

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER S21(1)(b) OF
THE LEASEHOLD REFORM ACT 1967**

Applicant: The City of Westminster

Respondents: The Personal Representatives of W R Rees-Davies (deceased)

Re 5 Lord North Street, London SW1

**Application dated 29 July 1998
Heard 8 and 9 June and 19 July 1999
Inspection 14 July 1999**

Appearances:

**Mr R Mullis (counsel)
Mr I MacPherson MA FRICS (Gerald Eve, chartered surveyors)
Mr G Pope FRICS FSVA
Mr K Shaw ASVA and Mr P Tonkin, solicitor (Westminster City Council)**

for the applicant

**Mr S Schaw Miller (counsel)
Mr C E J Boston FSVA IRRV MCIM (Boston Carrington Pritchard,
chartered surveyors)
Mr R Symons (Titmuss Sainer Dechert, solicitors)
Mrs S Rees-Davies
Mr S Lockwood BA DipBldgCons FRICS (Drivers Jonas)**

for the respondent

Leasehold valuation tribunal:

**Lady Wilson
Mr J R Humphrys FRICS
Mr D J Wills ACIB**

Date of the tribunal's decision: 2 September 1999.

Background

1. This is an application by the landlord for the determination of a ground rent pursuant to section 15(2)(a) of the Leasehold Reform Act 1967 ("the Act"). The rent is payable from 25 March 1990, which is the date by reference to which the rent falls to be assessed.
2. 5 Lord North Street is a terraced house built between 1720 and 1725 and listed grade II*. It is on lower ground, ground, first, second and attic floors and has a gross internal floor area of 1925 square feet.
3. On 24 February 1961 the London County Council granted a lease of the house for a term of 29 years and nine months expiring on 25 March 1990 at a rent of £150 per annum. On 22 February 1988 the then tenant, Mr Rees-Davies QC, applied for an extended lease under section 14 of the Act. A new lease was granted on 14 March 1990 at a rent of £150 per annum, reviewable in accordance with section 15 of the Act on 25 March 1990 and 25 March 2015. On 22 March 1990 the tenant gave notice of his intention to enfranchise, which was admitted. Mr Rees-Davies died on 12 January 1992 and the house is now occupied by his widow to whom we will refer henceforth in this decision as the tenant. An application by the landlord, by then the City of Westminster, to determine the section 15 ground rent was withdrawn on 15 February 1993 on the basis that negotiations were proceeding for the purchase of the freehold, and on 21 September 1993 the landlord applied to the leasehold valuation tribunal to determine the price for the freehold. The application was due for hearing on 15 March 1994 but was adjourned because the tenant's valuer, Mr Boston, was not available, and it was again adjourned on the landlord's application because the Mr Boston's report was produced late. On 22 November 1994 the tribunal determined an enfranchisement price of £350,000.

4. The tenant appealed to the Lands Tribunal, but by a decision dated 12 February 1997 the appeal was dismissed on the ground of her failure to pursue it with due diligence and failure to comply with the Lands Tribunal Rules. She appealed to the Court of Appeal but her appeal was dismissed on 7 May 1998, and her application for leave to appeal to the House of Lords was refused on 27 August 1998.

5. On 29 May 1998 the landlord served on the tenant a notice to complete the purchase of the freehold by 26 June 1998, on which date it served a default notice under condition 10 of Part I of the Schedule to the Leasehold Reform (Enfranchisement and Extension) Regulations 1967 requiring completion by 27 August 1998. On 29 July 1998 the landlord issued the present application for the determination of a section 15 ground rent. Completion of the purchase of the freehold has not yet taken place.

6. At the start of the proceedings on 8 June 1999 Mr Schaw Miller for the tenant invited us to adjourn the landlord's application on the ground, firstly, that we had no jurisdiction to deal with the matter because the tenant's intention to buy the freehold suspended the requirement to pay the rent under the extended lease, the only requirement under condition 7 of Part I of the Schedule to the Regulations being, he argued, to pay the rent of £150 per annum under the original lease. He said that the landlord's notice to complete was premature and invalid because time did not run while the appeal process was pending, and consequently the default notice under condition 10 was also invalid. He said, further, that if we had jurisdiction to determine a ground rent under section 15 we ought not, as a matter of discretion, to exercise it because negotiations might take place in relation to the purchase of the freehold and the payment of ground rent. He maintained also that in any event the matter should be adjourned because the tenant needed further time to consider the landlord's valuation evidence and to prepare her own.

7. On this issue Mr Mullis said that a section 15 ground rent was payable until the date of completion of the enfranchisement. Upon the grant of the extended lease, the original lease was surrendered by operation of law, so that the rent payable until completion was the section 15 rent. The tenant's failure to have her valuation evidence ready and available was, he said, in keeping with the history of delay since notice of desire to have the freehold was first given.

8. We were quite satisfied that Mr Mullis was correct, and that the rent payable until completion was the section 15 ground rent due under the extended lease, by virtue of which the tenant presently occupies and on 25 March 1990 occupied the property and on the grant of which the old lease was surrendered by operation of law. We saw no grounds to exercise our discretion to adjourn the proceedings pending negotiations, which we had no reason in the light of the history to suppose would prove fruitful. We however agreed to start the substantive hearing on the following day in order to enable the tenant to adduce valuation evidence, which she did. The hearing occupied the following day, 9 June 1999, and was concluded on 19 July. We inspected the property internally, and all the comparables externally, on 14 July.

Issues

By section 15(2)(a) of the Act, the rent to be assessed shall represent the letting value of the site (without including anything for the value of the buildings on the site) for the use to which the house and premises have been put since the commencement of the existing tenancy. In order to arrive at the value of the site, both parties have adopted the standing house approach, there being no evidence of the value of cleared sites in the area. The issues which thus arise are:

- (i) the entirety value of the property on 25 March 1990;
- (ii) the proportion of the entirety value which is attributable to the site;
- (iii) the decapitalisation rate.

Decision

1. Entirety value

The entirety value is the value of the freehold interest in the house with vacant possession in good condition and fully developing the potential of its site. It must take account of any potential for modernisation (see, for example, *Kemp v Josephine Trust Ltd* 1971 22 P & CR 804)), but any assumed potential for modernisation or enlargement must be realistic and not fanciful (*Cadogan Estates Ltd v Hows* [1989] 2 EGLR 216).

On this issue Mr Mullis for the landlord called Mr Pope, who proposed an entirety value of £600,000. Mr Pope had prepared a report dated 12 December 1995 for the tenant's proposed appeal to the Lands Tribunal from the determination of the enfranchisement price, and had concluded in that report that the freehold value on the 22 March 1990 of the property, disregarding tenant's improvements which he valued at £5000, was £475,000. He had not appeared before the leasehold valuation tribunal, when the City of Westminster's valuer had agreed with Mr Boston for the tenant that the value was £400,000, which he regarded as too low. He considered that the entirety value significantly exceeded the value of the property as it stood, and disregarding the tenant's improvements. He relied on sales of 7, 13, 15 and 17 Lord North Street, 14 and 17 Cowley Street, 12 Barton Street, 17 Great College Street and 7 Smith Square, all of which are in the immediate vicinity of the property. He adjusted the sale prices for size,

facilities and condition and, by reference to the Savills Capital Values Index for prime central London houses, for date of sale. Of the comparables relied on by Mr Boston for the tenant, 3/4 Lord North Street and 6 Smith Square were not, in his opinion, useful because they were so much larger than the subject. He considered that 5 Lord North Street should be regarded as largely unmodernised, and could be improved, reformed and reorganised to provide different and better accommodation, in particular by extending the building at ground floor level, although he accepted that the panelling should be kept. Cross-examined, he said that he had not made enquiries about planning constraints on altering a building with grade II* listing, and he defended his use of the Savills Index, which he had found to be reliable and useful. He strongly denied the suggestion that the location of the property was not particularly attractive in relation to its social amenities, and considered it to be a wonderful location in which many people, and not only politicians, would wish to live. He did not accept the view that the fall in property values between the valuation date in March 1990 and the dates of sale of the comparables was less marked in this location than in other central London locations, although he agreed that in the isolated case of 7 Smith Square there appeared to have been two sales at the same price in May and December 1991.

Mr Boston, for the tenant, proposed an entirety value of £404,250, based on £210 per square foot. He relied, as Mr Pope did, on 7 and 15 Lord North Street, 7 Smith Square and 17 Cowley Street, and, in addition, on 3/4 Lord North Street and 6 Smith Square. He did not accept that the entirety value significantly exceeded the value of the house as it stood. He considered the house to be already modernised, and that there was very limited scope for making more of it than had already been made, although he accepted that central heating could be installed. He considered that the market in the special part of London in which the property was situated was not as volatile as that in other prime locations because of the particular need of politicians and journalists to live close to the

Houses of Parliament, and thus he had not referred to the Savills Index because he considered it too generalised to be of help. He considered the market for houses in the immediate vicinity of the subject to be a special one. If, as Mrs Rees-Davies had been told, 3/4 Lord North Street had been sold for £615,000 rather than £700,000 as he had been told, then the value of 5 Lord North Street was rather less than he had suggested. He agreed in cross-examination that he had no recent direct experience of selling houses, and he was unable to explain precisely how he had arrived at his figure of £210 per square foot when the best modernised comparable, 15 Lord North Street showed, on his analysis, a higher figure. He accepted that there was some fall in the market for houses in the area, although less, he considered, than in Belgravia and other fashionable locations. He agreed that 15 Lord North Street was more relevant than most of the comparables.

Mr Schaw Millar also called Mr Lockwood, an associate partner in the Building Group of Drivers Jonas, a specialist in the survey, care and conservation of historic buildings. He explained the stringent planning restrictions on altering buildings of such historic interest, the critical importance of the integrity of the terrace as a whole, and the importance of retaining the surviving parts of the original internal fabric of the building. In particular, he could not conceive any circumstances in which removal of the panelled partition between the front and rear ground floor rooms would be permitted. Nor did he agree with Mr Pope's suggestion that the second floor bathroom could sensibly be converted to a bedroom with *en suite* bathroom, and he doubted whether permission to increase the number of bedrooms, and thus the potential number of occupants of the property, would be permitted. He accepted, however, that central heating could be installed, the kitchen could be improved, the ground rear utility room could be converted into more usable space, and that the rear extension could be improved. He had not considered the feasibility of obtaining permission to alter the roof line by fully

mansarding the attic.

Mrs Rees-Davies gave evidence of the improvements she and her husband had carried out, and produced a letter, which we admitted subject to arguments as to its weight, from the vendor of 3/4 Lord North Street who said that he had sold the property in 1992 for £615,000 rather than £700,000 as Mr Boston had been informed.

We also admitted, at Mrs Rees-Davies's request but subject to argument as to its weight, a letter from Mr Laurence Benson of Bensons, a local estate agent, who said that house price rises in Westminster in the 1980's were not as sharp as in well established residential areas, and that values in the area settled rather than fell back in the late 80's and early 90's, that the Savills Index was distorted because Westminster was a unique specialist market.

On the issue of planning constraints, Mr MacPherson, whose evidence mainly related to other valuation issues, was recalled by Mr Mullis to say that he was aware of no reason why planning consent might be required to change the use of a room in a property, and Mr Mullis produced a bundle of planning consents granted for alterations to other buildings in Lord North Street. There was also put before us an index of property prices prepared by Savills in 1994 for the particular purpose of the enfranchisement of the house, based on three bedroomed houses in SW1. This could not be put to Mr Pope who had completed his evidence when it was produced.

We have concluded that the entirety value of the property at the valuation date was £525,000. It is agreed, and we agree, that the most helpful comparable is 15 Lord North Street, a similar though smaller property which was sold, well modernised, in February 1993 for £430,000. It was agreed by Mr Mullis that the condition of that property

represented its entirety value. We have arrived at our valuation by adjusting that comparable for size and, by reference to the Savills Index prepared specifically for this case, for date, and by taking into account the other comparables, particularly those in Cowley Street which we found more of assistance than some of the others, and by taking into account also the agreed valuation of the property for the purpose of the enfranchisement at, virtually, the valuation date for the purpose of this application. While we accept that the fall in house prices may have been slightly less dramatic in the area of Lord North Street than in Belgravia, we accept that, essentially, property prices in the area followed the market for central London houses generally, and we are not inclined to any other view on the basis of the information we have on the two sales of 7 Lord North Street which may have been influenced by presentation, a special purchaser, or other factors. While we entirely accept that the important architectural features of the interior of the property, particularly the panelling, the layout of the ground floor and the first floor, the staircase, and possibly the front roofline, would have to be kept if the property was modernised, we are quite satisfied from the evidence, particularly that of Mr Lockwood, and from our inspection, that the property had, at the valuation date, very considerable scope for improvement within the constraints of its listed status, and that the entirety value considerably exceeded its value as it stood. In particular, we consider that central heating could have been installed, and the rear extension, the layout of the basement and the quality of the kitchen and bathrooms could have been much improved.

(ii) The proportion of the entirety value attributable to the site

Mr MacPherson proposed that the appropriate proportion was 50%. He produced a schedule of settlements for houses on the Grosvenor Belgravia, Howard de Walden and

Cadogan Estates, all involving estimates of section 15 rents, compiled in the same way as schedules which were accepted by the Lands Tribunal in other section 15 cases. He said that this schedule, which contained in each case the proportion attributed to the value of the site, lent massive support to 50% as the appropriate proportion in the location of the subject, and that the site proportion had been reduced only for a few small areas on the edges of these estates which were not in prestigious residential locations such as Lord North Street.

Mr Boston maintained that 40% was the appropriate proportion. He compared Lord North Street, which, he said, was in a predominantly commercial area and, though with some historical interest, largely anachronistic as a residential address, with what he considered to be more fashionable areas such as the central parts of the Cadogan Estate and Belgravia.

We have no doubt that the location of this property contributes an above average proportion of the value of the property, and is on a par with the best parts of the Grosvenor Belgravia, Cadogan and Howard de Walden Estates. In our view 50% is the proportion of the entirety value which is attributable to the site.

(iii) The decapitalisation rate

Although Mr MacPherson contended that, in the event that we adopted a lower proportion than 50% to arrive at the site value, we should take a higher decapitalisation rate than 6%, he said that 6% was the appropriate rate if 50% was taken. Mr Boston agreed that 6% was appropriate in any event. We agree that 6% is the correct rate.

Determination

Our valuation is thus as follows:

Entirety value: £525,000

Site value at 50%: £262,500

Section 15 rent at 6%: £15,750 per annum.

CHAIRMAN
DATE 2 September 1999.