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Ref LON/00AW/OLR/2007/0944

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 48. OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicants **The Earl Cadogan**

Respondent: **Poulan Aram Shirazi**

Re: **Flat 2/30 Lower Sloane Street London SW1**

Date of Tenant's notice: **3rd April 2007**

Date of Counter Notice: **14th June 2007**

Application date: **20th August 2007**

Hearing date: **8th January 2008**

Date of Inspection **9th January 2008**

Valuation date: **3rd April 2007**

Appearances: **For the Applicant :**

Mr Adam Smith of counsel instructed by
Pemberton Greenish Solicitors
Mr G French BSc(Est Man) FRICS

For the Respondent
Mr Henry MacHale MA FCA FIOD,C Eng MICE
FCI (Arb)

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
Mr J Avery BSc FRICS

Date of Tribunal's decision: **1st February 2008**

1.0 Introduction

- 1.1 By notice under Section 42 of the Leasehold Reform Housing and Urban Development Act (“the Act”) dated 3rd April 2007 the Respondent sought an extension of her lease of the first floor flat known as Flat 2, 30 Lower Sloane Street SW1 (“the subject flat”) and proposed a premium of £95,000 for the freehold interest and £5000 for the intermediate leasehold interest.
- 1.2 By a counter notice dated 14th June 2007 the Applicant admitted the Respondent’s right to a lease extension but proposed a premium of £207,864 for the freehold and £7,900 for the intermediate leasehold interest
- 1.3 By an application dated 20th August 2007 the Applicant applied to the Tribunal for a determination of the premium to be paid for the grant of the lease extension and the terms of acquisition
- 1.4 Directions were given for the conduct of the application on 11th September 2007 and the matter came before the Tribunal for hearing on 8th January 2008

2.0 Inspection

- 2.1 On 9th January 2008 the Tribunal inspected the subject flat in the presence of Mr McHale and Mr French and, at the request of Mr McHale, the Tribunal also inspected the interior of Flat 3 at 48 Lower Sloane Street London SW1 of which Mr McHale informed the Tribunal that he held the head lease on the building. The Tribunal also carried out an external inspection of properties in Sloane Gardens which was nearby
- 2.2 The building is part of a Victorian red-brick terrace on the west side of Lower Sloane Street, opposite a narrow strip of ornamental gardens on the east side. Lower Sloane Street is a busy traffic route between Sloane Square and the river. The comparables were in Lower Sloane Street and Sloane Gardens. Sloane Gardens runs parallel to, and to the east of, Lower Sloane Street and the gardens are, on both sides, at the backs of the buildings. Sloane Gardens is a quieter road but the buildings are similar in design and appearance.

- 2.3 The subject flat is on the first floor of the building and is accessed from the common hall and staircase. The entrance hall is clean and smart, carpeted, and with a small fireplace. The windows on the landings at the rear offer a good view of the garden behind the building.
- 2.4 Internally the flat consists of a single, large living room, a small double bedroom, a well fitted narrow kitchen and modern bathroom. The flat retains attractive original decorative features with high ceilings, and a small balcony off the living room and kitchen. The kitchen and bathroom were modern and in good condition and appeared to have been refurbished within the last five or six years
- 2.5 The Tribunal also inspected the interior of flat 3 at No 48 Lower Sloan Street, one of the comparables analysed by Mr French in his report and with which analysis Mr McHale disagreed. Mr McHale was intermediate leasehold owner of Flat 3.48 and was familiar with the history of the purchase by the present tenant. Mr French had, without inspection, considered that the transaction price of this flat ,namely £735,000 should be adjusted downwards to reflect its superiority as a two bedroom flat; Mr McHale considered it to be inferior to the subject flat by reason of its layout.
- 2.6 Flat 3/48 is also on the first floor and with similar common parts and no lift. The flat is similar also in its high ceilings and possession of original features. It differs in the following respects: the flat does have two bedrooms, but they have been created by the division of the front room into two and the smaller room is narrow and has an awkward window at the wrong angle to the room. The main bedroom however is larger than that in the subject flat. The living room, at the back, is very small and has leading off it an open staircase to a very small kitchen at mezzanine level. The bathroom is modern but to a basic standard. The Tribunal considered the flat to be inferior to the subject flat

3.0 The Hearing

- 3.1 At the hearing the Applicant was represented by Mr Adam Smith of counsel who called Mr Gary French FRICS , a valuer of Friend and Falcke surveyors and valuers and the Respondent was represented by Mr Henry MacHale a qualified arbitrator, engineer and chartered accountant but who was not qualified as a valuer . In spite of the fact that the directions gave the

Respondent the option of calling an expert witness she had chosen not to do so.

- 3,1 An issue arose at the outset as to the status of Mr McHale and the manner in which he was able to conduct the case. He had produced a document which he entitled "Respondent's Response to Applicant's Valuation Report on Capital Values ". This document contained a critique of the report prepared by Mr French and put forward matters of analysis and opinion.
- 3.2 In the course of correspondence with Mr French in July and December 2007 Mr McHale had stated that he was not a professional valuer but was competent to give an opinion in relation to existing lease values and discount rates based on his experience of property ownership He had chosen however, not to prepare a statement either with a declaration compliant with CPR 35 of the Rules of the Supreme Court as an expert or as a statement of fact with a statement of truth attached.
- 3,4 Mr Smith contended that while Mr McHale was entitled to cross examine Mr French and make legal and factual submissions about his evidence , he was not entitled to adduce evidence of his own which was not factual but was in the nature of expert opinion in contradiction to that given by Mr French or generally
- 3.5 Mr McHale argued that he was entitled to have his evidence treated as that of an expert because he was an experienced landlord, had wide financial experience and was very familiar with properties in the Sloane Square area. He referred to earlier decisions of the Tribunal where he had been allowed to give expert evidence but no weight had been attached to his evidence in an expert capacity (see **10 Sloane Gardens London SW1 LON ENF/1229/04**) In that case there was a further complicating factor as he had a personal interest in the outcome of the proceedings as an owner of the flat. He was therefore one of the Respondents to the application and the Tribunal stated it would not preclude him from giving evidence, The Tribunal found that he was not "truly independent and his opinion evidence is not accepted as that of an expert witness" and placed no reliance upon it.. That decision, which also found against a number of Mr McHale's other submissions which appear in this application is currently subject to an appeal to the Lands Tribunal leave having been granted by the LVT

- 3.6 The Tribunal considered that if Mr McHale wished to give expert evidence he had to establish his expertise and then present his evidence in accordance with the provisions of CPR 35. On his own admission he was a friend of the Respondent and could not be considered to be independent, but more importantly despite his many qualifications in areas of finance and accountancy and his experience of property he was not sufficiently qualified in the view of the Tribunal to entitle himself to be heard as an “expert” in the area of leasehold valuation
- 3.7 The Tribunal ruled therefore that his evidence on matters of opinion was not receivable in evidence although he was entitled to cross examine and challenge the evidence of Mr French and make any legal or factual submissions on the evidence before the Tribunal. He was also able to give evidence before the Tribunal on questions of fact and chose to do so, although this covered a very limited area of the case.

4.0 The Lease

- 4.1 The freehold of the property is vested in the Applicant and there is a head lease in favour of Beavergate Limited dated 22nd February 1980 for a term of 66 years from September 1979 and thus expires in September 2045. At the valuation date there is 38 years and five months unexpired
- 4.2 The Respondent holds on an underlease dated 12th January 1981 also for a term of 66 years from September 1979 but for five days less than the head lease. The rent on the underlease is £125 per annum until September 2000, £250 per annum until September 2021, £500 per annum until September 2042 and £1000 for the remainder of the term.

5.0 Agreed Facts

- 5.1 The valuation date and the terms of the underlease and the lease are agreed. The unexpired term was agreed at 38.32 years. The capitalisation rate to be applied to the head lessee’s interest was agreed at 6% and 2.5% and it was agreed that the extended lease represented 98% of the value of the freehold interest
- 5.2 At the date of the hearing the extended lease values were not agreed but it appeared that the difference between the parties was very small and the

Tribunal invited the parties in the interest of proportionality to agree a figure for the extended lease and freehold values which they did. The figures agreed were £653,500 for the freehold interest and £640,430 for the value of the extended lease

6.0 Issues in Dispute

- 6.1 There remained two issues in dispute in connection with the valuation of the lease and one issue in respect of the terms of acquisition .The issues outstanding in connection with the lease were (1) the value of the existing sub lease and (2) the deferment rate to be applied
- 6.2 The issue in relation to the terms of acquisition related to Clause 12 of the Fourth Schedule to the lease relating to the right of the landlord when collecting rents and service charges to apply the costs of such collection to the leases of all tenants in the building if they could not be recovered against the original defaulting tenant.. The Applicants claimed that the clause in the lease was in similar terms to that of Clause 3 of the Schedule to the existing sub lease or alternatively that the Tribunal should impose the clause by virtue of the provisions of Section 57(2) of the Act. The issue of the terms of acquisition was not dealt with at the hearing but the parties were given the opportunity of making written submissions to the Tribunal. Following the hearing, however, the solicitor acting for the Respondent on the conveyance agreed to accept the inclusion of the disputed clause so that the Tribunal was not required to determine that issue.

7.0 Evidence on Valuation of Existing Lease

- 7.1 Following the Tribunal's determination on the status of Mr McHale's submissions, expert valuation evidence was presented on behalf of the Applicant alone by Mr French but Mr McHale put to him a number of questions on Mr French's conclusions based upon his opinion as a business man, and his knowledge of one of the comparables,.
- 7.2 Following the parties' agreement that the freehold value of the flat was £653,500 and the value of the new long lease (at the agreed 98%) at £640,430, the

remaining dispute on values was therefore limited to the market value of the existing lease, on the assumptions specified in the Act, i.e. in the “No Act World”.

- 7.3 Mr French had adopted a two way approach to the valuation. His method was to derive a proportion from a graph of relativities prepared by Gerald Eve in 1996 and then to consider evidence of transactions in the real world, adjusted for compliance, to support that relativity. He concluded that the graph indicated a proportion of 64.5%, giving an existing lease value of £413,077. being approximately £725 per square foot
- 7.4 Mr French then analysed nine transactions of sales of small flats with similar lease lengths in Lower Sloane Street and Sloane Gardens. The prices adjusted for time produced values ranging from £661 to £1077 per sq ft. He then made adjustments to reflect differences in location, floor level, condition and any other distinguishing features. This produced a range between £697 and £886 per sq ft
- 7.5 He then excluded the two highest prices above £800 per sq ft and the one lower than £700 and found the midway point on the range of £742 per sq ft. He had a further deduction to make for the fact that each of the transactions would give the buyer the benefit of the rights under the Act which had to be excluded. By making a deduction for rights under the Act a figure of approximately £671 was arrived at
- 7.6 However he considered one of the transactions – Flat 3 at No 20 - to be the best comparable evidence which, when analysed, gave £652 per sq ft. He therefore felt able to adopt £671.44 per square foot as the appropriate rate to value the existing interest – rounded to £429,725
- 7.7 However following the inspection of Flat 3.48 he submitted a revised valuation in which the existing lease value was slightly reduced to £421,508.
- 7.8 Mr McHale had submitted written representations on Mr French’s report. He made a number of assertions as to the facts (which were not disputed). From his local knowledge he believed that two of the transaction prices were either higher or lower than the real value and he proposed alternative adjustments for the various differences. Mr French replied that his schedule was supported by reliable evidence of transactions; and that as to Mr McHale’s opinions, these were not those of an expert valuer.

- 7.9 Mr McHale also proposed a method involving weighted averages. Again this opinion could not be admitted as this was a matter of expertise and Mr McHale was not an expert valuer.
- 7.10 In cross examination by Mr McHale Mr French made no concessions other than an agreement to inspect the interior of Flat 3/48 at the time when the Tribunal inspected and to consider whether his conclusion would be affected by Mr McHale's comments on its applicability as a comparable
- 7.11 Following the inspection Mr French with the permission of the Tribunal submitted a further note to this report in which he indicated that having seen the flat at 3.48 he found it to be quite different from the subject flat and did not consider it to be a suitable comparable. He adhered to his view that Flat 3/20 Lower Sloane Street was the best comparable and stated that if he had to remove Flat 3/48 from his list it would make very little difference to his conclusion as the average per square foot would be increased only slightly
- 7.12 Although the Tribunal did not give express permission for Mr McHale to make a further submission he has in fact done so following receipt of Mr French's additional note. His submissions were longer than those of Mr French and contained further evidence which he had obtained from the owner of Flat 3/20 Lower Sloane Street and agents who had acted on the sale of another property. In that further submission he states that the comparable at 3/48 should not be excluded from the other comparables but should be included and that as adjusted it would produce a lower rate per square foot which should be included in the average adopted by Mr French. The Tribunal did not consider the further evidence from other sources produced by Mr McHale as this should have been produced at the hearing if it was to be relied upon.

8.0 Rights under the Act

- 8.1 In his analysis Mr French had made a deduction from the lease value of approximately 10% to reflect the disregard of rights under the Act as provided in Schedule 13 of the Act and appears to be in accordance with normal valuation practice. Mr McHale contends that this practice is incorrect and that the deduction for rights under the Act should not be made since he maintains that existing lease values are too high and they give a windfall to the landlord

which is unjustified He maintains that there is no additional value in the longer lease granted under the Act

- 8.2 Mr McHale states in his written submission that “a proper interpretation of Schedule 13 may not permit increasing marriage value by a notional amount” He does not explain, however, how such a construction should operate
- 8.3 Schedule 13(2) of the Act requires the Tribunal when assessing the premium payable for the extended lease to make the following assumption:
(b) “...that Chapter I and this Chapter confer no right to acquire an interest in the premises containing the tenant’s flat or to acquire a new lease”
- 8.4 Mr McHale accepted that no valuer agreed with his value and although he suggested to Mr French that the latter’s approach was wrong he agreed that if Mr French was wrong every other valuer would also be wrong but that if the approach adopted by other valuers was correct, which he disputed, then Mr French would also be correct.
- 8.5 Mr Smith contended that the terms of Schedule 13 were clear and had always been understood in the manner in which Mr French had applied it and that the figure of 10% to reflect rights under the Act was fully justified.

9.0 Deferment Rate

- 9.1 Notwithstanding the decision of the Court of Appeal in **Earl Cadogan –v Sportelli (2007) EWCA Civ 1042** Mr McHale has adopted a deferment rate of 8% for the property even though the subject property is a prime Central London property and falls four square within the terms of the decision
- 9.2 Mr McHale sought to argue that the decision of the Lands Tribunal was wrong because it failed to reflect in the discount rate the early receipt of cash and the investment opportunities to which it gave rise, and he put forward a series of figures to show that the rate ought to be nearer 10%
- 9.3 He then proceeded to argue that the Court of Appeal had not upheld the rate approved by the Land Tribunal but had merely dismissed the appeal because the decision which it reached was not irrational but that it need not be followed in other cases
- 9.4 Mr Smith contended that the decision of the Court of Appeal was a finding which was that decisions of the Lands Tribunal, although not yet a superior court of record, should be followed by leasehold valuation tribunals, so that it

was not open to the Tribunal to go behind the figure for deferment rate of 5% which had been approved as a guideline figure for Central London properties.

10.0 Determination of the Tribunal

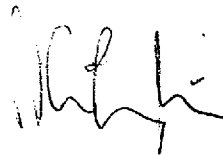
- 10.1 With regard to the first point concerning the value of the existing lease Mr McHale does not possess the relevant expertise for the Tribunal to receive his opinion on that question, but even if it did so it would not attach any weight to his opinion on the issue of the use of graphs such as the Gerald Eve Graph. On questions of this kind the Tribunal would accept the opinion of Mr French based on his extensive knowledge and experience. The Tribunal accepted his analysis of the comparables and further accepted that even if the property at 3/48 was excluded as he later suggested it should be the rate per square foot of £742 which he had adopted would not be significantly affected on the methodology which he had adopted.
- 10.2 With regard to the rights under the Act and the “no act world” the Tribunal accepted and followed the existing practice of allowing such a deduction to reflect the additional benefits of rights under the Act. The Tribunal accepted that a deduction of 10% to reflect rights under the Act was reasonable. It also preferred the construction of Schedule 13 (2)(b) advanced by the Applicant
- 10.3 Accordingly the Tribunal concluded that the value of the existing lease was 64.5% of the freehold namely £421,508.
- 10.4 With regard to Mr McHale’s submissions on the deferment rate the Tribunal did not accept the submission that it was not bound to follow the reasoning of the Lands Tribunal in **Sportelli** which had give a guideline rate of 5% which was clearly applicable to prime Central London flats
- 10.4 Secondly the Court of Appeal in **Sportelli** approved the exercise which the Lands Tribunal had undertaken in **Earl Cadogan –v- Arbib** where it had received and analysed the various theories for evaluating the discount rate having considered all the relevant opinions of the experts before it.

- 10.5 The Court of Appeal also indicated that although the Lands Tribunal was not a superior court of record it was important that where it gave general guidance on issues such as discount rates, such guidance should be followed by leasehold valuation tribunals. It likened the situation to where guidance was given by the court on discount rates in personal injury actions until the introduction of statutory rules in 2007
- 10.6 Even before the Lands Tribunal had decided Arbib the rates which had been applied were of the order of 6%. The Tribunal considers that the proposition that a deferment rate of 8% should be adopted for a prime Central London flat is untenable

11.0 Conclusion

- 11.1 The Tribunal rejected the construction of Schedule 13 (2)(b) for which Mr McHale contends which would limit the applicability of the “no Act world “ to the freehold interest and not affect the existing lease value. The Tribunal is also satisfied that a deduction of 10% to reflect Act rights is reasonable.
- 11.2 The Tribunal accepted the analysis of the comparable properties adopted by Mr French and adopted a figure of £421,508 for the existing lease
- 11.3 The Tribunal rejects the submission that it is not bound to follow the ruling of the Lands Tribunal in Sportelli and the further submission that the Court of appeal did not uphold the deferment rate of 5% for prime Central London properties
- 11.4 In the event the Tribunal assesses the premium for the lease extension in the sum of £161,064 as set out in Mr French’s revised valuation received on 14th January 2008 A copy of the valuation is appended to this decision

Chairman Peter Leighton
Date 1st February 2008



APPENDIX

FLAT 2 30 LOWER SLOANE STREET LONDON SW3
 LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993
 Valuation date 4th April 2007

HEADLEASEHOLDERS INTEREST

T1	INCOME Ground Rent YP	14.50	6.00%	2.50%	£250.00 8.46967 £2,117.42	£2,117	
T2	Ground Rent YP PVE1	21.00 14.50	6.00% 6.00%	2.50%	£500.00 10.33193 0.42960 £2,219.30	£2,219	
T3	Ground Rent YP PVE1	2.99 35.50	6.00% 6.00%	2.50%	£1,000.00 2.58889 0.12637 £327.16	£327	
HEAD LEASEHOLDERS INT						£4,664	£4,664

FREEHOLDERS INTEREST

EXISTING	REVERSION Freehold Value	38.52	5.00%		£653,500 0.152682126	£99,778	
PROPOSED	Freehold Value	128.52	5.00%		£653,500 0.00189128	£1,236	
FREEHOLDERS INT						£98,542	£98,542

MARRIAGE VALUE

Proposed Interests							
Head Leaseholder		nil					
Freeholder				£1,236			
Leasehold	@	98%		£640,430		£641,666	
Existing Interests							
Head Leaseholder				£4,664			
Freeholder				£98,778			
Leaseholder	@	64.50%		£421,508			
MARRIAGE VALUE					£525,949		
					£115,717 @	50%	
						PREMIUM	£57,858
							£181,084

APPORTIONMENT

MV							
FREEHOLDER				£98,542			
HEAD LEASEHOLDER				£4,664			
	TOTAL			£103,206			
FREEHOLDER				£98,542 x	£57,858 =	£55,244 +	£98,542
				£103,206			£153,786
HEAD LEASEHOLDER				£4,664 x	£57,858 =	£2,615 +	£4,664
				£103,206			£7,279
TOTAL						£57,858	£161,064

**THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

MR LON/OOAW/OLR/2007/0944

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

DECISION ON AN APPLICATION FOR LEAVE TO APPEAL

PREMISES: FLAT 2, 30 LOWER SLOANE STREET, LONDON SW1W 8BP

Applicant: The Earl Cadogan

Respondent: Pouran Alam Shirazi

The Tribunal has considered the respondent's request for Leave to Appeal received 26 February 2008 and determines that leave be refused. Please see reasons overleaf.

In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the respondent may make further application for Leave to Appeal to the Lands Tribunal.

Tribunal: Mr P L Leighton, LLB (Hons),
Mr J Avery, BSc, FRICS,

Date: 3 April 2008

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 48. OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicants **The Earl Cadogan**

Respondent: **Poulan Aram Shirazi**

Re: **Flat 2/30 Lower Sloane Street London SW1**

REASONS FOR REFUSING LEAVE TO APPEAL

A **The Status of Mr McHale**

At the request of the Applicant the tribunal ruled that Mr McHale on his own admission was not an expert on valuation matters and was therefore not entitled to give evidence of expert opinion

The Tribunal attempted to minimise the effect of any prejudice arising from this ruling by seeking to encourage Mr McHale to indicate the nature of his case in oral submissions. He constantly kept referring the Tribunal to his written submissions some of which contained inadmissible material.

Mr McHale was permitted to comment on and dispute the evidence put forward by Mr French and make legal submissions

B **Capital Values**

This was a matter of judgment on the material before the Tribunal. The tribunal accepted Mr French's relativity of 64.5%. Mr McHale's theory of relativity at 85% was unsustainable even if his evidence had been receivable on that issue.

C **Marriage Values**

The Tribunal considered Mr McHale's theory relating to marriage values and considered it to be wrong. He agreed that for his opinion to be correct every other valuer's approach would have to be wrong. If the Lands Tribunal wish to hear him on that theory and on his legal analysis they have the option of granting leave, but the Tribunal refuses it.

D Deferment Rate

The Tribunal considers that the arguments adduced by Mr McHale are wrong, that they are in blatant disregard of the decision of the Court of Appeal in Sportelli and that a deferment rate of 8% for which he contends would have been unsustainable for prime Central London properties even before Sportelli was decided. No purpose would be served and much time expended in allowing Mr McHale to pursue this ground of appeal. And leave is refused.

E 10 Sloane Gardens

The fact that another tribunal may have granted leave to appeal in another case is neither binding nor indeed relevant for the purposes of the existing application. If Mr McHale succeeds in overturning the existing law and valuation practice in that appeal no doubt he will invite the Lands Tribunal to revisit the decision in the present case. Alternatively he may invite the Lands Tribunal to defer the question of leave in this case until his other appeal is heard. That appeal was however lodged in March 2007

F Human Rights

The fact that the issues raised by Mr McHale may have a wide impact on other leaseholders is not a human rights issue as such. The only human rights issue is whether he received a fair hearing. The Tribunal considers he did receive a fair hearing and refuses leave on this basis.

With regard to the reference to the disputed clause concerning liability for legal costs on service charge proceedings, the Tribunal was informed that this matter had been resolved and that they did not have to resolve it. No suggestion has been received that this would significantly affect the value of the premium and no submissions were made at the hearing to this effect. .

Chairman Peter Leighton

Date 3 April 2008

