

268

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION
TRIBUNAL FOR THE LONDON RENT ASSESSMENT COMMITTEE

CASE NUMBER : LON 11695-1699/04

**PREMISES : 429-437 (odd only) HIGH ROAD LEYTON
LONDON E10**

Parties:

Applicants : Grocola plc

**Respondents : Mayor and Burgesses of the London Borough
Of Waltham Forrest**

Appearance:

**Applicants : Mr M Dray Counsel
Mr J L Bennett BSc MRICS**

**Respondents : Mr J Small Counsel
Mr D C Radford
Mr McNair**

Application Date : 12 January 2004

Hearing Date : 12 May 2004

**Committee : Mr A A Dutton Chair
Mr J R Humphrys FRICS
Mr S Shaw (Lawyer Member)**

Date of Decision :

16 July 2004

DECISION

A. BACKGROUND:

1. These applications made by Grocola Plc (the Applicant) were for the determination of the purchase prices and the terms of the conveyances for properties at 429-437 (odd numbers only) High Road Leyton London E10. The Respondents to the application were the Mayors and Burgesses of the London Borough of Waltham Forest (the Council). The applications were dated the 12 January 2004 and the matter was dealt with at a combined hearing which should have commenced on the 11 May 2004 but which in fact started and indeed finished on the 12 May 2004.

2. Certain matters are agreed and are as follows:
 - The valuation date is the 14 July 2003.
 - The basis of the valuation is pursuant to S9(1) of the Leasehold Reform Act 1967 ("the Act"),
 - The square footage of the commercial elements.
 - The capitalized existing ground rent for the premises is £12.00.
 - The yield rate is 8.75%

3. Certain matters were not agreed and they were as follows:
 - The basis upon which the rent, pursuant to S15 of the Act was to be determined. (The Applicant sought to argue that the entirety value should be assessed on the basis of the existing use of the premises namely as a maisonette. The Respondent contended that the use would be as two self-contained flats.)
 - The value of the maisonettes, or flats, if that was to be the relevant approach.
 - The rental value of the shop premises both new and existing (the Applicant contended for the new shops £10.00 per square foot and the Respondent £15.00 per square foot.)

- The site value, that is the proportion of the site value in relation to the entirely value (the Applicant contended 25% and the Respondent 33%.)
 - The final issue was of course the value of the reversion.
4. We wish to record the manner in which both parties appeared to deal with this application to the Tribunal. The hearing date, fixed for 11 May 2004, had been known at least since the middle of March 2004. The Council at a late stage sought to have the hearing adjourned but this was refused by the Tribunal. On the morning of the hearing the Applicants presented to the Tribunal five valuations prepared by their expert, Mr Bennett as well as a skeleton argument and a list of issues prepared by Counsel. For the Respondent the expert did not attend the hearing at the time it was due to start and we were told that the Report was not then immediately available. This cavalier attitude to the Directions Order made by the Tribunal in March 2004 is to be deprecated. We sincerely trust therefore that we will not be presented with cases conducted in this manner again. It resulted in the 11 May being a wasted day and delaying our inspection of the premises until June and the delivery of the Decision until now.
5. We move on. We will give more details of the premises under the "Inspection" heading of the Decision but briefly the description of the development is a three storey terrace of shops and living accommodation above, built at the junction of Grange Park Road and High Road Leyton in the early 1900's. The shops are accessed from Leyton High Road and the residential premises to the rear of the property from Grange Park Road. Each property is held under a Lease for 99 years from the 25 December 1905 accordingly due to expire on the 24 December 2004. The user provisions in the Lease indicate that the properties are to be used as a *"private dwelling house or shop or for carrying on handicraft occupations of a quiet innoxious and inoffensive nature."*

B EVIDENCE

6. Mr Dray of Counsel on behalf of the Applicants had prepared a skeleton argument which he took us through outlining the various matters which were agreed and issues which we were required to determine. Mr Bennett on behalf of the Applicants had produced five valuations, one for each property which, by and large, were the same although with changes to reflect the different properties. The principle applied was the same. We would not propose to go through each and every valuation process undertaken by Mr Bennett suffice to say that the contents of the Reports have been noted by us and considered fully when reaching our decision.
7. There was in fact no real difference between the parties as to how the figure for the freehold was achieved. Both sides accepted that the relevant section of the Act for valuing purposes was section 9(1). The issues between the parties were the values of each part of the equation leading to the final reversion figure and whether the premises should be valued as commercial usage at ground floor (which was not disputed) and residential flats or maisonettes to the floors above (which as we have said was disputed). For these reasons it is not necessary for us to go into great detail as to the calculations put forward by each expert.
8. Mr Bennett relied on a number of comparable properties, which so far as the residential units were concerned were, at least by Mr. Radford, accepted as being relevant. At the end of the day Mr Bennett, relying on the comparables he put forward, contended for an unimproved value for the maisonette of £140,000, a modernised value of £220,000 and the value for the new and existing shop at £10 and just over £8.00 per square foot respectively. He attributed a figure of 25% to the site value based on the development as a shop with maisonette above.
9. Mr Radford relied on others to provide the figures for his calculations, in particular Mr. MacNair a senior valuer for the Council. He felt that the evidence supported a square footage figure of £250 for fully modernised rebuilt flats, which was conceded as being a reasonable figure by Mr Bennett. As to the market rent for

the shops he relied on comparable evidence supplied by the Council which he felt gave a new shop rent of £15 per square foot. As to the entirety value he disagreed with Mr Bennett's assessment of 25% and instead utilised a figure of 33% based on two settlements, one in Enfield and the other in London W10.

10. These differing figures, of course gave rise to differing prices for the purchase of the freehold. The main disagreement however, centred on the maisonette/flat argument.
11. Both experts were strongly challenged in cross examination but in the main stuck to their guns. We did note that neither Mr Bennett nor Mr Radford had any great knowledge of the market in the area, either residential or commercial. Indeed Mr Radford told us that he did not deal with commercial premises. Mr MacNair, from whom we heard, was not of great help. He had not been involved in any of the commercial lettings upon which the Council relied, they having been dealt with by colleagues who were not called to give evidence.
12. At the closure of the evidence Counsel made submissions. Both attacked the opponent's experts and we noted all that was said. On the question of the user Mr Small had this to say on behalf of the Council. He reminded us what section 15(2)(a) of the Act said, which is as follows.
"The rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the tenancy, other than uses which by the terms of the new tenancy are not permitted or are admitted only with the Landlords consent".
13. He told us that we were not bound by the various authorities to which we were referred (see later) and that the past usage was not strictly in accordance with the lease. If it could be used as a house it could be used for two residential units. If the tenant had the right to convert into two flats, that is what he should pay for.

He did not think that the lease prohibited the use of the premises as two flats. If it did he suggested that an application to the Lands Tribunal would remove the restriction.

14. Mr Dray also addressed us on the question of law relating to the use of the premises indicated that there were no binding authorities but they should be used as guidelines and that we should pay particular regard to the statute. He told us there was no evidence that the premises had been previously used as flats some time in the past and that the lease was somewhat prohibitive as to user. Mr Small had suggested in his submission that the phraseology of the lease allowed for the plural use of the residential element, i.e. flats. Mr Dray disagreed. He felt that the wording "private dwelling house" meant just that and that the word "only" preceding the description of the usage as a whole and following after "dwelling house" was not intended to limit the use to an either or situation, that is commercial, or residential, but rather one residential unit and one commercial unit. He also reminded us that the property had only been used as a maisonette. He also put forward various authorities to which we will refer later in this Decision.
15. Because of the loss of the first day we were not able to reconvene to inspect the subject premises until 7 June.

C INSPECTION

16. The subject premises comprise a three-storey terraced block at the junction of Grange Park Road and High Road Leyton. The High Road at this point is one-way. We were able to inspect the interior of all maisonettes, save for number 437, as well as the commercial premises below and should like to take this opportunity of thanking those tenants and occupiers who facilitated us in this regard.
17. The external condition of the residential premises was poor. The external rendering was broken and cracked. We noted that in a number of the maisonettes there were broken and cracked windows, greenery growing from window sills and

from gutters. Internal inspection of the four maisonettes in which we could gain access confirmed that in all regards the properties were not being kept in repair and indeed in some cases showed they were being used as multiple occupancy lettings although with very poor facilities. There was however no evidence save for the fact that there appeared to be two kitchens at 435A High Road, to show that these premises had ever been used as anything other than a single maisonette albeit presently in multiple occupancy.

18. The commercial units were well maintained. The first unit which was to be found under two of the maisonettes numbered 429 – 431 High Road was occupied by an Estate Agency and clearly had undergone considerable internal refit. Adjacent was a take-a-way, which again had been fitted out, we understand, by the same tenant who occupied the next door convenience store. Access to the maisonette above was through part of the shop unit, which was unsatisfactory. The remaining commercial units were taken up by the convenience store but which had no storage space. We were able to externally inspect some of the commercial comparables put forward by the parties, in particular the property at 250 High Road, which appeared to be a coffee shop and which was in an altogether better area and the property at 621 High Road which was similar.

D THE LAW

19. Section 9.(1) of the Act sets out the method by which the price payable for the house and premises is to be determined with certain assumptions which are set out therein. Section 15 of the Act sets out the basis upon which the new tenancy to be granted under s14 is to be considered including both the terms and the rent. We have borne these sections in mind when reaching our decision and it is common ground that they apply.
20. Cases cited: Buckely v. SRL Investments Limited and Kator and Robinson; Country and Metropolitan Developments v. Brewer Trust; Ruhan v. Attenborough; Lake v. Bennett; Official Custodian for Charities v. Goldridge; H A Pattern v.

Wenrose Developments Limited; Barrable v. Westminster Council; Cuduggan Estates Limited v. Howes and another;

21. We were also referred to various extracts from Hague on Leasehold Enfranchisement (Fourth Edition) and Woodfalls Law of Landlord and Tenant together with s84 of the Law of Property Act 1925.

E **DECISION**

22. The first matter we will deal with is the basis of valuation, that is to say whether the property can be valued as capable of being developed into two flats or whether the existing usage of maisonette accommodation is the appropriate one.

23. We have considered the various authorities cited above. In a number of them there is already an existing usage which has been accepted by the Tribunal. In the cases of Country Metropolitan, a Lands Tribunal Case and Ruhan v. Attenborough, a Leasehold Valuation Tribunal case, a restrictive approach has been adopted which concurs with the views of the Lands Tribunal in the case of Buckley v. SRL Investments Limited and Kator and Robinson. It seems to us that we need to consider the terms of the lease and the use to which the premises have actually been put since the lease was granted and the statute itself. The wording of section 15(2)(a) has been set out above. As we mentioned above the clause in the lease indicates a restriction limiting the use of the property as a private dwelling house or shop or for carrying on handicraft occupations of a quiet innoxious and inoffensive nature. The reference to a private dwelling house is in the singular. We find that the interpretation put on the lease by Mr Dray preferable. It is our finding that the Lease, on its proper construction provides for one unit of residential accommodation and one shop unit. There was no evidence given to us at the Tribunal hearing to show that the residential premises had been used anything other than a maisonette, intended for the occupancy of one family. It is true to say that at the time of our inspection it appeared that a number of people may be using rooms but no evidence from the parties was adduced and physical inspection

confirmed that the units were not divided into two flats. Whilst we accept it may well be possible to redevelop the residential element into two flats, that seems to us to go beyond the uses definition contained in the Act and beyond the terms of the leases. To refer to the learned authors of Hague at paragraph 8-04 they state as follows. *"The uses" referred to in the definition set out above (this was the wording of s15 referred to above in para 8-03 of Hague) "mean the actual uses to which the house and premises have been put. They do not include general residential use in a broad town planning sense, involving either development of the site to a higher density or multiple occupation of the house itself. Nor do they mean the use to which the land might be put if it were vacant land. Thus in the ordinary case of a house in single residential occupation, only that use can be considered ie., the site must be valued as a site for a single residential house and any potential use as or conversion into flats must be ignored"*.

24. We find therefore that the correct basis of valuation is as a commercial usage at ground floor level and maisonette above.
25. We now turn to the valuation process itself. Firstly we will consider the values of the maisonettes in a modernised condition. In fact there was little difference between the valuers on this. Their figures came in at somewhere between £220,000.00 and £240,000.00. Having regard to the paucity of evidence available to us, but having regard to our inspection and our own knowledge and experience, we have concluded that it is reasonable to take the middle figure of £230,000.00 as being the value of the maisonettes in an improved state.
26. Insofar as the current value is concerned we find that Mr Bennett's valuation of £140,000.00 is reasonable. We bear in mind that we must assume the tenant has no liability for carrying out any repairs, maintenance or redecoration under the terms of the tenancy so that the price to be paid is not affected by any breach of covenants of repair. As we have indicated earlier there is no doubt there has been a lack of repair on the part of the tenants but as has been stated by the authors of

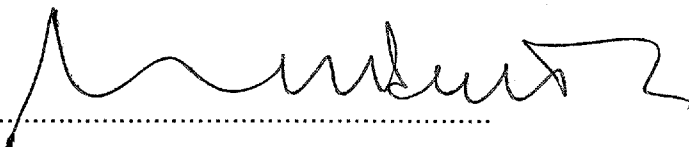
Hague, we are, whether it is logical or not, required to ignore that fact. Again the evidence for the figure of £140,000.00 is fairly scant but did not seem to be a real issue between the parties.

27. We then turn to the rental value for the commercial premises. Mr Bennett concluded in 7.48 of his report that the best evidence was the last letting for a short term of 3 years (2001-2004?) at numbers 429/431 High Road. This showed in his analysis of £8.09 ITZA. He adopts this in preference to the December 2000 five yearly review at 433/435 High Road. We suspect that this review date was possibly 1999. His analysis was £9.96 ITZA.
28. We do not accept this conclusion where apparently one transaction is relied upon to suggest a falling market in this location, which is then adopted and reduces the 1999/2000 rent review rent when valuing the reversion at 433/437 in 2003. We have not had the benefit of being told the actual circumstances surrounding this evidence. However, we must certainly treat with caution the letting at 429/431, which may be referred to as the "fag end" of a lease with all the uncertainty that it entails. The terms of the rent review clause in the lease, which the Tribunal has not seen, at 433/437 are we believe much more likely to have reflected the open market and certainty of future occupation.
29. Neither expert has actual knowledge and experience of the shop market in High Road Leyton. Our own knowledge and experience suggests that values in the High Road have been slowly and steadily increasing over the last few years. The lack of empty units apparent on our inspection supports this. We accept that in this location rents for two or three units may be at a discount.
30. Our own knowledge and experience suggests that shops in this location often let at a weekly rent and a rigid adherence to ITZA may be misleading. When valuing the new shops the experts are at £10 and £15 ITZA. Our inspection indicates that there should be more evidence than we have been given and that perhaps more

diligent research by the experts could have uncovered this. However, using that limited evidence and in particular the review and our own knowledge and experience we have reached the valuations set out at Appendix A.

31. The other elements to make up the basis of the calculation which need to be considered are the question of the percentage for the site value. Mr Bennett argued with 25% and Mr Radford for 33%. Our view is that 25% is too low. The site is in a prominent position and the general locality is such that we conclude an appropriate percentage figure applicable would be 30%. This is based upon our inspection and knowledge and experience of the locality. Applying these figures to the various properties gives rise to the valuations which are contained in the schedules annexed hereto under appendices A-E inclusive.
32. It is hoped that the parties will be able to agree the terms of the Transfers in respect of these matters but if there are difficulties in that regard they are welcome to refer the matter back to us for consideration.

Chairman.....



Dated.....

16 July 2008

Valuation Tribunal's Shop Rental Valuations and Analysis

Shop Number		Weekly Rent	Annual Rent	ITZA
429	new	160	8320	13-16
	existing	140	7280	11-52
431	new	140	7280	12-70
	existing	120	6240	10-89
433	new	90	4680	13-07
	existing	80	4160	11-62
435	new	130	6760	12-97
	existing	110	5720	10-97
437	new	130	6760	13-49
	existing	110	5720	11-41

Summary of Tribunal's Valuations

429 High Road	£87,977
431 High Road	£84,720
433 High Road	£76,649
435 High Road	£83,104
437 High Road	£83,104

429 High RoadExisting Freehold

Shop

Passing Rent apportioned

			5110	
Y.P. 1.45yrs	@	8.75%	1.3134	6,711
ERV (see Appendix A)			<u>7280</u>	
Y.P. perp	@	8.75%	11.4286	
PV £1 1.45 yrs	@	8.75%	<u>0.8851</u>	73,640
Maisonette				<u>140,000</u>
				£220,351
			say	£220,350

Section 15 Rent

Shop

ERV (see Appendix A)

			8320	
Y.P. perp	@	8.75%	<u>11.4286</u>	95,086
Maisonette				<u>230,000</u>
Entirety Value				325,086
Site Value	@	30%		97,526
Section 15 Rent	@	8.75%		<u>8,534</u>

ValuationTerm 1

Ground Rent

			9	
Y.P. 1.45 yrs	@	8.75%	<u>1.3134</u>	say 12

Term 2

Modern Ground Rent

			8534	
Y.P. 50 yrs	@	8.75%	11.2562	
PV 1.45 yrs	@	8.75%	<u>0.8851</u>	85,023

Reversion

Existing Freehold

			220,350	
PV £1 51.45 yrs	@	8.75%	<u>0.01335</u>	2,942

Enfranchisement Price**£87,977**

431 High RoadExisting Freehold

Shop

Passing Rent apportioned

		4640	
Y.P. 1.45yrs	@ 8.75%	1.3134	6094

ERV (see Appendix A)		6240	
----------------------	--	------	--

Y.P. perp	@ 8.75%	11.4286	
-----------	---------	---------	--

PV £1 1.45 yrs	@ 8.75%	0.8851	63,120
----------------	---------	--------	--------

Maisonette			140,000
------------	--	--	---------

			£209,214
--	--	--	----------

say			£209,200
-----	--	--	----------

Section 15 Rent

Shop

ERV (see Appendix A)		7280	
----------------------	--	------	--

Y.P. perp	@ 8.75%	11.4286	83,200
-----------	---------	---------	--------

Maisonette			230,000
------------	--	--	---------

Entirety Value			313,200
----------------	--	--	---------

Site Value	@ 30%		93,960
------------	-------	--	--------

Section 15 Rent	@ 8.75%		8222
-----------------	---------	--	------

ValuationTerm 1

Ground Rent		9	
-------------	--	---	--

Y.P. 1.45 yrs	@ 8.75%	1.3134	say 12
---------------	---------	--------	--------

Term 2

Modern Ground Rent		8222	
--------------------	--	------	--

Y.P. 50 yrs	@ 8.75%	11.2562	
-------------	---------	---------	--

PV 1.45 yrs	@ 8.75%	0.8851	81,915
-------------	---------	--------	--------

Reversion

Existing Freehold		209,200	
-------------------	--	---------	--

PV £1 51.45 yrs	@ 8.75%	0.01335	2,793
-----------------	---------	---------	-------

Enfranchisement Price

			£84,720
--	--	--	----------------

433 High RoadExisting Freehold

Shop

Passing Rent apportioned

			3567	
Y.P. 1.45yrs	@	8.75%	1.3134	4,685
ERV (see Appendix A)			4160	
Y.P. perp	@	8.75%	11.4286	
PV £1 1.45 yrs	@	8.75%	0.8851	42,080
Maisonette				140,000
				<u>£186,765</u>

Section 15 Rent

Shop

ERV (see Appendix A)

			4680	
Y.P. perp	@	8.75%	11.4286	53,486
Maisonette				230,000
Entirety Value				283,486
Site Value	@	30%		85,046
Section 15 Rent	@	8.75%		7,442

ValuationTerm 1

Ground Rent

			9	
Y.P. 1.45 yrs	@	8.75%	1.3134	say 12

Term 2

Modern Ground Rent

			7442	
Y.P. 50 yrs	@	8.75%	11.2562	
PV 1.45 yrs	@	8.75%	0.8851	74,144

Reversion

Existing Freehold

			186,765	
PV £1 51.45 yrs	@	8.75%	0.01335	2,493

Enfranchisement Price**£76,649**

435 and 437 High RoadExisting Freehold

Shop

Passing Rent apportioned

			5191	
Y.P. 1.45yrs	@	8.75%	1.3134	6,818

ERV (see Appendix A)			5720	
----------------------	--	--	------	--

Y.P. perp	@	8.75%	11.4286	
-----------	---	-------	---------	--

PV £1 1.45 yrs	@	8.75%	0.8851	57,860
----------------	---	-------	--------	--------

Maisonette				140,000
------------	--	--	--	---------

				£204,678
--	--	--	--	----------

			say	£204,680
--	--	--	-----	----------

Section 15 Rent

Shop

ERV (see Appendix A)			6760	
----------------------	--	--	------	--

Y.P. perp	@	8.75%	11.4286	77,257
-----------	---	-------	---------	--------

Maisonette				230,000
------------	--	--	--	---------

Entirety Value				307,257
----------------	--	--	--	---------

Site Value	@	30%		92,177
------------	---	-----	--	--------

Section 15 Rent	@	8.75%		8,066
-----------------	---	-------	--	-------

ValuationTerm 1

Ground Rent

			9	
Y.P. 1.45 yrs	@	8.75%	1.3134	say 12

Term 2

Modern Ground Rent

			8066	
Y.P. 50 yrs	@	8.75%	11.2562	

PV 1.45 yrs	@	8.75%	0.8851	80,360
-------------	---	-------	--------	--------

Reversion

Existing Freehold

			204,680	
PV £1 51.45 yrs	@	8.75%	0.01335	2,732

Enfranchisement Price

				<u>£83,104</u> each
--	--	--	--	---------------------