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LON/00BK/OLE/2012/0010

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 21 LEASEHOLD REFORM ACT 1967.**

Applicant : **Howard De Walden Estates Limited**
Represented by : **Ms Katie Helmore Counsel**

Respondents : **Michael Stephen Winkler
Richard Anthony Winkler
Jonathan Winkler**
Represented by : **Mr K Gavin Buchanan Knight Frank**

Property : **23 Beaumont Street London W1G 6DQ**

Date of Application : **24 September 2012**

Date of Hearing : **29 January 2013**

Venue : **10 Alfred Place, London WC1E 7LR**

Members of the Tribunal : **Mr John Hewitt Chairman
Mr J Raymond Humphrys FRICS**

Date of Decision : **28 February 2013**

DECISION

Decision

1. The decision of the tribunal is that the price payable by the Respondents to the Applicant for the house under section 9 of the Act is the sum of £630,596 calculated as shown in the valuation attached to this Decision.

Background

2. The subject Property, 23 Beaumont Street, is a house within the meaning of the Act. The Applicant is the registered proprietor of the freehold interest which is registered at the Land Registry under Title Number LN114423. A leasehold interest is registered at the Land Registry under Title Number NGL20228 of which the Respondents were registered as proprietors on 9 April 1992. The subject lease is dated 30 June 1966 and granted a term of 92 years from 25 March 1966.
3. By a claim notice dated 18 July 2012 and given under Part 1 of the Act the Respondents sought to exercise the right to have the freehold of the house and premises.
4. By a counter-notice dated 20 September 2012 and given by solicitors on behalf of the Applicant, the Applicant admitted the Respondents' right to have the freehold. The counter-notice stated that in the Applicant's opinion the house should be valued in accordance with section 9(1C) of the Act.
5. By an application dated 24 September 2012 and made pursuant to section 21 of the Act, the Applicant sought a determination of the price payable by the Respondents under section 9 of the Act for the house and for a determination of the provisions to be contained in the transfer of the property in accordance with section 10 of the Act.
6. At all material times the parties have been represented by solicitors and valuers.

The hearing and inspection

7. The hearing of the application came on before us on 29 January 2013. The Applicant was represented by Ms K Helmore of counsel. Expert valuation evidence was given by Mr Kevin Ryan FRICS of Carter Jonas LLP.
The Respondents were represented by Mr K Gavin Buchanan BSc (Est Man) MRICS of Knight Frank LLP who also gave expert valuation evidence.
8. We were told that the parties had been able to agree most of the relevant components of the requisite valuation. The only component not agreed was the value of the freehold interest in possession. The parties had also agreed the terms of the transfer.
9. An expert valuation report dated 18 January 2013 was submitted by Mr Chris Carter-Pegg BSc (Hons) MSc MRICS of Gerald Eve LLP on behalf of the Applicant. Appended to it was a statement of agreed facts and a valuation. All of the components of that valuation were agreed by the Respondents save for the value of the freehold in possession. Mr Buchanan said that he did not wish to cross-examine Mr Carter-Pegg, Both parties agreed that Mr Carter-Pegg's valuation should be taken as read save that the tribunal should determine the

value of the freehold in possession and insert that value into Mr Carter-Pegg's valuation, in substitution for the figure of £3,045,750 advanced by Mr Ryan, and should then make any consequential arithmetical adjustments using Mr Carter-Pegg's valuation formula as the model to follow.

10. On 30 January 2013 we had the benefit of an inspection of the subject Property in the company of Mr Ryan, Mr Buchanan and Mr M Winkler. We also carried out external street level inspections of the ten comparable properties.

The value of the freehold in possession

11. Mr Ryan on behalf of the Applicant said that in his opinion the value of the freehold in possession was £3,045,750 and this led to an enfranchisement price of £650,250.
12. Mr Buchanan on behalf of the Respondents said that in his opinion the value of the freehold in possession was £2,667,000 and this led to an enfranchisement price of £571,913.
13. In the event the tribunal has determined the value of the freehold in possession to be £2,951,000 and this leads to an enfranchisement price of £630,596.

The subject Property

14. The subject Property is a 1960's town house. The frontage is on Beaumont Street. Devonshire Place Mews runs to the rear of the Property and affords access to an integral double garage with hardstanding in front capable of accommodating a further two small cars.
There is a stairway to a lower ground floor with a bedroom and adjacent bathroom/WC.
The ground floor comprises an entrance hall, kitchen, dining room and a separate WC.
The first floor comprises a bedroom with ensuite bathroom and a reception room.
The second floor comprises three further bedrooms a bathroom/WC and a stairway to a reasonably large roof terrace from which views of the surrounding area can be enjoyed.
In general terms the Property was regarded by the valuers as a family house which has not been improved since its construction and which is now in need of modernisation and refurbishment.
15. The Property is well located within an area which is now known as Marylebone Village and which now has a thriving and diverse retail offer in and around Marylebone High Street. It is a favoured location with a healthy demand for residential properties. Adjacent to the west is an area now known as the Portman Village. We accepted and preferred the evidence of Mr Ryan that properties within the Portman Village are in a different, slightly less prestigious, market and

consequently tend to attract lower prices than very similar properties within the Marylebone Village, because this strikes a chord with the experience and expertise of the members of the tribunal. In these circumstances the tribunal is not persuaded that the comparables which are located in the Portman Village are particularly helpful to the valuation exercise. Left to us we would have ignored them. However, the parties' valuers have agreed they should be treated as comparables and we have considered them and adjusted them as we consider appropriate.

The rival contentions

16. Both valuers were agreed upon a list of ten properties which were to be regarded as comparables. These are listed in the Schedule of Comparisons attached to this Decision. Both valuers were agreed upon the gross internal floor area (GIA) of the subject Property and each of the ten comparables. Both valuers agreed that the appropriate valuation method to adopt was to consider the most recent transaction of each of the ten comparables and to make appropriate adjustments to reflect differences with the subject Property, arrive at a common value per square foot (psf) and apply that to the agreed GIA of 2,154 psf of the subject Property and thus to arrive at the value of the freehold in possession as at the agreed valuation date of 18 July 2012.

17. We have entered on the attached Schedule of Comparisons the adjusted rates psf arrived at by Mr Ryan and Mr Buchanan and we have entered the rates we have determined. The totals for the ten properties are as follows:

Mr Ryan	£13,888
Mr Buchanan	£12,629
Tribunal	£13,696

18. Before dealing with some of the specific adjustments there is a general point to be made. It was agreed that the subject Property was unimproved from its original as built 1960's condition. Some of the comparables have been modernised and refurbished in recent times. It was thus necessary to adjust for condition. Neither Mr Ryan nor Mr Buchanan carried out an internal inspection of any of the comparables. They both relied upon selling agent's sales particulars for information as to condition. We observe that such particulars must be treated with caution. It is our experience that sometimes selling agents can be over enthused by some features of a property and economical with the truth about other features. Moreover, sometimes what is not said about a property can be quite telling and of greater significance than what is said.

19. We note that on sales particulars for 11 Shouldham Street prepared by Mr Buchanan's firm, Knight Frank, the reader is exhorted: "*Particulars: These particulars are not an offer or contract, nor part of one. You should not rely on statements by Knight Frank LLP in these particulars*

or by word of mouth or in writing ('information') as being factually accurate about the property, its condition or its value...".

The sales particulars for 20 Jacobs Well Mews prepared by Mr Ryan's firm, Carter Jonas bear the warning: *"Our property particulars do not represent an offer or contract or part of one. The information is given without responsibility on the part of ... and you should not rely on the information as being factually accurate about the property, its condition or its value."*

Savills in its particulars for 3 Dukes Mews states: *"Savills, their clients and any joint agents give notice that: 1. ... They assume no responsibility for any statement that may be made in these particulars... 2... The text, photographs and plans are for guidance only and are not necessarily comprehensive."*

20. **83 Blandford Street**

Mr Ryan made a substantial adjustment of -15% for condition compared with Mr Buchanan's nil adjustment. We did not consider there was persuasive evidence to support a -15% adjustment and we have made a -5% adjustment. We accept that this property is in the Portman Village, not the Marylebone Village and thus an adjustment for location is justified. We considered Mr Ryan at +20% was too high and Mr Buchanan at +5% too low and we have applied an adjustment of +15%. We rejected Mr Buchanan's adjustment of -5% to reflect that this property has no lower ground floor accommodation because we considered that the lower floor bedroom at the subject Property enjoyed good natural light and could not reasonably be equated with basement premises.

21. **11 Shouldham Street**

We agree that an adjustment for condition is appropriate but we find that Mr Ryan at +20% is too high and Mr Buchanan at +10% too low. We bear in mind that the only evidence available is the sales particulars, which we treat with caution. We find that an adjustment of -17.5% is appropriate. This property is also on the Portman Estate and we adjust +15% for location. We accept Mr Ryan's adjustment of +5% to reflect no parking.

22. **30 Devonshire Place Mews**

This property is close the subject property. It is a period mews conversion with no light or windows to the rear. The front outlook is across the mews to the wall of a bleak commercial building. We accept Mr Ryan's adjustment of -17.5% for condition. The subject Property enjoys a spacious roof terrace but this comparable has no outside space and the front door and garage door lead directly onto the mews. We thus made an adjustment of +10%. We also adjusted +5% to reflect the poor aspect of overlooking commercial premises at the front and no windows at the rear.

23. **45 Weymouth Mews**
There were three issues with this comparable. One was the proximity to a public house (next door but one), the second the absence of parking and the third the prospect of extension into the roof space. We considered that the proximity to the public house was of some significance. Mr Buchanan said that if the property was next door to the public house he would have made an adjustment to reflect noise and inconvenience factors, but these do not apply to a next door but one property. We reject that. We find that Mr Ryan's adjustment of +5% would be appropriate to a property next door to a public house but is too high for a property next door but one. We have applied an adjustment of +2.5%. We reject the suggestion that there should be any adjustment to reflect the potential to extend into the roof area because there was no compelling evidence that this was a real possibility and the notion was too speculative. The property does not have the benefit of any parking; the sales particulars merely state that *'garage is available on separate lease'*. This is a feature applicable to most properties in central London. We have thus made an adjustment of +5% to reflect the absence of parking.
24. **3 and 5 Dukes Mews**
We can take these together. Mr Buchanan suggested there should be an adjustment of -25% to reflect condition and new build. We agree, although we have split that as to -17.5% for condition and as to -7.5% to new build. We have also adjusted +5% to reflect the absence of parking, +5% to reflect that the basement accommodation enjoys virtually no natural light and +2.5% to reflect the poor outside space, the properties enjoying only quite small terraces.
25. **89 Blandford Street**
The evidence available on condition was not compelling. We considered Mr Ryan's adjustment of -15% too low and Mr Buchanan's adjustment of nil as being unrealistic. We have applied an adjustment of -5%. We also considered that this property had the benefit of an unusually large garden for a central London property. The garden ran to the side and behind the house. We thus applied an adjustment of -5%.
As before we applied an adjustment of +15% to reflect location.
26. **20 Jacobs Well Mews**
Mr Ryan applied an adjustment of +5% to reflect location because the property is located behind a large office block and other commercial properties. We reject that because the property is in the heart of Marylebone Village, many properties are in close proximity to commercial buildings and on our inspection we did not find the approach to or outlook from the property displeasing in comparison with others. The property had a small balcony on the top floor accessed via a bedroom and we adjusted by +5% to reflect such poor outside space.

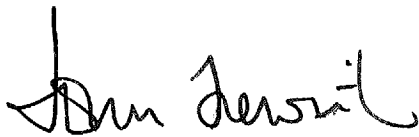
27. 15 and 22 Beaumont Street

We can take these together. In many respects these are ideal comparables because they are of identical and unimproved properties. Indeed one is immediately next door to the subject Property. The only difficulty, accepted by both valuers, was the dates of the transaction; being in October and September 2009 respectively. The agreed valuation date is 18 July 2012. Both valuers agreed that ideally helpful comparables are transactions 12 months either side of the valuation date. Both valuers adjusted for time using the Savills index. However it was suggested the resulting figure can be distorted where the time span is so long so that it does not reflect the market very accurately. Both valuers agreed that these two transactions should be regarded as comparables but there is an issue as to what weight should be given to them. Mr Ryan contends they should be treated equally with the other eight comparables. Mr Buchanan says they should be given less weight, as described below.

The application of the comparables

28. Mr Ryan notes that the straight average of the ten comparables on his adjustments equates to £1,389 psf. He considers that the three Portman Village properties reduce the average so as to distort it whereas his highest five are all within £100 of one another. This includes the two Beaumont Street properties. He has thus adopted a median average which equates to £1,414 psf.
29. Mr Buchanan has a different approach. On his adjustments the straight average of the ten comparables now equates to £1,263 psf. In the course of the hearing Mr Buchanan felt able to make some concessions. Thus his average is now £1,263 rather than the £1,268 mentioned in his report. He notes that the two Beaumont Street properties are both significantly higher at £1,498 and £1,485 respectively. To lessen the impact of these two comparables Mr Buchanan says that they should be excluded and the average of the remaining eight taken which is £1,210 psf. He takes the midpoint between £1,210 and £1,263 to arrive at £1,236. Mr Buchanan submitted that this approach took account of the Beaumont Street transactions but lessened the impact of them.
30. Having made our adjustments it will be seen from the attached Schedule that the straight average of all ten comparables is £1,370. If we were to adopt the median average as advocated by Mr Ryan the figure is £1,368. If we were to adopt the average of the highest and lowest the figure is £1,366 and if we were to adopt Mr Buchanan's approach the figure is £1,356. The difference between the highest and lowest figure is only £14, which is just over 1% of the highest figure of £1,370. In valuation terms such a difference is de minimis given that in all of the valuations save for Beaumont Street subjective adjustments are required - and in most cases several subjective adjustments.

31. We consider that comparables are either in or out. We cannot see that it is really helpful to include transactions that are 'nearly comparable' and then seek to make arithmetical adjustments to averages so as to lessen the impact of the resulting figure where it is not to one's liking.
32. The parties' experienced valuers have agreed the ten comparables should be taken into account. We find that they are either in or out and those that are in should all carry equal weight. We have therefore taken the view that the correct approach for us to adopt is the straight average of all ten, which, on our adjustments produces a value of £1,370. When tested against alternative approaches it can be seen the result is so close as make no real difference and is well within valuation tolerances.
33. For the above reasons we find that the freehold value in possession of the subject Property based on £1,370 psf amounts to £2,951,000. Adopting the valuation formula agreed by the parties this produces an enfranchisement price of £ 630,596.



John Hewitt
28 February 2013

LEASEHOLD VALUATION TRIBUNAL'S VALUATION
Leasehold Reform Act 1967 (as amended)
Section 9 (1C) Valuation

Property	23 Beaumont Street, London W1
Valuation Date	18 July 2012
Capitalisation Rate	6.5%
Deferment Rate	4.75%
Relativity	70.54%
GIA	2154 sq.ft.
Price per sq.ft.	£1,370

A) Diminution in Value of Landlord's Interest			£	£
Underlease expires 24 March 2058	45.68 years			
Annual rent payable			2,550	
Years Purchase	15.69 years @	6.5%	<u>9.6553</u>	
				24,621
Review due on 25 March 2028			2,691	
Years Purchase	30 years @	6.5%	13.0581	
Deferred	15.69 years @	6.5%	<u>0.3724</u>	
				13,086
Reversion to value of freehold in possession			2,951,000	
Deferred	45.68 years @	4.75%	<u>0.1200</u>	
				354,120
Diminution in Value of Landlord's Interest				391,827
 B) Calculation of Marriage Value				
a) Value of Proposed Interests				
Landlord's			0	
Tenant's	% of FHVP	100.00%	<u>2,951,000</u>	
Less				2,951,000
b) Value of Existing Interests				
Landlord's (from above)			391,827	
Tenant's	% of FHVP	70.54%	<u>2,081,635</u>	
				<u>2,473,462</u>
c) Marriage value				477,538
d) Attributed to landlord @	50%			<u>238,769</u>
C) Premium payable				<u>630,596</u>

Jan Hewit
28.02.13

Property								
	2,701	£1,184	1. -15%		1. Nil		1. -5%	
			2. +20%		2. +5%		2. +15%	
			3. nil	£1,243	3. -5%	£1,184	3. Nil	£1,302
	1,550	£1,204	1. -20%		1. -10%		1. -17.5%	
			2. +20%		2. +10%		2. +15%	
			3. +5%	£1,264	3. Nil	£1,204	3. +5%	£1,234 No parking +5%
	1,861	£1,339	1. -17.5%		1. -5%		1. -17.5%	
			2. Nil		2. Nil		2. Nil	
			3. +5% & +10%	£1,306	3. -5%	£1,205	3. +10% & +5%	£1,306 No O/side space +10% & Poor aspect +5%
	1,411	£1,614	1. -15%		1. -15%		1. -15%	
			2. Nil		2. Nil		2. Nil	
			3. +5%	£1,453	3. -5% & -2.5%	£1,251	3. -2.5% & +5%	£1,412 Near PH -2.5% & No parking +5%
	1,971	£1,557	1. -15%		1. -25%		1. -17.5%	
			2. +10%		2. Nil		2. Nil	
			3. -10%, +5% & +5%	£1,480	3. Nil	£1,168	3. -7.5%, +5%, +5% & +2.5%	£1,362 New build -7.5%, No parking +5%, Basement +5% & Poor o/side space +2.5%
	2,608	£1,634	1. -15%		1. -25%		1. -17.5%	
			2. +10%		2. Nil		2. Nil	
			3. -10%, +5% & +5%	£1,553	3. Nil	£1,225	3. -7.5%, +5%, +5% & +2.5%	£1,430 New build -7.5%, No parking +5%, Basement +5% & Poor o/side space +2.5%
	2,978	£1,232	1. -15%		1. Nil		1. -5%	
			2. +20%		2. +5%		2. +15%	
			3. -5%	£1,232	3. -5%	£1,232	3. -5%	£1,294 Large garden -5%
	1,436	£1,308	1. Nil		1. -5%		1. Nil	
			2. +5%		2. Nil		2. Nil	
			3. Nil	£1,374	3. -5%	£1,177	3. +5%	£1,373 Poor o/side space +5%
	2,175	£1,498	1. Nil	£1,498	1. Nil	£1,498	1. Nil	£1,498
			2. Nil		2. Nil		2. Nil	
			3. Nil		3. Nil		3. Nil	
	2,192	£1,485	1. Nil	£1,485	1. Nil	£1,485	1. Nil	£1,485
			2. Nil		2. Nil		2. Nil	
			3. Nil		3. Nil		3. Nil	
Total				£ 13,888		£ 12,629		£13,696
Average Divided by 10				£1,389		£1,263		£1,370
Median Average				£1,414		£1,215		£1,368
Average of Highest & Lowest				£1,393		£1,333		£1,366
Respondent's Average Method				£1,377		£1,238		£1,356

John Sewell
28.02.13