(284)

REF: LON/LVT/1745/04

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

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

Applicant:	**Earl Cadogan (Landlord)**
Respondent:	**Mrs M Wallenius – Kleberg (tenant)**
RE:	**12 Astell Street, London SW3**

Application to Tribunal by Pemberton Greenish dated 27 April 2004

Heard:	**Tuesday/Wednesday 7-8 September 2004**
Appearances:	**Mr T Dutton, Counsel** **Mr G Hollamby Dip Surv MRICS, John D Wood & Co** **Mr P Alger, Nicholson Graham & Jones** **For the tenant**
	Mr A Radevsky, Counsel **Mr K Gibbs FRICS, Gerald Eve** **Miss L Blackwell, Pemberton Greenish** **For the landlord**

Members of the Leasehold Valuation Tribunal:

Mrs B M Hindley LLB (Chairman)
Mr D L Edge FRICS
Mr L Jarero BSc FRICS

Tenant's section 42 notice dated: 15 January 2004

Landlord's section 45 counter-notice dated: 9 March 2004

Valuation date: 22 January 2004

Leasehold Valuation Tribunal's determination: £520,920
Date of Tribunal's decision : 27 OCT 2004

1. This is an application by the landlords, Cadogan Holdings Ltd., to determine the price payable by the respondent, Mrs Wallenius-Kleberg, for the freehold of the property at 12 Astell Street, London SW3, under Section 9 (1C) of the Leasehold Reform Act 1967.

2. The following were agreed between the parties:-

Date of valuation	22 January 2004
Unexpired term	30.92 years
Ground rent	£40pa fixed
GIA	2250 sq.m.

3. By the conclusion of the hearing the positions of the parties were as follows:-

	Applicant	Respondent
Freehold vacant possession value	£1,750,000	£1,750,000
Leasehold vacant possession value	£995,000(56.86%)	£1,067,500(61%)
Capitalization rate for term	6%	7%
Capitalization rate for reversion	4.5%	10.5%
Enfranchisement price	£602,100	£381,400

4. Attached at Annex 1 is the valuation of Mr Gibbs. Attached at Annex 2 is the valuation of Mr Hollamby which he produced during the course of the hearing in place of his original.

5. The form of the transfer had been agreed between the parties but they asked that the question of costs should be left open for determination at a later stage, if not agreed.

6. Mr Gibbs asserted that there was a danger of over valuing the existing leasehold interest because of the almost non existent supply of new open market evidence of value for non enfranchisable leases. Professionals had, he said, therefore come to agree relativities by negotiation and the results of such negotiations had, over a period, produced a body of evidence which, he claimed, amounted to more than an analysis of such settlements. On the basis of such evidence, presented to the Tribunal in graph (settlements on the Cadogan Estate relating to houses with leases of between 25.83 and 36.25 years) and narrative form, he argued that the appropriate relativity was 56.86%.

7. He claimed that in many cases, before the Lands Tribunal or Leasehold Valuation Tribunal, the price of the existing leasehold interest had already been agreed and that when, as they often did, those Tribunals had reduced the freehold values the effect was to reduce the differential since there was then no opportunity to reduce the leasehold value. Moreover, whilst it had been accepted that settlement evidence should rank above previous Tribunal decisions the effect was subtly misleading.

8. He argued that in a rising market purchasers of houses in desirable locations were relaxed about the price paid for the leasehold interest since only a reducing percentage of this was payable for the freehold and even this payment could be advantageously deferred for at least nine months.

9. He also alleged that leaseholds sold with a notice already served provided no reliable evidence of value since this amounted to a part payment for the freehold rather than the purchase of a leasehold. All in all he saw no justification, from 29 years of dealing with such claims, for a narrower differential.

10. Mr Hollamby achieved his relativity by analysis of prices achieved in terms of pounds per square foot. He produced a graph of some 371 settlements and Leasehold Valuation Tribunal decisions relating to houses in prime central London areas. Since he accepted that high ground rents could depress leasehold values these had been flagged where possible.

11. He compared the sales of 4 Astell Street, in July 2001, at £1,400,000 for a 32.25 year lease and 8 Astell Street, in December 2003, at £2,100,000 for the freehold. He made a deduction of 10% from the sale price of No 4 for the enfranchisement rights and a further deduction for the additional value of an integral garage, which he saw as having the disadvantage of taking up valuable living space. With the garage excluded, his price per square foot produced a differential of 56%, which when compared with his graph he found to be somewhat low for a lease in excess of 32 years. Accordingly, for a number of reasons which included the Lands Tribunal decision relating to 57 Shawfield Street, where despite concluding that a lease of 32.54 years was worth 63.1% of the freehold interest, they chose not to overturn the Leasehold Valuation Tribunal's decision that it was worth 62.3%, he chose to attribute a differential at the subject property of 61%.

12. Mr Gibbs argued for his proposed yield rates because of the continued demand for well located residential property in central London and the perceived potential for continuing growth, the loss of confidence in equities with the resulting perception of residential property as a more attractive option, together with the long term trend of low interest rates at the valuation date. He found support for his views from the prospectus of the Freehold Income Trust which showed a yield reducing from 11.5% in 1995 to 5.6% in April 2002.

13. Mr Hollamby said that for many years 6% had, almost invariably, been agreed or determined by a Tribunal. Despite the Lands Tribunal's adoption of 5.25% in 57 Shawfield Street, Leasehold Valuation Tribunals had continued to use 6%. He considered that any change from accepted practice should only be made 'on a simple and equitable basis with common sense being the over riding objective'. Whilst he accepted that the income was safe he opined that

the cost of collecting £40 pa for 31 years might be significant and he, therefore, proposed capitalising the ground rent at 7%.

14. The reversionary interest he regarded as far from safe since it was difficult to forecast with confidence what would happen to property prices or inflation over the term of the lease. Gilts, bonds or equities he saw as a safer and more liquid investment. Accordingly, quoting the average annualised return on equities between 1900 and 2000 as 10.2%, he concluded that the higher risk involved in a reversion 31 years away should be discounted at 10.5%.

15. After the hearing the Tribunal inspected the subject property. They found it to be a three storey terraced house approached through a small, mainly paved front garden. The second floor was a mansard with dormers front and rear. The accommodation comprised a ground floor through room (with an arch dividing) and an enclosed patio off, a rear kitchen/ diner and a wc/whb. Accessed from the kitchen was a tiny yard leading to a store cupboard, housing the boiler, and Danube Street – a narrow service-type road. At first floor level were two bedrooms and a bath/wc and at second floor level there were three further bedrooms and a bath/wc. The property appeared not to have been recently modernised, with surface rewiring apparent, tired decorations and having a replacement double glazed window only in the front dormer.

16. In determining the leasehold vacant possession value the Tribunal noted that, in cross examination, Mr Hollamby had conceded that had he included the integral garage in his calculation of 8 Astell Street (see para 11 above) the resulting differential would have been 57%. Equally, Mr Gibbs had agreed, in cross examination, that his proposed differential could vary slightly. On the basis of these two responses the Tribunal determines a differential of 57% giving an existing leasehold value of £997,500.

17. Noting that Mr Radevsky, during the course of the hearing, had conceded that it could be appropriate to capitalize the ground rent at 6.5%, and that Mr Hollamby had suggested that the small amount of the ground rent could cause collection problems, the Tribunal was of the opinion that a capitalization rate of 6.5% was appropriate. In coming to this conclusion they noted that this percentage fitted the pattern established in the table produced by Mr Gibbs for unexpired terms in excess of 30 years.

18. The Tribunal was concerned at the reliance Mr Gibbs was prepared to place on the prospectus of the Freehold Income Trust without having the benefit of any supporting information. Moreover, they considered that he was being selective in choosing to highlight, from the prospectus, yields in the years 1995 and 2002 since those yields showed the widest margins. They also noted that they were not being supplied with an updated target yield rate despite the passage of time (nearly two years).

19. The Tribunal was interested to note that the Lands Tribunal in 57 Shawfield Street had said that the Freehold Income Trust was an investment 'based exclusively on residential ground rents' but later in the decision appeared to

accept that income for the trust would be generated 'from rearranging leases, granting consents, insurance commissions or disposals to sitting tenants.'

20. Unlike Mr Gibbs, the Tribunal found it impossible to relate projected long term yields from rental investments generally, to the growth potential of the subject property in Chelsea.

21. Mr Radevsky pointed out that at the date of valuation - 22 January 2004 – the bank rate had been 4%, which was exactly what it had been at 11 June 2002 – the date of valuation for 57 Shawfield Street. Mr Hollamby countered that in June 2002 the bank rate was coming down whilst in January 2004 it was going up.

22. On the other hand the Tribunal agreed with Mr Radevsky's condemnation of Mr Hollamby's proposed rate as 'ludicrous'.

23. In all the circumstances, not least the agreement between the parties that until recently 6% had invariably been agreed or determined the Tribunal, in the total absence of any supporting evidence from either party determines a capitalization rate for the reversion of 6%.

24. Therefore, the Tribunal's valuation is attached at Annex 3.

25. Accordingly, the Tribunal determines the price payable for the freehold interest in 12 Astell Street to be £520,920.

Chairman R P Hardley

Date 27 OCT 2004

Annex 1

KDG 1

CADOGAN HOLDINGS LIMITED

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property:	12 Astell Street, London SW3	
Date of Claim:	January 22, 2004	
Unexpired term of lease:	30.92	years

VALUATION IN ACCORDANCE WITH SECTION 9 (1C) OF THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Value of Lessor's interest excluding marriage value						
For remainder of term -						
Rent currently payable				40		
Capitalised for	30.92	years @	6.00%	13.917	557	
For reversion to -						
Value of freehold in possession				1,750,000		
Deferred	30.92	years @	4.50%	0.2564	448,627	449,184
Add Lessor's share of marriage value						
Value of freehold in possession					1,750,000	
Less						
Value of lessor's interest exclusive of marriage value				449,184		
Value of lessee's interest exclusive of marriage value				995,000	1,444,184	
			56.86%			
Gain on marriage					305,816	
Attributed to lessor at		50.0%				152,908
Enfranchisement price						602,092
Floor area (sq ft)	*2,201*				say	**£ 602,100**
FVP per sq ft	*£795*					

Aug-04

GeraldEve
Chartered Surveyors
& Property Consultants
KDG/CNCP/A11878

LEASEHOLD ENFRANCHISEMENT VALUATION

PROPERTY:	**12 Astell Street**	Lease Expiry	**25.12.2034**
		Existing L/hold Value	**£1,067,500**
	~~without prejudice~~	Date of Notice	**21.01.04**
		VP Value at date of notice	**£1,750,000**
		GIA Square Feet	**2,250**
		Rate per Square Foot	**£778**

1.	**Value of Landlord's Existing Interest**				
	Existing Ground Rent			**£40**	
	YP	**30.92** years @	7 %	12.5223	£501
	Review to			**£0**	
	YP	**0** years @	7 %	0.0000	
	PV	30.92 years @	7 %	0.123	£0
	Review to			**£0**	
	YP	**0** years @	7 %	0.0000	
	PV	30.92 years @	7 %	0.123	£0
					£501
	VP Value of Freehold			£1,750,000	
	PV	30.92 years @	10.5 %	0.046	£79,850
					£80,351
2	**Therefore, Price for Freehold =**				**£80,351**
3	**Marriage Value**				
	Value of Freehold to lessee			£1,750,000	
	Value of Landlord's proposed interest			£0	
					£1,750,000
	Less				
	Landlord's existing value			£80,351	
	Plus lessee's existing value			£1,067,500	£1,147,851
	Marriage Value				£602,149

4	**Marriage Value to be Split**	**50 / 50**	
		landlord / tenant	
5a	Landlord's share		£301,074
5b	Tenant's share		£301,074

5 **Premium to Landlord** = 2 + 4a

£80,351 + £301,074 = **£381,426**

say **£381,400**

Annex 3

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12, ASTELL STREET, LONDON SW3

LEASEHOLD REFORM ACT 1967: Section 21.

Lease Expiry Date: 25 December 2034
Ground Rent: £40 p.a. fixed

Valuation Date: 22 January 2004

Unexpired Term at Valuation Date: 30.92 years

Freeholder's Existing interest			
Ground Rent	40		
YP 30.92 years @ 6.5%	13.190		
		528	
Reversion to freehold interest with vacant possession	1,750,000		
Deferred 30.92 years @ 6%	0.16504		
		288,820	
			289,348
Freeholder's share of Marriage Value			
Freehold interest with vacant possession		1,750,000	
Less			
Freeholder's existing interest	289,348		
Lessee's existing interest	997,500		
		1,286,848	
		463,152	
Freeholder's share @ 50%			231,576
Enfranchisement price			520,924
		Say	**£520,920**