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Reference: LON/ENF/1634/05

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993:
SECTION 24

HEARING ON: TUESDAY 7 MARCH 2006

PREMISES: 107 King Henry's Road, London NW3 3QX

TRIBUNAL MEMBERS: Mr G F Bowden TD MA FRICS
Miss M Krisko BSc (EstMan) BA FRICS
Mr L Jarero BSc FRICS

APPLICANT TENANT: King Henry's Road No 107 Ltd

Represented by: Mr T O'Keefe, Enfranchisement Manager
Buy your Freehold Ltd

RESPONDENT LANDLORD: Starlit Properties Ltd

Represented by: Mr R Stone of Counsel
Mr M Wilson BSc MRICS

LON/ENF/1643/05

107 KING HENRYS ROAD, LONDON, NW3 3QX

1. Preliminary

- 1.1 This was an Application under Section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (hereinafter called "the 1993 Act") to acquire the freehold interest in the above property.
- 1.2 The Applicant-Tenant was the company, King Henrys Road No 107 Ltd (which comprised lessees of Flats 1, 5 and 6). At the Hearing they were represented by Mr Tim O'Keefe of Buy Your Freehold Limited. The Lessees of Flats 2, 3 and 4 were non-participating. The Respondent-Landlord was Starlit Properties Ltd, whose solicitors were Messrs Ingram Winter. The Respondent was represented at the Hearing by Mr R Stone, of Counsel, and Mr Mark Wilson BSc MRICS gave expert evidence.
- 1.3 The issues before the Tribunal for determination were:
- (a) The price of the freehold pursuant to Schedule 6 of the 1993 Act;
 - (b) The freeholder's reasonable costs pursuant to Section 33 of the 1993 Act;
 - (c) The terms of transfer pursuant to Section 34 of the 1993 Act.
- 1.4 The Initial Notice by the Applicant offered £30,053 for the freehold interest.
- 1.5 The Counter Notice by the Respondent proposed £70,000 for the freehold interest.

2. Inspection

- 2.1 On their inspection the Tribunal found King Henrys Road to be a wide residential street running from Swiss Cottage to Chalk Farm. Whilst the properties were predominantly substantial semi-detached villas and Victorian terraces, there were a number of more recently constructed properties. Most of the large houses had been converted into flats.
- 2.2 Whilst King Henrys Road was geographically close to the high quality and sought after residential area of Avenue Road, Wadham Gardens and Elsworthy Road, it not be considered as having the same cachet or appeal of a prime residential area.
- 2.3 It was conveniently situated for a choice of public transport facilities; civic, social and leisure amenities; and the wide range of shops in Finchley Road.
- 2.4 The subject property was a substantial, four-storey, brick-built, semi-detached Victorian villa. There was a short flight of stone steps leading up to an imposing porch and front door. There was a narrow front garden with well maintained shrubs.

- 2.5 In the semi-basement was Flat 1, the garden flat. It had its own separate entrance at the side. The other flats in the house were accessed by way of the main front door. The hallway and staircases were maintained and decorated in a serviceable, if not particularly stylish, way.
- 2.6 Flat 1 in the semi-basement comprised a good-sized entrance hall; large room at the front; a reasonably sized room at the rear, with French windows opening on to the garden; a small room to the side of the entrance; small galley-kitchen and a bathroom with WC and a separate WC beyond the smaller bedroom. The rear room and the kitchen enjoyed good natural light, whereas the other rooms were somewhat dark.
- 2.7 The large garden was demised to Flat 1, although the occupant of Flat 4, a Rent Act tenant, claimed a personal right of access to the garden.
- 2.8 The fixtures, fittings and decoration of Flat 1, whilst to an acceptable letting standard, were dated and the flat would require some upgrading to realise its full sale value.
- 2.9 Flat 2 occupied the whole of the raised ground floor and was not inspected by the Tribunal.
- 2.10 Flats 3 and 4 were on the first floor, and not inspected.
- 2.11 Flats 5 and 6 were on the top floor and were inspected by the Tribunal. These two studio flats were similar in layout, modern in design, style decoration. Each comprised a large room with good natural light and open outlook, well-appointed galley-kitchens, and fully tiled bathrooms with fixtures and fittings of a high standard.
- 2.12 On the top landing between these two flats was a trap door to the loft space in the roof above. The Tribunal inspected this area, and noted that the shallow slope of the roof provided little, if any, real headroom in the roof space above these two flats.
- 2.13 The Tribunal inspected the comparables as cited by Mr O'Keefe and summarised in paragraph 3.1.4 below, and those cited by Mr Wilson in paragraph 3.2.9 below.

3. Hearing

3.1 The Applicant's Case

3.1.1 Mr O'Keefe, on behalf of the Applicants, informed the Tribunal that:-

- (i) the parties had agreed a relativity of 93.23% for the unexpired term of 71.3 years;
- (ii) that costs – under Section 33(d) of the 1993 Act in dispute;
- (iii) costs in relation to Section 33(a), (b), and (c) were outstanding for the Tribunal to determine.

3.1.2 The Applicant's case was set out in Mr O'Keefe's Proof of Evidence, which was before the Tribunal. He explained that he was instructed by Mr Kevin White, the leaseholder of Flats 5 and 6; and Mr Stuart Bygrave, the leaseholder of Flat 1, through their company, King Henrys Road, No 107 Limited.

3.1.3 Present Market Value: Mr O'Keefe, in assessing the present market value, described the six units in the subject property and set out the values as follows:

Flat 1	£500,000
Flat 2	£450,000
Flat 3	£150,000
Flat 4	£182,000
Flat 5	£170,000
Flat 6	£170,000

3.1.4 In support of his valuation, Mr O'Keefe drew the Tribunal's attention to the following comparables:-

157 King Henrys Road – Basement Flat (17/8/04)	£830,000
106 King Henrys Road (14/5/04)	£725,000
109 King Henrys Road – Flat 2 (28/5/04)	£405,000
119 King Henrys Road – Flat 4 (11/8/04)	£235,000
103 King Henrys Road – Flat 2 (7/9/04)	£172,000

3.1.5 With regard to lessee's improvements, Mr O'Keefe made an adjustment of 5% in respect of Flats 1 and 2, but stated that there were no improvements in respect of Flats 3, 4, 5 and 6.

3.1.6 Ground Rents: May be summarised as follows:-

Flats 5 and 6 (term of 85 years)
£150 per annum for rest 7.64 years)
Then £300 for following 21 years
Then £600 per annum following 21 years
Finally £1200 per annum for last 22 years

Flats 3 and 4 (term 125 years)
£150 per annum for next 7.64 years
Then £300 per annum for following 21 years
Then £600 per annum for following 21 years
Finally £1200 per annum for last 62 years

Flat 2 (term 175 years)
£285 per annum for next 7.64 years
Then £570 for following 21 years
Then £1140 for following 21 years
Finally £2280 for last 112 years

Flat 1 (term 125 years)
£325 per annum for next 7.64 years
Then £650 per for following 21 years
Then £1300 per for following 21 years
Finally £2600 for last 62 years.

- 3.1.7 Development Value: Mr O'Keefe argued that there was no development value in the property. In the first instance any move by the Respondent Landlord to develop the roof space would infringe upon the space demised to the leaseholders of Flats 5 and 6 in particular – and the common parts shared by the other lessees in the property. Further, it is unlikely that any proposed development would be structurally feasible, or would receive planning consent, or would provide viable usable space, or provide a profit for the freeholder. In the light of these obstacles, Mr O'Keefe, notwithstanding a claim by the freeholder contended that there was no development value in the subject property.
- 3.1.8 Capitalisation and Deferment Rate: Mr O'Keefe cited two decisions of the LVT of properties nearby 123, and 115 King Henrys Road where the rate was determined at 8%. He proposed a rate of 7.5% in respect of the subject property.
- 3.1.9 Uplift Rate: In assessing the percentage increase, the existing rate as a result of leaseholders acquiring the freehold and being able to grant themselves long leases, Mr O'Keefe contended that, following established LVT decisions, the improvement to the value of leases with more than 80 years to run, is nil. In respect of Flats 5 and 6, the assessed the improved value to be 7%.
- 3.1.10 Arbib and Deferment Rates: Acknowledging the guidance offered to valuers in the Lands Tribunal decision in Arbib v Cadogan, Mr O'Keefe distinguished the circumstances of the present case from that of the Lands Tribunal decision on the grounds that the subject property is not the prime residential area to which Arbib applied, and moreover the unexpired term is in excess of 70 years. Therefore, he argued, the Arbib approach was inappropriate in the present case.
- 3.2 The Respondent's Case
- 3.2.1 Mr Mark Wilson gave expert evidence on behalf of the Respondent in accordance with his Report which was before the Tribunal. He confirmed that the valuation date was agreed as 16 June 2005, being the date of the tenant's notice.
- 3.2.2 Mr Wilson in his report (p. 3 para. 11.3) gave his opinion that the price payable for the freehold was £123,250, and attached his worked valuation to support that figure, assessing the participating leases:-

Flat 1 at £474,000
Flat 5 at £212,000
Flat 6 at £210,000

and the non-participating leases:-

Flat 2 at £450,000

Flat 3 at £214,000

Flat 4 at £253,000

- 3.2.3 The existing lease values, in relation to the freehold value for the participating lessees: Flat 1, was assessed at 99% and for Flats 5 and 6 at 93% - applying a 7% uplift to the freehold value for the 71 year term.
- 3.2.4 The existing lease value for non-participating lessees (Flats 2, 3 and 4) were assessed at 99% of the freehold value – applying a 1% uplift.
- 3.2.5 Capitalisation and Deferment – Mr Wilson adopted a rate of 5.25% for the capitalisation of ground rent and also the same rate for the loss of reversion.
- 3.2.6 It was stated that marriage value was payable by the lessee of Flats 5 and 6, they being the two participating leases with terms under 80 years to run. The Landlord here being entitled to 50% of the marriage value.
- 3.2.7 Mr Wilson contended that the subject property was located in a high quality residential area, opposite a modern private estate, with ease of parking, modern relatively free from congestion and traffic disturbance.
- 3.2.8 In considering the impact of *Arbib* decision. Mr Wilson explained (p. 15 para. 11.20) that he had moved the *Arbib* yield of 4.75% upward by .5% on the basis of “general all risks and market adjustment”.
- 3.2.9 In citing comparables to support his valuation, Mr Wilson in his report (page 32 Appendix 1) submitted sales particulars of some seven neighbouring properties. In outline:-

49-50 Ainger Road – Flat 3	£ 375,000
29A King Henrys Road	£ 1,095,000
47A Willow Road – Garden Flat	£ 395,000
117 King Henrys Road – 2nd and 3rd Floor Maisonette	£ 465,000
9 King Henrys Road – 1st Floor Flat	£ 350,000
20 King Henrys Road – Top Floor Flat	£ 370,000
17A King Henrys Road – Lower Ground Floor	£ 595,000

The details of these properties and the prices achieved are set out in Appendix J (page 33) of Mr Wilson’s Report.

- 3.2.10 Development Value – Mr Wilson contended that the Landlord would lose the opportunity of potential development of the roof space. The lessee of the top floor Flats 5 and 6, Kevin White had in earlier negotiations made an offer of £50,000, which was subsequently revised to £30,000 and later agreed in principle at £35,000 for the right to develop the roof space. Plans were prepared and Camden Council, the planning authority, was approached.

3.2.11 The transaction was not concluded. However, on the basis of these negotiations, Mr Wilson contended that there was a view that development value exists. This on a 50% probability on the total value of the development of £100,000, amounted to £50,000.

4. Decision

4.1 The Tribunal gave careful consideration to the documentary evidence before them, to the arguments advanced on behalf of the parties at the hearing, the cross examination and the question from members of the Tribunal, and their inspection of the subject property and comparables that were cited.

4.2 The Tribunal took note of the matters agreed between the parties:-

(i) The valuation date 16 June 2005;

(ii) Relativity in respect of:

Flats 5 and 6, where the unexpired lease term was 71.3 years should be 93.23%;

(iii) Flats 1, 3 and 4, where the unexpired lease term was 111.3 should be 99%;

(iv) Flat 2, where the unexpired lease term was 161.3 should be 99%.

4.3 Yield: In considering the appropriate yield, the Tribunal noted the arguments of the Applicant in proposing a yield of 7.5% and those of the Respondent proposing 5.25%.

4.4 The Tribunal also borne in mind the guidance offered by the decision of the Lands Tribunal in Arbib v Cadogan. In considering the subject property in investment terms, the Tribunal recognised that although the reversion was distant, it provided a secure income stream, which was relatively risk free. They felt in the circumstances that 7.5% was somewhat optimistic.

4.5 The Respondent's proposal of 5.25% appeared to the Tribunal to be based on a view that the subject property was situated in a somewhat superior residential locality than was the actual situation.

4.6 The Tribunal felt that the yield lay somewhere between the figures proposed by the parties. They determined that the yield should be set at 6.25%.

4.7 Development Value: Mr Stone argued that the lessee had already approached the freeholder with the possibility of extending into the roof space, making the point that there was hope value, as some use would certainly be made of this space. Other similar houses in the street had extended into the roof. The present configuration makes it impracticable, but not impossible. Reconstruction could become cost effective if price, demand and cost of moving continue to rise, although the profit element would be small due to the potential difficulties and expenses involved. The project could sell receive

planning consent and building regulations subject to the considerable expenditure involved in the necessary construction details.”

- 4.8 The Tribunal recognised, notwithstanding the problems of access to this space it did have potential value. In recognition of this they valued it at £5,000.
- 4.9 Extended lease values. In assessing the extended lease value of the individual flats, the Tribunal considered the arguments put at the hearing by Mr Wilson (Report page 13) on the basis of a comparable price – per square foot. Whilst accepting this method may have a place in valuing new-build properties, and form the basis of valuation in high price property in prime residential areas, the Tribunal felt it was not a helpful or appropriate method for the subject property.
- 4.10 Flat 1; Mr O’Keefe for the Applicant valued this at £450,000; Mr Wilson for the Respondent at £474,000, on the basis of the per square foot method for somewhat different types of property, which moreover by and large appear to be in an improved condition. The Tribunal assessed this flat at £450,000.
- 4.11 Flat 2 for the Applicant £405,000; for the Respondent £450,000. The Tribunal assessed this flat at £410,000.
- 4.12 Flats 3 and 4 appeared from the plan similar in size and layout to Flats 5 and 6. On the basis of the documentary evidence before them, their inspection and what was stated at the Hearing, the Tribunal saw no justification for differentiating in value between these four flats. The Tribunal assessed each to be valued at £200,000.
- 4.13 Accordingly the Tribunal assessed the unimproved freehold value to be:-

	£
Flat 1	490,000
Flat 2	410,000
Flats 3, 4, 5 & 6	<u>800,000</u>
	£ 1,700,000

- 4.14 The Tribunal determined the enfranchisement price to be £59,235 (fifty-nine thousand, two hundred and thirty-five pounds).
- 4.15 The Tribunal detailed valuation is set out in Appendix A.

5. Respondent’s Costs

- 5.1 This case was listed together with another for a two day hearing, Thursday 7 and Wednesday, 8 March. The general rule is that the earlier application should be heard first and that was the other case. However, at the start of the first day there was some uncertainty as to whether Mr O’Keefe, for the Applicant who was appearing in both cases, would be able to start on the morning of the first day. This was resolved, and the Chairman gave the Respondents the opportunity to be heard on that first day and possibly

continuing for part of the second day, or whether they wished to have a clear start at the beginning of day two. They opted to return for a clear start on the second day.

- 5.2 The question arose as to whether in these circumstances the Respondents had incurred extra costs for which they were entitled to claim.
- 5.3 On the basis of the above facts, the Respondents were from the start committed to two days, and that the hearing had been completed on the second day. In these circumstances the Tribunal determined no extra costs had been incurred. Therefore no order was made.

JG

Chairman:

Cornald Bowden

Date:

30 June 2006

LVT VALUATION107 KING HENRYS ROAD, LONDON, NW3 3QX

Valuation Date:	16 th June 2005	
Leases:	Flats 1, 3 and 4	125 years from 29 th September 1991.
	Flat 2	175 years from 29 th September 1991.
	Flats 5 and 6	85 years from 29 th September 1991.
Unexpired terms:	Flats 1, 3, and 4	111.3 years
	Flat 2	161.3 years
	Flats 5 and 6	71.3 years
Yield:	6.25%	
Relativity agreed at:	93 23% on 71.3 years	
Unimproved freehold values:	Flat 1	£450,000
	Flat 2	£410,000
	Flats 3, 4, 5, 6	£200,000 each
Participating flats:	Flats 1, 5 and 6	

FLAT 1

Value of freehold interest:

		Ground Rent	£325pa	
YP	7.3 yrs.	6.25%	5.72176	£1860
		Ground Rent	£650 pa	
YP	21 yrs.	6.25%	11.52068	
PV	7.3 yrs.	6.25%	0.64239	£4811
		Ground Rent	£1300 pa	
YP	21 yrs.	6.25%	11.52068	
PV	28.3 yrs.	6.25%	0.17984	£2693
		Ground Rent	£2600 pa	
YP	62 yrs.	6.25%	15.62698	
PV	49.3 yrs.	6.25%	0.05035	£2046

Reversion unimproved freehold value £450,000
 PV 111.3 yrs. 6.25% 0.001174

£ 528

Value of landlord's interest

£11,938

Marriage Value - N/A as remaining term over 80 years

Enfranchisement value

£11,938

FLAT 2

Value of freehold interest:

Ground Rent £285 pa
 YP 7.3 yrs. 6.25% 5.72176 £1631

Ground Rent £570 pa
 YP 21 yrs. 6.25% 11.52068
 PV 7.3 yrs. 6.25% 0.64239 £4218

Ground Rent £1140 pa
 YP 21 yrs. 6.25% 11.52068
 PV 28.3 yrs. 6.25% 0.17984 £2362

Ground Rent £2280 pa
 YP 112 yrs. 6.25% 15.9812
 PV 49.3 yrs. 6.25% 0.05035 £1835

Reversion unimproved freehold value £410,000
 PV 161.3 6.25% 0.0000566

£ 23

Value of landlord's interest

£10,069

Marriage Value - N/A as remaining term over 80 years

Enfranchisement value

£10,069

FLATS 3 AND 4

Value of freehold interest:

			Ground Rent (£150 each)	£300 pa	
YP	7.3 yrs.	6.25%	5.72176		£1717
			Ground Rent (£300 each)	£600 pa	
YP	21 yrs.	6.25%	11.52068		
PV	7.3 yrs.	6.25%	0.64239		£4440
			Ground Rent (£600 each)	£1200 pa	
YP	21 yrs.	6.25%	11.52068		
PV	28.3 yrs.	6.25%	0.17984		£2486
			Ground Rent (£1200 each)	£2400 pa	
YP	62 yrs.	6.25%	15.62698		
PV	49.3 yrs.	6.25%	0.05035		£1888
			Reversion unimproved freehold value (£2000,000 each)	£400,000	
PV	111.3 yrs.	6.25%	0.001174		<u>£ 470</u>
			Value of landlord's interest		£11,001
			Marriage Value – N/A as remaining term over 80 years		
			Enfranchisement value		<u>£11,001</u>

FLATS 5 AND 6

Value of freehold interest:

			Ground Rent (£150 each)	£300 pa	
YP	7.3 yrs.	6.25%	5.72176		£1717
			Ground Rent (£300 each)	£600 pa	
YP	21 yrs.	6.25%	11.52068		
PV	7.3 yrs.	6.25%	0.64239		£4440
			Ground Rent (£600 each)	£1200 pa	
YP	21 yrs.	6.25%	11.52068		
PV	28.3 yrs.	6.25%	0.17984		£2486

	Ground Rent (£1200 each)	£2400 pa	
YP	22 yrs.	6.25%	11.7842
PV	49.3 yrs.	6.25%	0.05035
			£1424
	Reversion unimproved freehold value (£200,000 each)	£400,000	
PV	71.3 yrs.	6.25%	0.013266
			<u>£5306</u>
	Value of landlord's interest		£15,373
Marriage Value			
	Value of landlord's interest		Nil
	Value of unimproved freehold interest		£400,000
	Less values before enfranchisement		
	Value of landlord's interest		£15,373
	Value of unimproved leasehold interests	93.23%	<u>£372,920</u>
			£ 11,707
	50% of marriage value		£ 5,854
	Any other loss:		
	User potential of roof void over Flats 5 and 6		<u>£ 5,000</u>
	Enfranchisement value		<u>£26,227</u>

Total enfranchisement value for 107 King Henrys Road:

Flat 1	£11,938	
Flat 2	£10,069	
Flats 3 and 4	£11,001	
Flats 5 and 6	<u>£26,227</u>	<u>£59,235</u>

APPLICANTS VALUATION

APPENDIX B

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993
COLLECTIVE ENFRANCHISEMENT

DATE: 09/02/2006
PROPERTY: Flat 5 & 6, 107 King Henrys Road, London, NW3 3QX
VALUATION DATE: 16/06/2005 Sq M Sq Ft
Area 698

LEASE DETAILS:

Date granted 29/09/1991
Term 85
Expiry Date 28-Sep-2076
Unexpired Term 71.29 93.00%

Rent to Headlessee

VALUES Discounts Relativity

Share of Freehold £422,000 CV Freehold
Extended leat 1% 93.01% £418,000 CV Extended
Existing Leas: 93.00% £392,500 £392,500 CV Existing
Yield 5.25%

DIMINUTION IN VALUE OF HEADLESSEE'S INTEREST

LOSS OF RENT					£300	
x YP	7.25	years	@	5.25%	<u>5.9035316</u>	£1,771
LOSS OF RENT					£600	
x YP	21.00	years	@	5.25%	12.543679	
					£7,526	
x P.V £1	7.25	years	@	5.25%	<u>0.6900646</u>	£5,194
LOSS OF RENT					£1,200	
x YP	21.00	years	@	5.25%	12.543679	
					£15,052	
x P.V £1	28.25	years	@	5.25%	<u>0.2356273</u>	£3,547
LOSS OF RENT					£2,400	
x YP	62.00	years	@	5.25%	18.249495	
					£43,799	
x P.V £1	49.25	years	@	5.25%	<u>0.0804565</u>	£3,524
						£14,035

DIMINUTION IN VALUE OF FREEHOLDERS INTEREST

Reversion Freehold Value £422,000
x P.V £1 71.29 years @ 5.25% 0.0260539 £10,995

Total Value of Landlords Interests £25,030

MARRIAGE VALUE

Freehold Value	£422,000	
Landlords future interest	£0	
	£422,000	
less		
Landlords present interest	£25,030	
Existing lease (S110(4) HA 1996 amendment)	<u>£392,500</u>	
	<u>£417,530</u>	
Marriage Value	£4,470	
Landlords portion @ 50.00%		£2,235
(Commonhold and Leasehold Reform Act 2002)		£27,265
Total Value of Landlords Interests		£27,265
Compensation		£27,265

15.0 VALUATION

15.1 In conclusion, it is my opinion a price payable for the freehold in accordance with the provisions of the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) is in the sum of £123,250 (one hundred and twenty three thousand two hundred and fifty pound)

15.2 My valuation calculations are as follow:-

Participating Tenants

Flat 1	£16,800.00
Flat 5	£13,658.00
Flat 5	<u>£13,607.00</u>
	£44,065.00

Non Participating Tenant

Flat 2	£13,586.00
Flat 3	£ 7,737.00
Flat 4	<u>£ 7,869.00</u>
	£29,192.00

Development Value

Roof Space	<u>£50,000.00</u>
TOTAL CLAIM	<u>£123,257.00</u>
SAY	<u>£123,250.00</u>