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Ref LON/LVT/1462/01

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

**DETERMINATION
UNDER
SECTION 9 OF LEASEHOLD REFORM ACT 1967**

Applicant: Lady Anousksa Weinberg (Tenant)

Respondent: Ilchester Estate Trustees (Landlord)

RE: 11 & 12 ADDISON ROAD, LONDON W 14

Application to Tribunal by Tenant dated 22 November 2001

Valuation Date: 16 June 2001

Hearing: 1, 2 and 3 October 2002 (Inspection: 7 October 2002)

Representatives:

Jonathan Gaunt QC instructed by Forsters [for Tenant]

Anthony Radevsky of Counsel instructed by Pemberton
Greenish [for Landlord]

Witnesses:

Lady Weinberg, Peter Beckett FRICS, Jennifer Ellis
FRICS and David Morris BSc FRICS [for Tenant]

A J McGillivray Estate Agent and Ian McPherson MA
FRICS [for Landlord]

Members of the Leasehold Valuation Tribunal:

PROFESSOR J T FARRAND QC LLd FCI Arb Solicitor (Chairman)

MR COLIN WHITE FRICS

MR DAVID MYER-SMITH LLB

1. The Tenant served Notice of Claim to acquire the freehold of "the house and premises" particularised as 11 and 12 Addison Road, London W14, on 16 June 2001. This date thus became the relevant time for valuation purposes (ss.9(1) and 37(1)(d) of the 1967 Act). The Landlord admitted the right claimed by Notice in Reply dated 12 July 2001. Consequently, it was implicitly asserted and accepted that 11 and 12 Addison Road constituted a house within the 1967 Act.
2. In her application to the Tribunal to determine the price payable for the freehold, the Tenant offered £1,350,000. However, by the Hearing, this sum had increased to £1,735,000. Against this, the Landlord's enfranchisement price remained £2,688,000.
3. At one time, 11 and 12 Addison Road were two separate dwelling-houses, the former a converted coach house and the latter semi-detached (with 13 Addison Road) with GLAs, respectively, of 396 sq. m. and 336 sq. m, both with good-sized gardens. The Tenant had become the leaseholder of each house under separate leases, as follows:

Lease of No 11 dated 24 January 1978 for 58 year term from 24 June 1977 with rent reviews in 1999 and 2021 to 0.5% of value of 58 year term of premises without disregarding improvements; rent under 1999 review agreed at £13,000 pa.

Lease of No.12 dated 23 September 1980 for 55 year term from 24 June 1980 at a ground rent of £500 pa but with rent reviews in March 2002 (not yet agreed) and 2024.

4. In 1982 the Tenant amalgamated the two houses by the construction of a four storey linking extension between them, demolishing a two storey extension to No.12 to do so. In addition, the Tenant undertook various works of structural alteration to floor levels and room arrangements, as well as "a major programme of internal refurbishment of both houses" (according to the Tenant's Witness Statement). It was also an agreed fact that the Tenant's improvements then included "Formation of terrace and balcony at the rear (at No.12)" as well also as "1984/5 The swimming pool and swimming pool building". No documentary evidence of exactly what work was done (such as specifications with plans and estimates) and no evidence as to precise costs or, potentially more important, as to enhancement in value was submitted. In particular, no pre-work surveys, details or pictures were produced to allow a 'before and after' assessment. The Inspection enabled the Tribunal to gain a clear idea as to the swimming pool but otherwise only a general appreciation of the changes involving significant uncertainty as to what part of the refurbishment and other work

amounted to improvements properly so-called and what part, albeit substantial, was really merely (re)decorative. However, it could be deduced that, at the valuation date, the 'house and premises', although not modernised to the utmost standards, would have been in a good state of repair and maintenance.

5. Certain aspects affecting the enfranchisement price had been agreed between the parties' experts and were scheduled as follows

1. The valuations are to be carried out in accordance with S9 of the Act.
2. At the valuation date (16th June 2001) the unexpired terms of the leases were 34 years.
3. Marriage value is to be shared 50/50.
4. The freeholder makes no claim for compensation under S9A of the Act.
5. The schedule of transactions, plans and property particulars at Appendix 8 [of the bundle of Agreed Schedules] are factually correct.
6. The relationships ('Relativity') between the leasehold value of a house in this location and a freehold at 58 and 65 years unexpired (in accordance with the rent review provisions in each lease) are respectively 79% and 84%.

6. The issues between the parties, leading to the £1m. approx. differential in enfranchisement prices, were identified at the Hearing as the following:

Capitalisation of rents

- (i) Ground rent of No.11 as if *unimproved*: Mr Beckett for the Tenant said £10,500 pa; Mr McGillivray said £12,000.
- (ii) Rental values of No.11 (58 year term) and of No.12 (65 year term): since the relativities of the terms to the freehold had been agreed at 79% and 84% respectively, this was a matter of arithmetic depending on the freehold valuations. However, Mr Beckett had calculated £14,500 for No.11 and £12,250 increasing to £12,750 on review in 2024 for No.12, whilst Mr McGillivray had calculated £18,500 and £15,600 increasing to £16,700 respectively.
- (iii) Yield rate: Miss Ellis for the Tenant supported a single capitalisation and deferment rate of 7% - although her evidence indicated 6.5%, she thought a higher rate justified because of the "lot size" reducing market interest; Mr McPherson supported differential rates of 5.5% and 6% respectively, essentially on the basis that this was how potential purchasers ought in principle to do their calculations.

Value of freehold reversion

- (i) Starting from an agreed Schedule of Comparables, divided into "Improved" and "Unimproved", Mr Beckett valued No.11 at £3,650,000 and No.12 at £3,050,000 and Mr McGillivray valued them at £4,690,000 and £3,975,000 respectively.
- (ii) This difference is primarily attributable to adjustments made in respect of improvements: Mr Beckett adopted the 'rough and ready' approach of deducting £3,000 per sq. m. from the value of any "Improved" (or "turn-key") comparable to arrive at an unimproved value; Mr McGillivray preferred a deceptively sophisticated approach of averaging so as to deduce an unimproved value of £11,842 per sq. m. Each of these valuers referred in support to different indices, one relating to houses and the other to the locality but including flats, neither of which could be dismissed as irrelevant.
- (iii) Both Mr Beckett and Mr McGillivray valued the subject house and premises as if still two unamalgamated houses and the latter explained this in his Proof of Evidence.. He first quoted from s.9(1A)(d) of the 1967 Act, which requires "the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors at their own expense". He then stated:

5.2 There are two possible approaches to valuing these properties in accordance with the provisions of the Act. One is to value the property as it existed at the date of valuation (i.e. as a single house) and then to deduct the value of the improvements. The other approach is to value the property as it existed at the grant of the qualifying leases (i.e. when it was two separate houses) and then to add for the potential to create the extensions. I have chosen the second approach as I believe it is the simpler method and I believe that it is also the approach which the tenant's valuer is adopting.

7. By way of interjection, the Tribunal expressed concern that the approach adopted actually appeared neither simpler in this case (except as to the swimming pool) nor actually consistent with the statutorily required assumption. The suggestion was put to Counsel for the Landlord that, as a general expectation, two separate houses should fetch a higher total in the market than one amalgamated house so that the improvements made by the tenant might not have increased value at all. Counsel submitted, correctly, that the Tribunal had received no evidence of relevant values on which to

base this approach and that it was an aspect not in dispute between the parties. He also referred to certain similar rent review decisions of the High Court (not the produced) which, both sides' Counsel agreed, should be taken as supporting the legitimacy of the valuation approach adopted by the parties' experts. Copies of these decisions, each decided by Forbes J, were subsequently supplied: *GREA Real Property Investments Ltd v Williams* (1979) 250 EG 651 and *Estates Projects Ltd v Greenwich London Borough* (1979) 252 EG 851. However, the Tribunal could not accept that they actually afforded the support asserted: the judge had made it explicit that he was construing the wording of private leases in their context to ascertain the parties' intention; he was not construing different wording used in a later statute to ascertain the intention of Parliament. Nevertheless, despite considerable misgivings, in the light of the unchallenged submissions and the consensus between Counsel, the Tribunal accepted and itself followed the valuers' agreed approach. However, it was noted that it was no longer contended that the possibility of amalgamating again the hypothetically separated houses should increase the enfranchisement price, although the reason for this appeared to be the difficulty of again obtaining planning permission.

8. Returning to the issues between the parties -

Marriage value

- (i) In valuing the 34 year terms, different relativity percentages were applied: Mr Beckett, having referred to a variety of graphs, adopted 62-4% but would deduct 3% for No.12's 'onerous' ground rent'; Mr McPherson for the Landlord, preferring, in effect, his own graph, calculated relativities of 57.29% for No.11 and 55.91% for No.12.
 - (ii) Mr Beckett additionally proposed what he called a "packaging discount" of 10% because a purchaser of the two houses being enfranchised would probably sub-sell one of them and would, therefore, offer less to take account of costs. This was objected to as misconceived: at this stage, what was being valued was the 'house and premises' in the hands of the Tenant who would be free to sell the two houses in the market as separate packages for owner-occupation without any account being taken of sub-sale costs.
9. Two matters which were raised by Counsel for the Landlord but not contested should be mentioned. First, when valuing at the valuation

date, it should be assumed, as is the fact, that the Tenant had complied with the repair and maintenance covenants in the leases so as to achieve houses in good condition even if 'unimproved'. Second, certain substantial works of reinstatement and alteration to No.12, which the original tenant had covenanted to carry out in (part) consideration of the grant of the Lease of that house to him in 1980, were not improvements the value of which fell to be disregarded: authority for this was seen in dicta in *Rosen v Trustees of the Camden Charity* [2001] 10 EG 159 CA. These works included, for example, putting the house "into first class repair and decorative order", the amalgamation of two second floor boxrooms to form a double bedroom and the formation of a new front boundary wall.

10. Having considered the evidence and submissions received in the light of its Inspection of the subject house(s) and of the 'comparables' referred to (which, it had been conceded, were generally unsatisfactory and unhelpful) as well as of its own general knowledge and experience, the Tribunal's conclusions as to the crucial valuation issues are as follows:

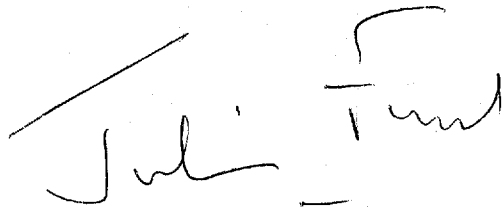
- (a) The *unimproved* rent of No.11 is £11,000.
- (b) The rental value of No.11 (58 year term) is £16,367 and of No.12 (64 year term) is £13,867 for the first review and £14,752 as from the 2024 review.
- (c) The yield rate for both capitalisation and deferment is 6%. Here, it should be observed that the Tribunal did not accept Miss Ellis's "lot size" point or Mr McPherson's differential approach because neither was supported by cogent evidence of practice in the market. However, the Tribunal did consider that the rate should be slightly depressed taking account of current lower interest rates.
- (d) The freehold reversion value of No.11 is £4,143,500 and of No.12 is £3,512,366.
- (e) The appropriate relativity percentage in valuing the 34 year terms is 60% but a 2% deduction, because of the onerous ground rent, is appropriate for No.11.
- (f) The objection to Mr Beckett's "packaging discount" was accepted as well-founded.

11. Expert evidence, written and oral, was given on behalf of both sides and examined carefully as to all the valuation issues. From the above

conclusions, it will be apparent that the Tribunal was throughout largely not persuaded more by one expert than another to adopt his or her preferred principle, figure, approach, graph or index as an unimpeachably reliable touchstone. Accordingly, the Tribunal felt that, in these circumstances, it would not be unreasonable or unfair, unless there were other factors or reasons, to give equal weight to the competing opinions and, doing so, in substance to 'split the difference'. For the legitimacy of this approach and expression, reference may be made to the Lands Tribunal decision in *West Hampstead Management Co. Ltd. v Pearl Property Ltd* 2001 at paragraphs 75, 76 and 77 (Member P R Francis FRICS; LRA/48/2000). This decision has been upheld without criticism of this aspect by the Court of Appeal ([2002] EWCW Civ 1372).

12. In the result, the Tribunal has been able to agree and make the attached Valuation. It is, therefore, determined that the enfranchisement price for the house and premises known as 11 and 12 Addison Road, London W14 8DJ is the sum of **£2,228,031.**

CHAIRMAN



DATE

23rd October 2002

11 & 12 ADDISON ROAD, LONDON ,W.14

VALUATION

VALUATION COMPONENTS

Valuation date	16 th June 2001
Marriage value	50% (<i>agreed</i>)
Compensation	None under S9A (<i>agreed</i>)
Lease expiry	23 rd June 2035
Term unexpired	34 years
Current ground rents	No 11 - £13,000. £11,000 used in valuation. No 12 - £500 £500 used in valuation.
Ground rents on review	No 11 - March 2021. 0.5% of value of 58 year leasehold term. 79% relativity (<i>agreed</i>) £16,367 used in valuation. (See decision) No 12 - March 2002. 0.5% of value of 65 year leasehold term. £13,867 used in valuation. (See decision) March 2024. 0.5% of value of 65 year Leasehold term. 84% relativity (<i>agreed</i>) £14,752 used in valuation. (See decision)
Floor areas (Unimproved ..GIA)	No 11 - 371.88 + 24.12 (Garage) sq.m. No 12 - 335.71 sq.m. (<i>All agreed</i>)
Freehold values	No 11 £4,143,500 (<i>See decision</i>) No 12 £3,512,366 (<i>See decision</i>)
Leasehold values	No 11 £2,403,230 (<i>See decision</i>) No 12 £2,107,420 (<i>See decision</i>)

VALUE OP FREEHOLDERS INTEREST

No 11

YP for 19.8 years @ 6%	11.3208		
Existing ground rent	<u>£11,000</u>		£124,529

YP for 14.3 Years @ 6%	9.4202		
PV for 19.8 years @ 6%	<u>0.3242769</u>	3.054753	
Review rent		<u>£16,367</u>	£49,997

Reversion to freehold value		£4,143,500	
PV for 34 years @ 6%		<u>0.1379115</u>	<u>£571,436</u>

Freeholders interest in No 11 **£745,962**

No 12

YP for 0.8 years @ 6%	0.75472		
Existing ground rent	<u>£500</u>		£377

YP for 22 years @ 6%	12.0416		
PV for 0.75 years @ 6%	<u>0.9572</u>	11.52622	
First review rent		<u>£13,867</u>	£159,834

YP for 11.3 years @ 6%	8.03597		
PV for 22.8 years @ 6%	<u>0.2722693</u>	2.1879479	
Second review rent		<u>£14,752</u>	£32,277

Reversion to freehold value		£3,512,366	
PV for 34 years @ 6%		<u>0.137911</u>	<u>£484,396</u> £676,884

Total value of freeholders interest **£1,422,846**

FREEHOLDER'S SHARE OF MARRIAGE VALUE

Value after marriage No 11	£4,143,500		
No 12	<u>£3,512,366</u>		£7,655,866

Value before marriage			
Freeholders interest	£1,422,846		
Lessee's interest	<u>£4,510,650</u>		<u>£5,933,496</u>
			£1,722,370

50% share of marriage value £861,185

ENFRANCHISEMENT PRICE **£2,284,031**