have considered yield in respect of the tenant's existing lease under (iii) above. In relation to the yield to be applied for capitalisation and deferment of the freehold interest, Mr Doncom argues for 12½% and Mr Marr-Johnson for 11%. Mr Doncom relies on the sale for £135,000 in May 1997 of shop premises at the nearby 60 Church Road, where a rent review was later agreed at £17,000, but in our view that property would be a less desirable investment, the upper parts having been sold off on a long lease, and we prefer Mr Marr-Johnson's suggested 11%.

Determination

We accordingly determine that the price to be paid for the freehold in possession of the property is £142,250 (one hundred and forty two thousand two hundred and fifty pounds) in accordance with our valuation which is attached to this decision marked C.

CHAIRMAN.....


DATE..... 29 SEP 1997

<u>10. VALUATION OF 135 CHURCH ROAD.</u>	<u>RENTAL BASIS</u>	
10.1 Ground Rent		£25 pa.
YP 12.5% 7.5 years		4.6 4.76 115
10.2 Reversion		
Shop	£14,000 pa.	
YP in perp @ 12.5%	8	£112,000
Maisonette	£11,400	
YP - perp	8	
@ 12.5%	<u>£ 91,200</u>	
less 10% uncertainty	<u>£ 9,120</u>	<u>£82,080</u> £194,080
PV 7.5 12.5% (Parry Tables)		.414 £80,349
Current freehold		£80,464
10.3 Marriage Value		
Freehold		£203,200
Current Freehold	£80,464	
Leasehold		
Shop	£12,500	
2.5year 16/4%	1.23	£15,375
Shop	£14,000	
5 year @ 16/4 def 2.5 yrs	1.68	£23,520
Mtte	£11,400	
YP 16/4 7.5yrs	2.8	<u>£31,920</u>
		£151,279
Marriage Value		£ 51,921 - 2
Purchase Price		<u>£25,960</u> £106,424

11. VALUATION OF 135 CHURCH ROAD - OWNER OCCUPIER BASIS

11.1	Ground Rent	£25		119
	YP 12.5% 7.5years	4.76 4.76		
		4.6		
11.2	Reversion			
	Shop	£14,000		
	YP - perp @ 12.5%	8	£112,000	
	Maisonette £120,000 (vacant possession)			
	less 10% uncertainty <u>£ 12,000</u>		<u>£108,000</u>	
			£220,000	
	PV 7.5 years 12.5%		.414	£91,080
	Current freehold			£91,199
11.3	Marriage Value			
	Freehold		£232,000	
	Shop £12,500			
	2.5 yrs 16/4 1.23		£15,375	
	£14,000			
	5yrs dep 16/4 1.68		£23,520	
	Mtte £11,400			
	YP 7.5 yrs			
	16/4 2.81		£32,034	
	Current freehold	<u>£91,199</u>	<u>£162,128</u>	
	Marriage Value		£ 69,872 - 2	<u>£34,936</u>
	Purchase Price			£126.135

10 VALUATION

<u>Freehold Valuation as at</u>		Nov 1995 claim	Jun 2003 expiry	
Ground rent per annum:				£ 22
Years' purchase for:	7.6 years at	11.0%		<u>4.9898</u>
				£ 110
Reversion to fully repaired but unimproved value, freehold with vacant possession				£257,250
Present value of £1 after:	7.6 years at	11.0%	0.45112	
				<u>£116,051</u>
Open market value of landlords' interest				£ 116,160
Marriage Calculation				
Freehold as above				£ 257,250
less freeholders' interest			£ 116,160	
and lessee's interest @ 12.5%			£ 32,156	
(ignoring the right to claim)				<u>£ 148,317</u>
Total marriage value				£ 108,933
Landlords' share @ 50%				<u>0.5</u>
				£ 54,467
Enfranchisement price exclusive of costs				£ 170,627

135 Church Road, Barnes, SW13
Valuation in accordance with
S9(1A) Leasehold Reform Act 1967

Valuation Date: 7 November 1995

1. Value of Freehold in Possession

Value of freehold maisonette, vacant possession		£120 000
Rental passing shop/basement YP 2.5yrs @ 11%	£12 500pa <u>1.983</u>	£24 788
Reversion to:- YP ppy @ 11% def 2.5yrs	£14 000pa <u>7.0128</u>	<u>£98 179</u>
		<u>£242 969</u>
		say <u>£243 000</u>

2. Freeholders Interest at Valuation Date

Ground rent YP 7.5 years @ 11%	£22 pa <u>4.929</u>	£108
Reversion to:- Unimproved maisonette Less 5% uncertainty	£120 000 <u>6 000</u>	
	£114 000	
Deferred 7.5 yrs @ 11%	<u>0.45779</u>	£52 188
Rent value shop/hasement YP ppy 11%	£14 000pa 9.091	
Def 7.5 yrs @ 11%	<u>0.45779</u>	<u>£58 265</u>
		£110 561
		say <u>£110 500</u>

3. Lessees Interest

Rental value unimproved maisonette

£7 800pa

Deduct

Ground rent

£22pa

Outgoings say 15%

£1 182pa

£1 204pa

Net rental income

£6 596pa

YP 7.5 yrs @ 18% + 3%sf

3.320

£21 899

Shop/basement

£12 500pa

YP 2.5yrs @ 18% + 3%sf

1.737

£21 712

Reversion to

£14 000

YP 5yrs @ 18% + 3%sf

def 2.5yrs

1.8244

£25 536

£69 147

say £69 000

4. Enfranchisement Price

Marriage Value

Freehold in possession

£243 000

Freeholders interest

£110 500

Lessees interest

£69 000

£179 500

Marriage value

£63 500

50% to freeholder

£31 750

Freeholders interest

£110 500

ENFRANCHISEMENT PRICE

£142 250