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Ref LON//ENF/1841/06/

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT) ACT 1993**

Applicants Glenrosa Street No 13 Limited

Respondent: Benedict Peter Beauchamp Francis

Re: 13 Glenrosa Street London SW6 2QY

Date of Tenant's notice: 2nd December 2005

Date of Counter Notice: 18th January 2006

Application date: 14th March 2006

Hearing date: 18th July 2006

Date of Inspection 19th July 2006

Valuation date: 2nd December 2005

Appearances: **For the Applicants:**
Mr T O'Keefe of Buy your Freehold Limited
who did not appear

For the Respondent
Mr M Wilson B Sc MRICS
Mr D Eldridge of Vizards Tweedy Solicitor

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB (Hons)
Mr P M J Casey MRICS
Mrs L Walter MA (Hons)

Date of Tribunal's decision: 16th August 2006

0 Introduction

- 1.1 By an application dated 14th March 2006 the applicant applied to the tribunal for a determination of the premium payable for the enfranchisement of the freehold property at 13 Glenrosa Street London SW6 2QY
- 1.2 The application arose from a Notice of Claim dated 2nd December 2005 to which the landlord had served a counter notice on 18th January 2006 No point seems to have arisen on the question of whether the counter notice was in time and the Tribunal accepted jurisdiction and gave directions for the matter to be heard on 18th July 2006 The Notice of Claim originally proposed the price of £5101 and the counter notice proposed a figure of £29,165
- 1.3 At the hearing the Respondent appeared by Mr Eldridge of Vizards Tweedy a solicitor and he was accompanied by Mr M Wilson B Sc. MRICS a valuer who gave evidence in accordance with his written report which appears to be undated but was written in either June or July 2006. The Applicants were represented by Mr T O'Keefe of Buy Your Freehold Limited who presented his written report dated 17th July 2006 but did not attend the hearing. Mr Eldridge presented his case orally to the Tribunal by calling Mr Wilson and making closing submissions on behalf of the Respondent. Mr O'Keefe is not a member of the Royal Institute of Chartered Surveyors and does not possess a relevant qualification but has considerable experience of enfranchisement claims and is familiar with LVT decisions and presents himself as an expert based on his practical experience and made an expert witness declaration to this report.

2.0 The Inspection

- 2.1 The Tribunal inspected the property on 19th July 2006. It is situated in Fulham in a quiet residential road leading from Townmead Road and close to the Chelsea College of Art and Design. It is a few minutes walk from Wandsworth Bridge with reasonable access to transport facilities.
- 2.2 The property is a two storey terrace house built in about 1900. The building is divided into two flats (13A and 13B) reached by a common entrance hall and front door. The lower flat (13A) has a lounge two bedrooms, kitchen and bathroom/WC and sole use of the garden at the rear of the property. The upper flat

is accessed by a staircase and consists of a lounge, two bedrooms, open plan kitchen and bathroom/wc. The gross internal areas of the flats are 589 square feet and 620 square feet respectively

- 2.3 The upper flat had a loft area, which was not easily accessible from the flat. The Tribunal noticed however, that there were numerous houses in the street undergoing or having undergone loft conversions at the time of the inspection. The property appeared to the tribunal suitable for such a conversion and it seems likely that planning would be granted

3.0 The Leases

- 3.1 Flat A has a lease of 99 years from 25th September 1996 with 89.83 years unexpired at the valuation date. Flat B is held on a lease for 99 years from 25th September 1980 with 73.83 years unexpired at the valuation date.
- 3.2 The ground rent on flat A is currently £100 per annum rising to £200 per annum in 23.7 years, and then to £300 per annum 33 years thereafter for the remainder of the lease. Flat B currently has a ground rent of £30 per annum for the next 7.7 years and thereafter £60 per annum for the next 33 years and thereafter 90 per annum until the end of the term
- 3.3 The loft of flat B is excluded from the demise so that it remains vested in the freeholder. There is a clause in the lease binding on the lessee not to make alterations to the structure of the building without the prior consent of the landlord such consent not to be unreasonably withheld

4.0 Agreed Facts

- 4.1 The floor areas, ground rents, unexpired terms on each of the leases and the valuation date have all been agreed.

5.0 The Issues in Dispute

- 5.1 The following items are in dispute between the parties:-
- (a) the value of the share of the freehold
 - (b) the existing lease values where the Applicants contend for a relativity of 96% on flat B and 100% on Flat A . The Respondent contends for 90.57% on flat B and 99% on flat A

- (c) the capitalisation yield The Applicants contend for 8% and the Respondent contends for 6.5%
- (d) the deferment yield The Applicants again contend for 8% and the Respondents again contend for 6.5%
- (e) the premium. The Applicants contend for £6180.50 and the Respondent for £21,200
- (f) the amount of costs payable under Section 33 of the Act. The Tribunal heard some evidence as to the costs but made no decision but left the matter to the parties to reach agreement failing which the matter could be restored on a costs application before the Tribunal

5.2 There was an additional issue although related to the above as to whether any additional sum should be allowed in respect of potential development of the loft area in respect of Flat B and for extension of the ground floor flat into the garden area.

6.0 The Evidence

6.1 The Share of Freehold Value

- 6.1.1 Mr Wilson values the flats in the sum of £253,000 for Flat A based on a rate of £430 per square foot and Flat B in the sum of £265,000 based on £425 per square foot. He then makes an adjustment of 1% to reflect the difference between the extended lease and the freehold value so that the value of Flat A is adjusted to £250,000 and Flat B to £262,500 and then makes a further adjustment to reflect the existing lease value to this flat.
- 6.1.2 He relies upon a number of comparables set out in Appendix H of his report, the nearest of which to the subject property is 47 Glenrosa Street a two bedroom garden flat sold for £250,000. He also cites the sales of flats for sale in Oakbury, Rosebury Cranbury and Stephendale Roads and Byam Street and Tynemouth Street in the vicinity of the subject property. He shows the prices achieved for each property and its floor area in Appendix I of his report but does not show the rate per square foot for each flat. but they appear to vary between £363 per square foot (47 Glenrosa Street) up to £504 per square foot

- 6.1.3 Mr O Keefe chooses simply to rely upon 47 Glenrosa Street which he says is the closest transaction in terms of distance and time having been sold in March 2005 for £250,000 with 120 years unexpired on the lease. It is a larger flat (668 square feet) than Flat A and Mr O'Keefe values Flat A also at £250,000
- 6.1.4 In relation to Flat B he chooses 11 Oakbury Road as his nearest comparable. It was sold in July 2005 for £330,000. This flat had an area of 754 square feet and is said to be 28% larger than Flat B. On this basis Mr O'Keefe adjusts the price by 28% to produce a value of £249,000 for Flat B which he adjusts to £250,000 as being the approximate market value

6.2 Existing Lease Values

- 6.2.1 It is agreed that the unexpired term on Flat A exceeds 80 years so that there is no marriage value for the freeholder by virtue of the provisions of the Commonhold and Leasehold Reform Act 2002 so that the existing lease is treated as having the same value as the extended lease for this flat. save that Mr Wilson deducts 1% to reflect the difference between the extended lease value and the freehold
- 6.2.2 With regard to Flat B Mr Wilson states that the relative value of this lease is 90.57% for the 73.7 year unexpired term. He does not have any market evidence for this assertion but relies upon recent LVT decisions and the Beckett and Kay Graph of Graphs and his own research to support the figure. He is of the opinion that the John D Wood /Gerald Eve graph is probably the most reliable and nearest to the correct figure as it is based on actual settlements. .
- 6.2.3 Mr O'Keefe argues for a relativity of 96.15% for Flat B. He describes it in his report as the uplift and argues that the figure for Flat A should be nil.
- 6.2.4 His argument in favour of a 4% uplift in the case of Flat B is based on a Graph of LVT decisions and he further states that with over 72 years unexpired lenders will still advance mortgages so that the lease retains its value.

6.3 Capitalisation Yield

- 6.3.1 The Applicant argues for a yield of 8% based on the relatively low ground rent, the difficulty of enforcing payment by forfeiture and the relatively high cost of conveyancing to dispose of the interest

- 6.3.2 He contends that these factors have been taken into account in recent settlements and LVT decisions, which he refers to in paragraph 5 of his report. The decisions relied upon relate to properties in the area and date from 1997 to 2004. The highest of 13% in Stephendale Road very close to the subject property was given in 1997 but Mr O'Keefe argues that it is relevant as it shows that the area is not an area of prime property and is mixed residential and warehousing
- 6.3.3 His lowest yield cited is 7% in 2000 for a property in Moore Park Road close to the subject property. He cites two other cases upholding a yield of 8%
- 6.3.4 Mr Wilson does not specifically deal with the capitalisation rate in his report other than to state that he has adopted the same figure as for the deferment rate. All his arguments are addressed to the deferment rate and the decision of the Lands Tribunal in the case of Arbib -v- Earl Cadogan LRA23/2004

6.4 Deferment Rate

- 6.4.1 Mr O'Keefe refers to the decision in Arbib and argues that the freeholder is relying on the Capital Asset Pricing Model which reflects stock markets rather than property markets. He maintains that the risk premium is an inherent feature of the deferment rate and this is reflected in his settlements and LVT decisions for capitalisation and therefore argues for a rate of 8%
- 6.4.2 Mr Wilson also takes Arbib as his starting point and adjusts for the location but noting that the property is close to prime Fulham property. He considers an appropriate adjustment is 1.75%, which provides a deferment rate of 6.5%, which he also adopts as his capitalisation rate. He also refers to more recent decisions of the LVT in 2005 and 2006 in the local area showing deferment yields of 6.5% and 7% for properties in W14 and SW11

6.5 Development Potential

- 6.5.1 Mr Wilson contends that in relation to the loft space and the garden area the properties have scope for development and that this should be reflected in the premium payable on enfranchisement. He says that property in this area is at a premium and that owners take every opportunity to develop their properties to add to their value. He also states that there is a strong likelihood that planning consent would be given by the local authority

- 6.5.2 He further points out that the lease prohibits the making of alterations to the property without the consent of the landlord and that in a no Act world the landlord would readily consent to a tenant improving the property and accept a premium. He states that the premium would probably amount to 2%. Mr Wilson calculates the additional value to be £5,000 and allows for a 45% likelihood of development of the loft and 40% likelihood in the case of the garden. He therefore claims £2250 and £2000 respectively
- 6.5.3 Mr O'Keefe disputes that there is any development values in either the garden or the loft space. He maintains that the garden is in the demise to the tenant and therefore the landlord has no right to develop it during the currency of the leases and that the possibility of his benefiting from it would be deferred for 89 years
- 6.5.4 With regard to the loft space this area is retained by the landlord although he can only obtain access to it by passing through the tenant's property Mr O'Keefe on his inspection states that he only saw one loft conversion at No 21 and that the prospect of development of the loft area is speculative and ought not to be allowed.

7.0 The Tribunal's Decision

7.1 Share of Freehold Value

- 7.1.1 Having considered the evidence of the witnesses and the comparables relied upon, the Tribunal considers that a realistic figure for the extended lease value would be £250,000 for Flat A and £255,000 for Flat B The Tribunal considers it reasonable to add a further 1% to reflect the freehold value thus giving figures of £252,500 and £257,500. This gives a figure of £428 per square foot for Flat A and £415 per square foot for Flat B
- 7.1.2 It is clear that Mr O'Keefe's calculation in respect of Flat B is simply wrong. It is 18% smaller than Oakbury Road and not 28% as he states. If he had taken the correct percentage he would have arrived at a figure of £262,500
- 7.1.3 For reasons which the Tribunal sets out below it does not consider that it is correct to add a figure for development value since it does not consider that the landlord is in a position to develop either flat until the end of the leases. However it does consider that the value of the upper flat should be adjusted by the sum of

£5000 since it is plainly physically possible for the attic to be developed with the upper flat and if the freehold interest in the flat were purchased unimproved in the market a purchaser would be likely to carry out such a development and pay an additional sum for the potential to do so. This would adjust the price of Flat B to £262,500

7.2 Existing Lease Values

7.2.1 Mr O'Keefe has provided no analysis for the settlements on which he relies to support a figure of 96% and places little if any weight on the LVT decisions none of which are recent. The Tribunal considers that this figure is unsustainable for a lease of 73.83 years unexpired.

7.2.2 It prefers the evidence of Mr Wilson based on the Beckett and Kay Graphs and more recent LVT decisions of **35Charville Road W14 (LON/ENF/1767/2005)** where the Tribunal in June 2006 had assessed a relativity of 90% for a lease of 69.58 years and **2A Eccles Road SW11 (LONNL/3824/05)** where in June 2006 the Tribunal had assessed a 94% for a lease of 78 years unexpired.

7.2.3 Accordingly the Tribunal assesses the relativity figure for the existing lease of Flat B at 90.57% of the freehold value excluding the value of the development potential in the attic space as the existing lease would not allow its realization.

7.3 Capitalisation Yield

7.3.1 The Tribunal accepted the evidence of Mr Wilson that the capitalisation yield of 8% would be too high but it also recognised that the investment at a low ground rent might not be attractive as contended by Mr O'Keefe and has decided to fix a capitalisation rate of 7.5%

7.4 Deferment Rate

7.4.1 The Tribunal accepted the evidence of Mr Wilson with regard to the deferment rate. It considered that he had adequately allowed for the location of the property and the risk factors affecting a property of this kind. An addition of 1.75% to the figure for Central London prime property was reasonable, in the light of the decision in **Arbib**

7.4.2 The Tribunal having rejected Mr O'Keefe's evidence in connection with capitalisation yield can see no basis for a figure of 8% on the deferment yield and accordingly fixes it at 6.5%

7.5 Development Potential

7.5.1 The Tribunal as stated earlier has not allowed a separate figure for development value as contended for by Mr Wilson. The garden flat is demised with exclusive use of the garden, which is not retained by the freeholder. The freeholder therefore has no right to develop the garden and the leaseholder can develop it with consent if he chooses to do so

7.5.2 The Tribunal does not accept that the freeholder in granting his consent to any alteration of the premises could demand a figure of £5000 particularly since this is now restricted under Section 158 of the Commonhold and Leasehold Reform Act to a reasonable figure

7.5.3 Further in relation to the roof area the Tribunal accepts that it is likely that a purchaser would wish to develop it. On its inspection it observed numerous loft conversions in the street unlike Mr O'Keefe who only observed one.

7.5.4 However, although the roof area is effectively reserved to the landlord under the terms of the lease it would be impossible for the landlord to develop the roof area against the wishes of the tenant. First it would create considerable disruption to the tenant and if not restrained by injunction would certainly result in heavy damages in his favour. Additionally the freeholder would not be able to provide separate access to the roof area without trespassing on the tenant's property

7.5.5 With regard to the tenant seeking consent to develop the same comments apply as in Paragraph 7.5.4 above and it would be unrealistic to assume that the freeholder could obtain any benefit during the currency of the lease.

7.5.6 Accordingly the Tribunal has rejected the claim for development potential but has reflected the possibility of a loft conversion in an additional sum to be added to the value of Flat B (

8.0 Schedule 12 Costs

- 8.1 Mr Eldridge appearing on behalf of the Respondent contended that the conduct of the Applicants had been unreasonable within the meaning of Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 and sought an order for costs on the basis of delay by Mr O'Keefe in preparing his report and notifying the Respondent of the areas of disagreement. He maintained that Mr O'Keefe had disregarded the directions given by the Tribunal and that as a result his clients had incurred further costs.
- 8.2 The Tribunal considered that while Mr O'Keefe was guilty of delay his conduct of the proceedings did not fall within the ambit of the section on this occasion and in any event it is considered that the areas of difference between the parties were such that a hearing would have been necessary even if he had complied with directions.. It is unlikely therefore that any costs would have been saved and accordingly the Tribunal makes no order

9.0 Conclusion

- 9.1 Accordingly the tribunal has determined that the figure payable by way of premium for the enfranchisement of the property is £18,700 Full details of the valuation are set out in the Appendix hereto
- 9.2 In addition the Tribunal makes no order for costs under Schedule 12 Paragraph 10 of the Commonhold and Leasehold reform Act 2002

Chairman Peter Leighton

Date 16th August 2006



S48 LEASEHOLD REFORM, HOUSING URBAN AND DEVELOPMENT ACT 1993

DETERMINATION OF PURCHASE PRICE ON COLLECTIVE ENFRANCHISEMENT

13 Glenrosa Street London SW6 2QY

Valuation Date 2/12/2005

Flat A	Unexpired term	89.83 years		
Diminution of Freeholder's interest				
Term Ground Rent		£100 pa		
	YP 23.83 years @ 7½%	<u>10.7</u>	£1070	
Reversion to		£200 pa		
	YP 33 years deferred 23.83 years @ 7½%	<u>2.1</u>	£420	
Reversion to		£300 pa		
	YP 33 years deferred 56.83 years @ 7½%	<u>0.2</u>	£60	
Reversion		£252,500		
	Deferred 56.83 years @ 6½%	<u>.0036</u>	<u>£909</u>	£2459
Flat B	Unexpired term	73.83 years		
Diminution of Freeholder's interest				
Term Ground Rent		£30 pa		
	YP 7.83 years @ 7½%	<u>5.75</u>	<u>£173</u>	
Reversion to		£60 pa		
	YP 33 years deferred 7.83 years @ 7½%	<u>7.15</u>	<u>£429</u>	
Reversion to		£90 pa		
	YP 33 years deferred 40.83 years @ 7½%	<u>0.65</u>	<u>£58</u>	
Reversion		£262,500		
	Deferred 73.83 years @ 6½%	<u>.0098</u>	<u>£2,573</u>	£3,233
Marriage Value				
Freehold Value			£262,500	
Less	Value F/H present interest	£3,233		
And	Value L/H present interest	<u>£233,218</u>	<u>£236,451</u>	
	Marriage Value		£26,049	
	50% share to Freeholder			<u>£13,024</u>
				£18,716
			<u>Say</u>	£18,700