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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993**

**Case Reference:** LON/00AN/OCE/2012/0141

**Premises:** 66 & 66A Wardo Avenue, London SW6 6RE

**Applicants:** Mr B Masson  
Ms MS Pull  
Mr NJ Vince  
Mrs SA Vince

**Representative:** Mr A Pridell FRICS

**Respondent:** Mr GR Whitten

**Representative:** Mr D Linnell MA FRICS MEWI

**Leasehold Valuation Tribunal:** Mr NK Nicol  
Mrs S Redmond BSc (Econ) MRICS

**Date of Decision** 8<sup>th</sup> November 2012

**Decision of the Tribunal**

- (1) The Tribunal determines that the sum of £8,048 is payable by the Applicants in respect of the price for the freehold of the property in accordance with the calculation in the Appendix to this decision.
- (2) The transfer is approved in the form submitted to the Tribunal.

## The application

1. The Applicants are the lessees of two two-bedroom flats in a two-storey purpose-built terraced building in south London. The Respondent is the current freeholder.
2. On 21<sup>st</sup> December 2011 the Applicants served an Initial Notice under s.13 of the Leasehold Reform, Housing and Urban Development Act 1993 seeking the collective enfranchisement of the Respondent's freehold interest for a proposed total premium of £4,634. On 4<sup>th</sup> January 2012 the Respondent served a Counter-Notice proposing a premium of £72,980.
3. On 29<sup>th</sup> June 2012 the Applicants applied to the Tribunal for a determination of the amounts payable as the purchase price for the Respondent's interest under section 32 and Schedule 6 of the Act. A hearing was scheduled for 23<sup>rd</sup> October 2012 but was adjourned for the reasons and on the directions set out in the Tribunal's order of that date.
4. The parties have now notified the Tribunal that they have been unable to reach agreement and have asked the Tribunal to determine the matter on the papers, without a further hearing. Both experts agreed that the hearing on 23<sup>rd</sup> October 2012 that there was no merit in the Tribunal making an inspection of the property, the description of which was agreed and clearly set out in the submissions.

## The background

5. The Statement of Facts agreed between the parties includes the following:-

a) Valuation date: 21<sup>st</sup> December 2011

b) Details of leasehold interests:

- |       |                 |     |  |
|-------|-----------------|-----|--|
| (i)   | Date of leases: | 66  | 24 <sup>th</sup> May 2006                    |
|       |                 | 66A | 15 <sup>th</sup> June 2010                   |
| (ii)  | Term of leases: | 66  | 99 years from December 2005                  |
|       |                 | 66A | 189 years from 1 <sup>st</sup> December 1984 |
| (iii) | Ground rents:   | 66  | 2005-2038 £150pa                             |
|       |                 |     | 2038-2071 £300pa                             |
|       |                 |     | 2071-2104 £450pa                             |
|       |                 | 66A | Annual rent of a peppercorn                  |

(iv) Unexpired terms: 66 93 years  
66A 162 years

- c) There are no intermediate interests.
- d) There is no marriage value.
- e) The property comprises a terrace house built late 19<sup>th</sup> century comprising two purpose built flats with separate access. The ground floor flat has the rear garden.

### The law

- 6. Schedule 6 to the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") provides that the price to be paid by the nominee purchaser for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.
- 7. The value of the freehold interest is the amount which at the valuation date that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.
- 8. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.

### Capital value

- 9. The first issue in dispute between the parties is the value of each of the two flats. Mr Pridell, on behalf of the Applicants, pointed to the sale of Flat 66 in April 2012 for £499,000 and to asking prices, supported by brief Undated estate agents' particulars, for some local comparable properties. He concluded that the values were:-

66 £495,000

66A £475,000

- 10. Mr Linnell, on behalf of the Respondent, in relation to Flat 66 also relied on the April 2012 sale, but also on three sales of comparable ground floor flats which took place between August and November 2011 for prices ranging from £485,000 to £528,000. In relation to Flat 66A, he

relied on the sale of that flat in September 2010 for £450,000 and the sale of a comparable first floor flat next door at number 68 in April 2011 for £511,000. He concluded that the values were:-

66 £511,000

66A £500,000

11. The Tribunal has to work out the freehold value of the subject flats as at the valuation date by looking at comparable sales. Asking prices constitute poor evidence and should not be used if actual sales figures and details of the relevant properties are available. Even better than details of sales of comparable flats are those for the actual flats themselves, although careful consideration must be given to the effect of lease length, improvements and the effect of the 'no Act' world. Sales of flats other than the subject flats are of particular relevance if the sales of the subject flats are too distant in time or have some unique factors which indicate that they are outside the market norm.
12. In this case, we have sales of the two flats, that of 66 just 5 months after the valuation date and that of 66A, 15 months before. Adjustments have to be made for the dates but the differences are not such as to make it difficult. There is no suggestion that either of the sales had any unique facts which take them outside the norm.
13. The comparables put forward by Mr Linnell are useful and he supports them with photographs and brief descriptions, some with floor plans. However, where they are indicated to be leasehold, there is no lease length shown. The values achieved range from £485,000 to £528,000. In respect of the ground floor flat, the implication of Mr Linnell's valuation is that the value of Flat 66 decreased by around 2.5% between the valuation date and the sale but there is no evidence the market declined during that period. On the contrary, the Tribunal knows from its expert knowledge and experience that the market in London has been generally on the increase over that period. The Tribunal is satisfied that Mr Linnell's valuation is too high. However, the Tribunal also take into account the unexpired lease term of around 92.5 years. It is common practice to allow a 1-2% adjustment to derive the freehold value and the Tribunal considers it appropriate to apply a 1% uplift to the price paid.
14. However, in respect of the sale of 66A this transaction is more than a year from the date of valuation. The sale of the neighbouring first floor flat is helpful. The Tribunal notes that the description indicates a flat in very good order, it has larger accommodation being in the end terrace with a wider frontage shown on the floor plan and Mr Linnell makes his adjustment to £500,000 because of the preferable layout. The Tribunal agrees with this approach.

15. The Tribunal is not satisfied with the method of Mr Pridell's calculation of the values of the subject flats given the lack of comparable sales. Doing the best that it can with the evidence supplied and using its knowledge and experience, the Tribunal concludes that the flats are of similar value, 66 benefiting from the use of the garden and 66A from the slightly more generous layout and determines a freehold value with vacant possession of £500,000 for both flats. We bear in mind that the experts have agreed there are no improvements to be discounted which would be particularly unlikely in the case of flat 66 where the lease commenced in December 2005.

### **Capitalisation rate**

16. Part of the value of the freeholder's interest is measured by the capitalisation of the ground rents. Mr Pridell pointed to consistent decisions by the Tribunal that the yield rate should be 8% but suggested it should be 7% here to take account of lower interest rates elsewhere. Mr Linnell, in support of his proposed rate of 5%, simply stated that he preferred current rates to historic rates.
17. The parties have presented little or no evidence or argument as to what the rate should be. Therefore, the Tribunal relies on its own expert knowledge and experience to determine that the yield rate should be 7% in respect of a modest rising ground rent.

### **Reversionary discount rate**

18. The well-known case of *Sportelli* set the deferment rate at 5%. Mr Pridell relies on a recent decision in Birmingham where adjustments were made for repairing costs, lower capital growth relative to the prime central London area considered in *Sportelli* and increasing management difficulties due to more complex consultation requirements introduced in 2003. However, he produced no evidence or argument to support any of these variations which in his opinion lead in this case to a deferment rate of 6%. Mr Linnell responded that the subject property is closer to that considered in *Sportelli* than one in Birmingham and that *Sportelli* should be followed but then, for reasons unknown, applied a rate of 4.75% in his calculations.
19. The Tribunal agrees with Mr Linnell that there is insufficient reason to depart from *Sportelli*, particularly on the basis of one example in another city. The deferment rate should be 5%.

### **Development value**

20. Mr Linnell has suggested that the freeholder's interest includes an element for the prospects of developing the roof space and a basement which he puts at £40,000 and £19,500 respectively. Mr Pridell argued

that nothing should be allowed on the basis that the freeholder would have to wait for the expiry of the leases to be able to carry out any development but this misses Mr Linnell's point. His figures are supposed to represent the amount the freeholder may recover if the relevant lessee sought the freeholder's permission to extend their demise and carry out the development.

21. However, the Tribunal is not satisfied that there is any development value. Mr Linnell's calculations are simply far too speculative and are unsupported by anything more than a *priori* reasoning. He gives figures for construction costs which are not supported by any evidence. All his figures are suspiciously round or exact, giving the impression that they were little more than educated guesses. No evidence was given in relation to planning requirements other than the fact that there is currently no planning permission and the local authority's planning department had not been asked for their opinion.

#### The Tribunal's valuation

22. With the above-mentioned changes, the Tribunal has determined that the price payable is £8,048, in accordance with the detailed calculation set out in the Appendix.

Name:

N.K. Nicol

Date:

8<sup>th</sup> November 2012

## **APPENDIX**

### **Valuation by the Tribunal of the premium to be paid by the Applicants for the Respondent's interest**

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993  
VALUATION FOR ENFRANCHISEMENT  
66/66A Wardo Avenue, Fulham, SW6 6RE**

**Matters Agreed:**

Valuation date: 30/12/2011

66A 99 years from 12/2005  
Ground rent: £150 for 33 years, £300 for 33 years, £450 remainder  
Unexpired term: 93 years  
66 189 years from 1/12/1984  
Ground rent: a peppercorn  
Unexpired term: 162 years

No improvements to be considered

No marriage value calculation required - unexpired leases over 80 years

**Facts and matters determined:**

Capitalisation rate:		7%
Deferment rate for the reversion:		5%
Unimproved virtual freehold value :	66	500,000
	66A	500,000
Hope value:		Nil

**Diminution in Value of Freeholder's interest**

Freeholder's Present Interest:		£	£
Ground Rent for 66:		150	
YP 27 years @ 7%		<u>11.9867</u>	1,798
		300	
YP 33 years @ 7%	12.7538		
deferred 27 years @ 7%	0.1609	<u>2.052086</u>	616
		450	
YP 33 years @ 7%	12.7538		
deferred 60 years @ 7%	0.0173	<u>0.220092</u>	99
			<u>2,513</u>
Reversion to virtual Freehold value			
66		500,000	
deferred 93 years @ 5%		<u>0.010700</u>	5,350
66A		500,000	
deferred 162 years @ 5%		<u>0.000369</u>	185
			<u>8,048</u>
Total Diminution in Value of Freeholder's interest			<u>8,048</u>
			<u><b>£8,048</b></u>