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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **TW/LON/00AJ/OAF/2014/0019**

**Property** : **14 The Vale, London W3 7SB**

**Applicant** : **Lombard Asset Management  
(Bahamas) Ltd (“the tenant”)**

**Representatives** : **WT Law LLP, Solicitors**

**Respondent:** : **David Parry (“the landlord”)**

**Representatives** : **Swabey & Co, Solicitors**

**Type of application** : **A Leasehold Enfranchisement  
claim under the Leasehold Reform  
Act 1967**

**Tribunal Judge** : **Angus Andrew  
Helen Bowers BSc(Econ) MSc  
MRICS**

**Date and venue of  
hearing** : **23 September 2014  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **28 October 2014**

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**DECISION**

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## **Decision**

1. The deferment rate is 5.75%.
2. The vacant possession value of the upper residential floors at the agreed valuation date was £513,910.
3. The price to be paid for the freehold interest is £391,257 in accordance with our valuation at appendix 2.

## **Background**

4. The property, which we shall refer to as number 14, comprises ground floor retail premises with a separate entrance leading to a flat on the first floor and a maisonette on the second and third floors. It forms the end of a short parade of seven similar properties that would have been built in the early part of the twentieth century.
5. Number 14 is subject to a head lease granted on 21 April 1927 for a term of 99 years from 29 September 1925 at an annual rent of £16.25. Thus at the date of the hearing the head lease had 10 years left to run.
6. In 1980 the then owners of the head lease granted a tenancy of the upper maisonette to Patricia Tanswell who has lived there ever since. She is a Rent Act protected tenant and pays a monthly rent that equates to £4,155 per year.
7. The tenant purchased the head lease in May 2010. On 9 July 2010 it granted an assured shorthold tenancy of the first floor flat for a term of 6 months. It seems that the tenants remain in occupation paying a monthly rent that equated to £10,800 per annum.
8. The tenant also has an interest in number 12 the Vale although we do not know the nature of that interest. In any event either the tenant or a predecessor granted a lease of the two ground floor retail units at 12 and 14 The Vale to MRAD Trading Ltd. That company apparently used the premises as a shisha pipe lounge/parlour and restaurant/café. The use was certainly in breach of the planning legislation and may well have been in breach of the company's lease. In any event the London Borough of Ealing issued an enforcement notice on 26 September 2011 and a copy of that notice was served on the tenant. MRAD Trading Ltd appealed the enforcement notice but the appeal was dismissed on 3 February 2012. The lease clearly came to an end although we do not know if it was forfeited, surrendered or expired by effluxion of time. On 1 July 2012 the tenant granted a lease of both retail units to Roni Trade Ltd for a term expiring on 27 September 2024 and at a rent of £30,000 per year, subject to review. Both MRAD Training Ltd and Roni Trade Ltd had a common director and

it is perhaps surprising that the tenant chose to grant a new lease to a connected company given the past breaches of planning legislation. In any event Roni Trade Ltd continued using the premises as a shisha pipe lounge/parlour and restaurant/café.

9. From the e-mail correspondence in the last section of the hearing bundle it is apparent that the use of the retail premises was not only in breach of the planning legislation but may well have been illegal because the police appear to have been involved and criminal proceedings contemplated. "Bailiffs, police and various uniform parties" attended the retail premises in the middle of October 2013 [page 183]. It seems that Roni Trade Ltd ceased trading for a period of time, presumably following what appears to have been a raid. However the lease continued and on 24 October 2013 the tenant's agent, Martin Gurpinar, informed Ealing that Roni Trade Ltd "fully intends to reopen the shisha café post the bailiff attending" [page 182]. On 11 March 2014 Mr Gurpinar again wrote to Ealing informing them that "the shisha café at the above address appears to have re-opened" [page 180].
10. The landlord purchased the freehold reversionary interest in March 2012 at auction for £295,000 and the purchase was completed on 30 April 2012. On the day that the landlord completed the purchase his solicitors served a section 146 notice on the tenant asserting that the use of the ground floor as a shisha pipe lounge/parlour and café was in breach of a covenant in the head lease not to use any part of the premises for any "*Trade or Dealing of a noisy noxious or offensive character*".
11. On 30 July 2012 the tenant gave notice of its wish to acquire "*the freehold house and premises*" under the provisions of the Leasehold Reform Act 1967. ("the 1967"). On 26 September 2012 the landlord gave its reply. It denied the tenant's claim on the grounds that number 14 "*may not properly be described as a house*".
12. The ensuing dispute was litigated in the Brentford County Court and on 29 January 2014 HH Judge Powels concluded that number 14 was indeed a house and confirmed the tenant's right to acquire the freehold under the 1967 Act.
13. An appeal was contemplated but was forestalled on the basis of a number of concessions made by the tenant to which we shall shortly refer.
14. On 5 March 2014 the tenant served a section 146 notice on Roni Trade Ltd effectively on the basis of rent arrears and possession of the premises was obtained on or about 23 April 2014. The ground floor retail premises have remained empty ever since and were vacant at the time of our inspection.

15. On 2 May 2014 the tenant applied to this tribunal under section 21 of the 1967 Act to determine the price to be paid for the freehold interest and also the terms of the proposed transfer.

### **Hearing and inspection**

16. We heard the application on 23 September 2014 and inspected number 14 on the afternoon of the following day. On the inspection we were accompanied by representatives of both parties. After inspecting number 14 we took the opportunity to make an external inspection of all the comparables referred to by the two experts and considered below.
17. At the hearing the landlord was represented by Mr B Swabey, a solicitor. Mr B C Sworn, FRICS gave expert valuation evidence on behalf of the landlord. The tenant was represented by Mr G Healey, a barrister. Mr W Robinson BSc, MRICS gave expert evidence on behalf of the tenant.

### **Issues**

18. The parties and their valuers had agreed the following:
- a. That number 14 should be valued under section 9(1A) of the 1967 Act.
  - b. Although the actual valuation date was 30 July 2012 the parties had agreed a valuation date of 23 January 2014 as part of their agreement to forestall an appeal.
  - c. Similarly the parties had agreed the unexpired term of the head lease at 12.165 years, which was calculated from the actual rather than the agreed valuation date.
  - d. A capitalisation rate of 7%.
  - e. Relativity at 31.5%.
19. The rental value of the retail ground floor at £10,000 per annum, which capitalised at 7% produces an agreed freehold value of the ground floor premises of £142,857.
20. They had in addition agreed the floor areas for the component parts of number 14.
21. Only two issues were in dispute, viz:
- a. The deferment rate.

- b. The freehold vacant possession value of the upper three floors.

### **Mr Robinson's approach**

#### The deferment rate

22. Mr Robinson's starting point was a deferment rate of 4.75% for houses in Prime Central London ("PCL") endorsed by the Lands Tribunal in Sportelli. He added 0.75% for the additional management complexities of a tertiary shop, non-self contained residential usage and a regulated tenant in occupation. He considered that number 14 offered less opportunity for growth than PCL properties and accordingly reduced the real growth rate of 2% endorsed in Sportelli by 0.75%, which had the effect of increasing the deferment rate by a further 0.75%. Finally relying on the Upper Tribunal decision in Cadogan Square Properties Ltd v Cadogan [2010] UKUT 427 (LC) he reduced the real growth rate by a further 0.75%. This further deduction related to the short term growth prospects and reflected his perception that the market was close to its peak in January 2014 and that a hypothetical buyer would anticipate a real growth rate over the remaining 12 years of the head lease that was substantially less than the 2% real growth rate assumed in Sportelli. Thus he added a further 2.25% to the Sportelli rate of 4.75% to produce a deferment rate of 7%.

#### Freehold vacant possession value of the upper residential floors

23. Mr Robinson relied principally on the sales of numbers 4, 8/10 and 14 The Vale at auction in March 2012. They sold for £700,000, £960,000 and £295,000 respectively.
24. Mr Robinson first had to value number 14 on the assumption that the head lease had expired. He did this by applying the relativity of 31.50% to the sale price of £295,000 and concluded that with vacant possession no 14 was worth £430,000  $[(295,000 \times 100)/68.50 = 430,657]$ .
25. He then calculated the value of the ground floor commercial premises of all three properties by applying the agreed capitalisation rate of 7% to the agreed, actual or assumed rental incomes. He then calculated the value of the residential floors in all three properties by deducting the ground floor commercial values from the vacant possession values of the whole properties. He thus concluded that the residential floors in number 4 were worth £557,143, in number 8/10, £613,571 and in number 14, £287,143. He made a number of assumptions about the internal floor areas in number 8/10 and number 4 and then concluded that these values equated to £223 per square foot ("psf") for no 4, £115 for number 8/10 and £143 for number 14.
26. Next he reduced the £psf value of number 4 by £100 psf to reflect the "high level of finish" about which he had been told by a letting agent. Thus he assumed an unimproved psf value for number 4 of £123.

27. However he had reservations about the price paid by the landlord for number 14 at auction. He assumed that the landlord had paid too high a price because (a) he was unaware of the Rent Act protected tenancy (b) he wrongly assumed that he could forfeit the head lease and (c) he was unaware of the tenant's right to acquire the freehold interest under the 1967 Act. Thus he gave more weight to the other two sales and valued the residential floors in number 14 at £121 psf.
28. However he had to adjust that figure to allow for the assumed increase in value between the auction date in March 2012 and the agreed valuation date in January 2014. As a result of the mixed use of number 14 he decided not to adopt any of the indices in common use. Instead he relied on two properties (95 and 137 the Vale) that had been offered to the market in both 2012 and 2014. We will say more about his analysis later but suffice it to say he concluded that residential values in The Vale increased by 5% between March 2012 and the valuation date. Applying that uplift produced £127 psf and a vacant possession value for the residential floors of £255,650. Finally he made a downward adjustment of 25% to the whole of the residential value to reflect the Rent Act protected tenancy of the upper flat thus producing a vacant possession value of £191,738 for the residential floors. The freehold value of the ground floor having been agreed at £142,857 he therefore valued number 14 at £334,595 and he calculated the price to be paid for the freehold interest at £188,100.

### **Mr Sworn's approach**

#### Deferment rate

29. Mr Sworn said that he saw no need to depart from the Sportelli deferment rate of 5% that was determined for flats. In Sportelli the Lands Tribunal determined a generic rate of 4.75% for houses and 5% for flats. By adopting the rate applicable for flats he had in effect factored in an additional 0.25% to reflect the additional management responsibilities associated with flats. However he saw no need to go beyond that. In particular he considered that there was no need to reduce the real growth rate of 2% endorsed in Sportelli. In his opinion number 14 was likely to increase substantially in value because it was on the borders of the now fashionable areas of Hammersmith and Fulham and as buyers were priced out of those areas the prices in W3 would be forced up.

#### Freehold vacant possession value of the upper residential floors

30. Mr Sworn considered using numbers 4, 8/10 and 14 the Vale as comparables but rejected that approach. His explanation given at the hearing was that the sales were too distant from the agreed valuation date.
31. Initially he relied on the sales of 1 The Vale in August 2012 and 135D The Vale on 4 February 2014. However he abandoned 1 The Vale when it became apparent that that it had not sold for £200,000 as he had been led

to believe. 135D The Vale is a second floor flat in a similar but much larger parade with ground floor commercial premises. The flat sold for £235,000 equating to £5,465 per square metre ("psm"). However the lease had only 68 years to run and he considered the sales of a number of other flats in the area that were all completed close to the valuation date. In particular the sales of 8 Holley Road, 49 Holley Road, and 13 Vale Court. He adjusted the sale prices for time by using the Land Registry House Price Index for Ealing. The adjusted prices indicated values of £6,118 psm, £6,315 psm and £6,440 psm respectively.

32. He considered that these comparables suggested a value of £5,750 psm if sold on a long lease and he used that figure to value the upper residential floors of number 14. This gave him values of £477,250 for the first floor flat and £598,000 for the upper maisonette if modernised and sold on the open market with vacant possession.
33. However neither flat was modernised and the upper maisonette was subject to a Rent Act protected tenancy. Thus adjustments had to be made to the modernised vacant possession values. He reduced the value of the first floor flat by £156,260 to reflect the cost of refurbishment thus producing a value of £320,990. He reduced the value of the upper maisonette by £195,780 to reflect the cost of refurbishment and by a further £209,300 (35%) for the Rent Act protected tenancy. Thus he valued the upper maisonette at £192,920. The freehold value of the ground floor having been agreed at £142,857 he therefore valued number 14 at £656,767 and he calculated the price to be paid for the freehold interest at £406,387.

### **Reasons for our decision**

#### **Deferment rate**

34. It should be said at the outset that Mr Robinson produced no empirical evidence to support the substantial increase in the deferment rate to which he spoke. His proposed increases in the various components of the deferment rate were no more than subjective judgments although no doubt based upon his knowledge and experience.
35. We deal firstly with his suggestion that the 0.25% addition for flats endorsed in Spotelli should be increased by a further 0.50% to reflect the additional management complexities of Number 14. We agree with his assessment that some increase is justified. In contrast to the properties considered in Sportelli Number 14 is neither a house nor a block of flats. As far as the ground floor commercial property is concerned there is always the possibility of unpaid rent and void periods in a tertiary position such as the Vale. The tenanted flats would be more difficult to manage than owner occupied long leasehold flats. We agree with Mr Robinson that an uplift is appropriate but in trebling the uplift endorsed in Spotelli he goes too far. Consequently we agree an uplift of 0.25% to the Sportelli rate of 0.25% to reflect the management difficulties inherent in Number 14.

36. We do not agree with Mr Robinson's assertion that the real growth rate should be reduced by 0.75% because the property is not in Prime Central London ("PCL"). As observed he produced no empirical evidence to support that assertion. In answer to our questions Mr Healey accepted that he was unaware of any Lands Tribunal or Upper Tribunal decision that has endorsed a reduction in the real growth rate for an inner London property outside PCL. Mr Sworn's evidence, that this part of Acton was likely to be gentrified as unsuccessful buyers were forced to look beyond the borders of Hammersmith and Fulham, was persuasive. We can see no reason to reduce the real growth rate simply on the basis of Number 14's location outside PCL.
37. Finally we turn to Mr Robinson's proposal that the real growth rate should be reduced by a further 0.75% to reflect the reversion of 12 years. Applying the guidance of the Upper Tribunal in Cadogan Square Properties Ltd, we agree with Mr Robinson that we must have regard to the cycle of the property market and the likely growth rate over the coming 12 years. Certainly the market has been on the rise for some time although whether it is nearing a peak is debateable in particular in respect of commercial property: it seems likely that with an improving economy there may well be greater growth potential for commercial properties. Again we agree with the thrust of Mr Robinson's argument but believe that he has overstated his case. A more modest increase in the real growth rate of 0.5% is justified. Such an increase is broadly consistent with the increases approved in Cadogan Square Properties Ltd although we accept that the timing both in terms of the property market and the length of the reversion is somewhat different.
38. We therefore adopt a deferment rate of 5.75%. That is the Sportelli rate of 5% for flats plus an additional 0.25% to reflect the additional management complexities of Number 14 and an additional 0.50% to reflect the length of the reversion in the context of the current property market.

#### Freehold vacant possession value of the upper residential floors

39. We disagree with Mr Robinson's approach for each of four reasons. Firstly because his methodology in calculating the vacant possession value of number 14 is flawed. Relativity compares the value of the vacant possession freehold interest with the value of an existing leasehold interest. In this case the comparison is between the values of two freehold interests: the vacant possession freehold interest and the freehold interest subject to the head lease. As we pointed out at the hearing the price paid at auction by the landlord was effectively a sum that reflected the vacant possession value, deferred for the remaining term of the head lease. Mr Sworn accepted that analysis although Mr Robinson persisted with his objections to using number 14 as a comparable. The only logical means of using the price paid at auction to calculate the current vacant possession value is by the application of the deferment rate and not the agreed relativity.



40. Secondly because there was a degree of artificiality in attempting to derive the value of the residential floors from the composite sale values of the three properties sold at auction in March 2012. The approach was dependent upon the two valuers having correctly assessed the values of the ground floor commercial premises. They may have agreed that valuation in respect of Number 14 but it does not necessarily follow that the agreed value was either correct or that it could be applied to the other two commercial premises in the parade. The value of the commercial premises has been calculated by the application of a capitalisation rate of 7%. That rate may be appropriate to value the nominal ground rent but we are not persuaded that it is appropriate to value the open market rent of the commercial premises. As both valuers agreed The Vale is a tertiary commercial location. As evidenced by both Number 14 and the adjoining property there are likely to be both rent arrears and void periods. Consequently a higher capitalisation rate may well have been appropriate. It is possible that the use of the 7% capitalisation rate to value the commercial elements had reduced the theoretical value of the residential elements.
41. Thirdly because his reasons for largely discounting the residential element of Number 14 as a comparable were not persuasive. He did not know what was in the landlord's mind when he purchased Number 14 and his assumptions were little more than speculation. It is reasonable to assume that the landlord had undertaken due diligence before purchasing Number 14 at auction and that he was aware of the Rent Act tenancy.
42. As far as the potential for forfeiting the head lease was concerned the landlord would have appreciated that a section 146 notice is only the first step in a rather tortuous procedure that rarely results in forfeiture. Furthermore it is apparent that a hypothetical purchaser of Number 14 at the agreed valuation date would have been in a similar position to the landlord. The enforcement proceedings were a matter of public record, the subtenant was still in occupation and either had or was about to reopen the shisha café (see paragraphs 8 and 9 above).
43. We accept that the landlord may not have appreciated that the head lessee could acquire the freehold reversion under the provisions of the 1967 Act. However, it seems highly unlikely that any other potential hypothetical buyer would have considered that a property that was built as a shop with upper residential accommodation and always used as such could be described as an a house "reasonably so called" within the meaning of the 1967 Act: indeed some may find the court's decision to that effect surprising. Even had they considered the possibility they would have been aware that any claim to acquire the freehold would have unlocked additional marriage value. With respect to Mr Robinson, it appears that his reservations were intended primarily to mitigate the inconvenient sale of number 14 that he was had to consider because of his reliance on the sales of 4 and 8/10 The Vale.
44. Finally his evidence in justifying his adjustment of 5% for time was wholly unpersuasive. He objected to using the HM Land Registry index for Ealing

because it related only to residential property notwithstanding that the issue in dispute was the valuation of the residential element of Number 14. As he pointed out (see paragraph 28 above) 95 and 137 The Vale had been offered to the market in both 2012 and 2014. However from reading Mr Robinson's report it is apparent that 95 The Vale was withdrawn from the market in 2012 without a sale being achieved. Mr Robinson was simply relying on intelligence that an offer of "around £1.1m" was received although where that information came from is not clear. Equally with regard to 137 The Vale it is apparent that in 2012 that property was offered at auction but withdrawn when the bidding reached £570,000. As Mr Sworn rightly pointed out it is not uncommon for auctioneers to take bids "of the wall" in an attempt to force bidding to the reserve price. It is simply not possible to conclude from these uncompleted sales in 2012 that prices in this area for mixed use property grew by only 5% during the following two years. Indeed it seems highly unlikely given that residential property prices in Ealing increased at more than more than three times that rate.

45. Although the HM Land Registry Index may not be a perfect tool for measuring price inflation for this sector of the market it is preferable to the methodology adopted by Mr Robinson and as with Mr Sworn we have used it to adjust for time.
46. We do however agree with Mr Robinson to the extent that if a subject property has been sold in the recent past it should always be considered as a comparable because, time apart, it will not usually require the application of what are inevitably subjective adjustments. Thus in this case no adjustments are required for either condition or the Rent Act protected tenancy. We have analysed the sale price of £295,000 achieved for Number 14 in March 2012. We have used the HM Land Registry Index to adjust for time and the 5.75% deferment rate to calculate the present vacant possession of the freehold interest. A copy of that analysis is included at appendix 1 to this decision. As will be seen it gives a value of £541,869 for the upper residential floors.
47. Turning to Mr Sworn's evidence we agree that 135D The Vale is a suitable comparable. Although a little distance away from Number 14 both properties are in the same area, the two parades are of similar character and both properties have ground floor commercial premises. However as Mr Sworn observed 135 D The Vale has a lease of only 68 years and the price achieved requires an upward adjustment. We do not know why Mr Sworn did not use the relativity tables in common use. Unfortunately the other comparables that he relied on to adjust to a long lease or freehold price were all unsuitable because they were flats in purpose built blocks without any commercial element.
48. Nevertheless, the upward adjustment that Mr Sworn made for the short lease of 135D The Vale appears reasonable. His implied relativity of 95% is higher than that indicated by any of the relativity tables in common use. We therefore agree his values of £477,250 for the first floor flat and £598,000 for the upper maisonette if modernised and sold on the open market with vacant possession.

49. Both values need to be adjusted for condition and the value for the upper maisonette needs to be further adjusted for the Rent Act tenancy. In this respect there was little to choose between the approaches of the two valuers as they acknowledged. For the reasons stated above we prefer the approach of Mr Sworn and we have adopted his deductions and his residual valuation of £513,910 for the residential element of Number 14, which is below our analyse of the auction sale of number 14 referred to in paragraph 46 above. By adding the agreed value of the commercial element this produces a total vacant possession freehold value of £656,750.

50. On the basis of the found deferment rate and vacant possession freehold value we determine the price to be paid for the freehold interest at £391,257 in accordance with our valuation at appendix 2 to this decision.

**Name: Angus Andrew**

**Date: 28 October 2014**

## Appendix 1

**Analysis**  
**14 The Vale**  
**London, W3 7SB**

Sold March 2012	£295,000
Time adjusted to the Valuation Date	£340,578
Unexpired Term	12.5 years

**Term**

Rent	£16.25	
YP 12.5 yrs @ 7%	<u>8.1537</u>	132

**Reversion**

Vacant Possession Value	X	
PV of £1 after 12.5 yrs @ 5.75%	<u>0.4972</u>	
		<u>0.4972X</u>
		£340,578

**Analysis**

$£340,578 = £132 + 0.4972X$   
 $£340,578 - £132 = 0.4972X$   
 $£340,446 = 0.4972X$   
 $X = £340,446 / 0.4972$   
 $= £684,726$

Current VP Value =  
 £684,726

Current VP Value	£684,726
less Commercial	<u>£142,857</u>
Residential element	£541,869

## Appendix 2

### 14 The Vale London W3 7SB

Valuation Date	23/01/2014
	12.165
Unexpired Term	years
Capitalisation Rate	7%
Deferment Rate	5.75%
Freehold Value	£656,750
Relativity	31.50%
Existing Lease Value	£206,876

#### **Freeholder's Present Interest**

##### **Term**

Term 1		
Rent Reserved	£16.25	
YP for 12.165 years @ 7%	<u>8.01</u>	
		£130

##### **Reversion**

FH reversion	£656,750	
PV of £1 in 12.165 years @ 5.75%	<u>0.5066</u>	
		<u>£332,710</u>
		£332,840

#### **Marriage value**

Proposed FH Reversion	£656,750	
less Existing Freeholder's Interest	£332,840	
Short lease value	<u>£206,876</u>	
Marriage Value		<u>£117,034</u>
50:50 division		<u>£58,517</u>

##### **Price for**

**Enfranchisement** **£391,257**