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LON/LVT/716

Leasehold Reform Act 1967

Housing Act 1980

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

Applicant: The Trustees of the Eyre Estate

Respondent: Mrs Patricia Rose

Re 34 Elm Tree Road, St John's Wood, London NW8

Date of tenant's notice and valuation date: 22 January 1997

Date of application to the tribunal: 20 June 1997

Heard: 3 November 1997

Inspection: 4 December 1997

RECEIVED
21 JAN 1998

Appearances:

Mr J E C Briant BA ARICS and Mr J Meikle BA
(Cluttons Daniel Smith, chartered surveyors)

for the landlord

Mr Andrew Walker (counsel)
Mr D Morris and Mr S Scott (Boodle Hatfield, solicitors)
Mr George Pope FRICS (John D Wood & Co, chartered surveyors)

for the tenant

Members of the leasehold valuation tribunal:

Lady Wilson
Mr C J Bradley JP BSc FRICS
Mr D J Wills ACIB

Date of the tribunal's decision:

19 January 1998

The facts

1. The relevant history of this house, as it emerged at the hearing, is as follows:

(i) In about 1830 a cottage and separate coachhouse were built on the site. They were probably subject to a lease, but this is not certain. Over the years the two buildings were enlarged and merged into one two storey house.

(ii) A licence to assign granted by the Eyre Estate dated 23 October 1916 refers to a lease dated 29 November 1901 for a term of 60 years from 24 June 1900.

(iii) By a deed dated 12 February 1960, the lease of 29 November 1901 was surrendered before it expired, and by a lease of the same date the same lessee was granted a new term of $28\frac{3}{4}$ years from 29 September 1959.

(iv) By a deed of 14 August 1980 the remainder of the term was assigned to a Mrs McLean, who carried out various alterations.

(v) That term expired on 29 September 1988, but by a lease dated 27 September 1988 a new lease was granted to Mrs McLean for a term of $72\frac{3}{4}$ years from 24 June 1988, at a ground rent of £800 per annum reviewable every 21 years to $\frac{1}{60}$ of the land value as defined by the lease. That lease expires on 24 March 2061 and is the lease which is being enfranchised. 64.16 years remained unexpired at the valuation date, 22 January 1997.

(vi) By a licence dated 5 April 1991, Mrs McLean was given permission to make various alterations which are listed in the licence. These included the provision of three bathrooms, french doors, a roof terrace, new central heating and a study.

(vii) Following a licence to assign dated 11 April 1991 the remainder of the term was assigned to the present lessee, Mrs Rose, for £1,500,000.

(viii) By a licence dated 23 June 1992, Mrs Rose, who had considered refurbishing the house but had been advised that rebuilding it would be more satisfactory and cost-

effective, was given permission to demolish the house and rebuild it. The house now standing on the site was built at a cost of £900,000.

2. It was agreed that the marriage value should be shared equally, and that the appropriate capitalisation and deferment rate was 6%. It was also agreed that we should disregard entirely, as a tenant's improvement, the present house. Mr Briant opened the case to us on the basis that we should additionally disregard the improvements made under the licence of 5 April 1991, which he valued at £75,000. Mr Walker argued for the lessee that the effect of section 3(3) of the Leasehold Reform Act was that all improvements since the first known lease, of 29 November 1901, should be disregarded. Rather than argue the legal issue at the hearing, Mr Briant undertook to provide a written opinion from counsel, Mr Radevsky, to be served on the lessee's advisors for their comments and on the tribunal. Mr Radevsky's opinion agreed with Mr Walker's submissions. The opinion said the plain words of section 3(3) meant that it applied to all provisions under Part I of the 1967 Act (save for section 1AA), including section 9(1A). Accordingly, Mr Radevsky continued, if a new long tenancy is granted to the same tenant who holds the property under a previous long tenancy which has come to an end, improvements carried out under the previous tenancy will be disregarded under section 9(1A)(d), provided that there is continuity of tenancies and of tenant (ie no gap in time between the termination of the previous lease and the grant of the new one, and the tenant under the new lease must be the same as under the previous lease). Although there was a gap between the expiry of the lease dated 12 February 1960 and the commencement of the new lease granted on 27 September 1988, and a term cannot commence before the date of its grant, if the long tenancy created by the 1960 lease continued under Part I of the Landlord and Tenant Act 1954, this would suffice by virtue of section 3(5) of the 1967 Act. Hague's *Leasehold Enfranchisement* (second edition, para. 9-47) comes to the same conclusion. (Mr Briant confirmed by letter that the

tenancy created by the 1960 lease continued in the intervening period). The conclusion of both counsel was, therefore, that all improvements carried out since the grant of the 1901 lease should be disregarded. In our view, counsel are correct in their joint conclusion.

3. The issues were thus the value of the unimproved freehold interest, the value of the unimproved leasehold interest, and the ground rent on review.

4. Mr Briant's proposed premium was £331,067, and that proposed by Mr Pope, for the lessee, was £198,600.

5. On 4 December 1997 we inspected the property internally and externally, and we externally inspected all the comparables relied on by Mr Briant and Mr Pope.

Decision

(i) Unimproved freehold value

Mr Briant proposed a value of £2,175,000. He relied on freehold sales of 9 Cavendish Avenue NW8, 29 Acacia Road NW8, 25 Queen's Grove NW8, and 57 and 123 Hamilton Terrace NW8, which he adjusted for factors including size, location, condition and facilities. Mr Pope proposed £1,650,000, relying on 123 Hamilton Terrace, Pear Tree Cottage, Melina Place NW8, 23 Cavendish Close NW8, 60 Marlborough Place NW8 and 29 Norfolk Road NW8.

Mr Briant based his valuation on the size and condition of the property immediately

prior to its demolition in 1992 or thereabouts, subject only to a deduction of £75,000 for improvements carried out in 1991. He said that he believed that the house to be valued had a gross internal area of about 4500 ft². We, on the other hand, are attempting to value the property as it was in 1901, (on the basis that it was maintained by the lessee as required by the lease). This is not an easy task, because its size and facilities at that time are largely a matter of guesswork, based on plans, the physical evidence having disappeared when the house was demolished. Mr Pope based his valuation on the, in our view, more accurate assumption that the house to be valued had a gross internal area of no more than 3500 ft², and very possibly less, and that, as a matter of common sense, it had the facilities of a house of its time, markedly less than those of the comparables. In our view the value of the unimproved cottage type of property which we have to assess would lie mainly in its excellent and high value site, and we accept Mr Pope's valuation of £1,650,000.

(ii) Unimproved leasehold value

Mr Briant proposed a value of £1,725,000, based on his adjustments of transactions relating to 3 Cavendish Avenue NW8, 23 and 25 Cavendish Close NW8, and 29 Norfolk Road. This represented a differential between his leasehold and freehold values of 79.31%. Mr Pope proposed £1,400,000, based partly on a graph prepared by his firm and Gerald Eve, chartered surveyors, showing relativities between leasehold and freehold values, principally on the Grosvenor and Cadogan Estates; partly on an index of relativities between leasehold and freehold values prepared by W A Ellis, estate agents and surveyors; and partly on adjusted transactions relating to 15 Cavendish Avenue, 30 Marlborough Place, 43 Hamilton Terrace and 43 Queen's Grove. He said that he had concluded that in 1991 the lessee paid, at £1,500,000, too much for the approximately 70

year lease. He said that the graph and index suggested a relativity of 85% between the leasehold and freehold values.

In our view, Mr Briant has, on this aspect of the valuation as on the valuation of the freehold, valued the property as it was in 1991 rather than 1901 as he should have done. As with the freehold, while we accept that the leasehold value of the property lies principally in its site, we consider that the property on the site makes some difference to the value, and such major adjustments are required to all the leasehold comparables that they are unreliable. We consider that the differentials suggested by Mr Briant and Mr Pope are both within reasonable limits, and, doing the best we can with the information we were given, we have come to the conclusion that Mr Pope is correct and that the unimproved leasehold value is £1,400,000.

(iii) Ground rent on review

Mr Briant said that the likely ground rent on the first review date (24 June 2009) is £20,000 per annum. He based this on a site value of £1,200,000, which he reached mainly by adjusting the sale of a 99 year lease of an almost adjacent site measuring 8293 ft² at 28 Elm Tree Road (against about 7750 ft² for No 34) in June 1995 for £1,500,000, with the benefit of a subsidence claim amounting to about £221,051.24, the purchaser having bought the house with the landlord's consent to demolish and rebuild. He said that this showed a site value of 28 Elm Tree Road of £1,278,948.80, and that this strongly supported a site value of £1,200,000 for the subject. As a cross-check, he said that the gross development value of the property was £3,000,000, and that the site would be worth about 40% of that figure, or £1,200,000.

Mr Pope proposed a site value of £800,000, and therefore a ground rent on review of £13,333. He accepted that the sale of 28 Elm Tree Road relied on by Mr Briant was good evidence, and he agreed that that sale, upgraded to freehold and, by the Savills Index, for time, provided a site value of £1,500,000 for a site of similar value to the subject, but this figure he adjusted to about 50% of his freehold valuation of the subject. Alternatively, he says that he considered the gross development value to be £2,000,000, and the site value to be 40% of that figure.

On this aspect of the case we accept Mr Briant's argument. We agree that 28 Elm Tree Road provides an excellent comparable for the cleared site, and that it supports a land value, as defined by the lease, of £1,200,000, with a consequent ground rent on review of £20,000 per annum.

Determination

We have therefore come to the conclusion that the price to be paid for the freehold of the property is £223,720, in accordance with our valuation which is attached to this decision.

CHAIRMAN.....*Hayes Wilson*.....

DATE.....*19 January 1998*.....

34 ELM TREE ROAD, LONDON NW 8.

VALUATION BY THE LEASEHOLD VALUATION TRIBUNAL

NOTICE DATE	22/01/1997
<u>LEASE DETAILS</u>	
DATE	27/09/1988
TERM	72.75
EXPIRY DATE	24/03/2061
UNEXPIRED TERM	64.16
GROUND RENT	£800 to 24/06/09
ESTIMATED GROUND RENT (from review)	£20,000

<u>VALUES</u>	
FREEHOLD VACANT POSSESSION	£1,650,000
LEASEHOLD - excluding improvements	£1,400,000

Value of Freehold Interest

Term

Ground Rent	£800	
YP 12.5 yrs @ 6%	<u>8.618</u>	6,895

Review

Ground Rent at review	20,000	
Y.P. 51.75yrs @ 6%	15.813	
Def. 12.5 yrs @ 6%	<u>0.483</u>	<u>7.638</u>
		152,760

Reversion

Freehold Vacant Possession Value	1,650,000	
PV £1 Def. 64.16 yrs & 6%		0.0229 <u>37,785</u>
		197,440

Marriage Value

Freehold Vacant Possession Value	1,650,000	
Less: (i) Freeholders Interest	197,440	
(ii) Unimproved Leaseholders Interest	<u>1,400,000</u>	
		<u>1,597,440</u>
		52,560

Freeholders share at 50% 26,280

Enfranchisement Price £223,720

12th December 1997