

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: The Trustees of the Eyre Estate

Respondent: Mrs P E Rothman



Re 25 Norfolk Road, St John's Wood, London NW8 -----

Date of tenant's notice and valuation date: 22 December 1993

Application to tribunal dated 14 June 1996

Heard 4 March and 12 May 1997 (inspection 15 April 1997)

Appearances:

Mr A Radevsky (counsel)
Mr G E Pemberton (Lee & Pembertons, solicitors)
Mr J E C Briant BA ARICS (Daniel Smith, chartered surveyors)
for the landlord

Mr E Johnson (counsel)
Mr D Conway and Mrs I Hibberd (David Conway & Co, solicitors)
Mr K G Buchanan BSc ARICS (Conrad Ritblat, chartered surveyors)
Mrs P E Rothman (tenant)
Mr L J Rothman MA C.STAT MAE FMRS
for the tenant

Members of the leasehold valuation tribunal:

Lady Wilson MA (chairman)
Mr C J Bradley BSc FRICS JP

Date of tribunal's decision: - 7 JUL 1997

The facts

1. 25 Norfolk Road is a detached Victorian Gothic house built in 1847. As improved by the tenant it has accommodation which includes drawing room, dining room, conservatory, four bedrooms, two studies and two bathrooms, a garden with swimming pool and summer house and a single garage with an additional off-street parking space. It has, as improved by the tenant, an effective floor area of 183 square metres, and an unimproved effective floor area which is calculated by Mr Buchanan for the tenant to be 147 square metres. It is held at a fixed ground rent of £400 per annum under a lease for a term of 60 years from 24 June 1964, expiring on 23 June 2024 and with thus approximately 30½ years unexpired at the valuation date, which is 22 December 1993.

2. For the landlord, Mr Briant proposed in his written valuation an enfranchisement price of £349,698, (adjusted during the hearing to take account of a revised figure for improvements), and, for the tenant, Mr Buchanan proposed either £168,069 or £108,571 if adjusted as described under paragraph (i) of our decision below. Mr Briant's valuation is attached to this decision as Appendix A, and Mr Buchanan's are attached as B(i) and B(ii). (B(ii) was revised downwards when the terms of the transfer were agreed between the parties during the course of the proceedings). The comparable properties relied on by either or both valuers are listed in an agreed schedule which is attached as Appendix C.

3. On 15 April 1997 we inspected internally and externally the subject property and two of the comparable properties relied on by both valuers: 2 Norfolk Road and 4/4A Norfolk Road, and we inspected externally all the other comparable properties relied on by each of the valuers.

4. It was agreed that valuation is to be made under section 9(1C) of the Leasehold Reform Act ("the Act"), and that the marriage value should be divided equally. A list of improvements carried out by the tenant was also agreed, but not their value.

5. The following issues emerged:

- (i) the value of the freehold interest;
- (ii) the value of the leasehold interest;
- (iii) the value of the improvements in relation to (a) the freehold interest and (b) the leasehold interest;
- (iv) yield.

Decision

(i) The value of the freehold interest

Mr Briant suggested £1,150,000 for the improved freehold interest and Mr Buchanan £1,100,000. Both counsel agreed that the difference between the two valuations was within valuation tolerance and neither suggested that we would be wrong to split the difference between the two. We therefore determined this head of our valuation at £1,125,000, which appeared to us to be, on the evidence, a reasonable figure.

In addition to the deduction to be made for improvements, dealt with below, Mr Buchanan asked us to make deductions of (i) 5% for the scarcity of freeholds in St John's Wood at the valuation date; (ii) £25,000 to reflect the landlord's costs which a tenant would have to pay to acquire the freehold and the cost of a sale of the freehold to unlock the marriage value gain; (iii) 5% for the possibility that the landlord might be faced with a property in poor condition at the end of the term. In our view (i) (for

which no market evidence was adduced) is, or should be, taken into account in any market valuation and no further discount is called for under this head; (ii) would, if it was a proper deduction, apply in every case but, as far as we are aware, is not a point which has been made before, and Mr Buchanan agreed that it had never occurred to him before (or since). We consider that the assumption in section 9(1A) of the Act (that Part I of the Act confers no right to acquire the freehold) suggests that we should not take into account the possible costs of realising the landlord's interest, (or, indeed, the tenant's interest). Similarly, (iii) has not, to our knowledge appeared in any other valuation under the Act, and we agree with Mr Radevsky that the market would assume that high value properties such as this, which are virtually certain to be insured against risks such as subsidence, would be kept in a reasonable state of repair. We reject these three proposed deductions.

(ii) The value of the leasehold interest

Mr Briant proposed a value of £625,000 for the improved leasehold interest and Mr Buchanan £625,000 for the unimproved leasehold interest. Mr Briant relied on an assignment of 35 year term of a lease of 58 Queen's Grove NW8 in October 1996 for £795,000, which he adjusted for date of sale, length of lease and size. He also gave as his opinion, derived from settlement evidence, that a differential of 54% between the 30½ year lease and the freehold was correct.

Mr Buchanan relied on the sale for £1,150,000 in November 1993 of a 62½ year lease of a very similar but smaller house, 2 Norfolk Road; on the sale in September 1993 for £1,286,000 of a 69½ year lease of a larger house, 4/4A Norfolk Road (both of these properties subject to ground rent reviews to 1/60th of land value); on the sale in June 1994 for £1,000,000 of a 42 year lease of 30 Marlborough Place, with the benefit of a

claim under the Act; and on the sale of the 35 year lease of 58 Queen's Grove relied on by Mr Briant. He adjusted these transactions for factors such as layout, facilities, condition, size, lease length and ground rent reviews, and arrived at a value of the existing leasehold interest, unimproved, of £625,000. Mr Johnson, for the tenant, called the tenant's husband, who is a chartered statistician, to give his analysis of comparable transactions. These he adjusted to zero ground rents and devalued to a price per square metre, and, using statistical methods, arrived at the conclusion that the percentage differential between 30½ year lease and freehold values to be derived from the transactions which he analysed was 73.9%. Mr Johnson also put before us a letter from Mr Rayden (the tenant's son-in-law), giving his opinion of the value of relatively short leases derived from rents obtainable.

In our view, a strictly mathematical approach of the kind suggested by Mr Rothman is not a reliable guide to the market, as it fails to take into account factors such as ground rent reviews, and whether these are to fixed amounts or require some form of adjustment which may involve argument, and we prefer to rely on market evidence, the opinion of valuers, and our own knowledge. Similarly, an estimate of rental values such as that contained in Mr Rayden's letter is in our view an unreliable guide to capital value.

In all the circumstances we have had regard particularly to the transactions relating to 2 and 4/4A Norfolk Road which are, apart from lease length and ground rent reviews, very good comparables, and we have come to the conclusion that the improved leasehold interest was, on the assumption that it was unenfranchisable and conferred no security of tenure at the end of the term, worth, at the valuation date, £650,000.

(iii) The value of the improvements in relation to (a) the freehold interest and (b) the leasehold interest

(a) This issue occupied a very considerable proportion of the hearing. We were assisted by the evidence given and submissions made at the hearing, but even more assisted by our inspection, at which we were able to assess for ourselves the contribution made by the very extensive improvements which the tenant had carried out. Our general conclusions are that works of decoration, however elaborate and attractive they may be, do not as a rule add to the value of an already high value property, where a purchaser is likely to wish to redecorate to his or her taste; that works such as kitchen and other fitted cupboards, electrical rewiring, and upgrading the central heating, which were carried out twenty or more years before the valuation date, would be likely to be replaced by a purchaser and do not for the most part add significantly to value; and that, as is generally accepted, cost does not necessarily equate with value.

We in general agree with Mr Briant's assessment of the value of the improvements in relation to the freehold, as he revised them during the course of the hearing. Where we do not agree with him, our assessment is as follows:

(i) Italian floor tiles.....	£5000
(ii) Conservatory.....	£50000
(iii) Additional telephone lines.....	£500
(iv) Double glazing.....	£5000
(v) Landscaping of garden.....	£10000
(vi) Security lights.....	£500
(vii) Garden lighting.....	£500

Accordingly, we assess the value of the improvements, as against the freehold value, at £175,800.

(b) Mr Radevsky argued that we should take the same figure for improvements against

the leasehold value as we did against the freehold value. He said that in other cases (43 Hamilton Terrace and 43 Queen's Grove, for example), the tenant's valuer had agreed that the same amount should be deducted from both values. He said that the value of the improvements would be written off by the time the lease had expired. Mr Johnson relied on *Henry Smith's Charity Kensington Estate Trustees v Frampton* (273 EG 990) where a leasehold valuation tribunal made the same percentage deduction from each of the two values (both sides agreeing that a percentage approach was appropriate). He pointed out that, where the improvements are as substantial as they are in this case, the nonsensical consequence of applying the same capital deduction would be that the lease would have a minus value as it diminished.

On this point we agree with Mr Johnson on the facts of this case, where the majority of the improvements involve adding space and improving the layout of the house and would not in our view depreciate as Mr Radevsky suggested. In our view it is appropriate to follow the approach taken by the tribunal in *Frampton* (and also in the decision on *Williams v Portman Estates* (LON/LVT/570)) and we therefore adopt a percentage deduction for improvements against the leasehold value, resulting in different absolute amounts. In this case we consider the appropriate percentage, taking rounded figures, to be 15.6%. We therefore put the unimproved value of the leasehold interest at £548,600.

(iv) Yield

Mr Briant argued for 6% and Mr Buchanan for 7%. Mr Briant said that the factors affecting yield were location, value, and lease length and he relied on a number of agreed enfranchisements, in particular 5 Cavendish Avenue; 8, 121, 143 and 145 Hamilton Terrace; and 30 Marlborough Place, where he produced a breakdown of the

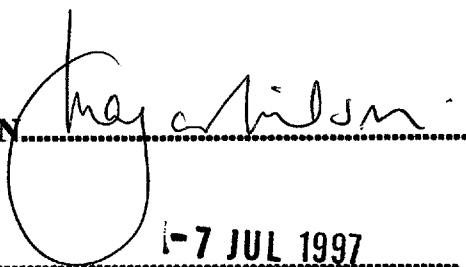
agreed price calculated on a yield rate of 6%. He also pointed to the recent leasehold valuation tribunal decision in relation to 27 Springfield Road, where Mr Buchanan had agreed a rate of 6%, although other aspects of his valuation were not agreed. Mr Buchanan agreed before us that 27 Springfield Road was a lower value property in a poorer location, with a longer lease and yielding a lower ground rent. He nevertheless contended for 7% on the basis of five leasehold valuation tribunal decisions, (reviewed by this tribunal in the recent decision on 1 Clifton Hill (LON/LVT/610)), all of which were or are subject to appeals to the Lands Tribunal.

In our view, while we appreciate the advantages of a consistent approach to yield from this tribunal, the value, location and lease length and terms in the present case suggest a yield rate of 6.5%.

Determination

We accordingly determine the premium to be paid by the tenant for the freehold in possession of 25 Norfolk Road to be £272,489, say £272,500 (two hundred and seventy two thousand, five hundred pounds) in accordance with our valuation which is attached to this decision as Appendix D.

CHAIRMAN.....



DATE.....

1-7 JUL 1997

Daniel Smith

CHARTERED SURVEYORS

THE LEASEHOLD REFORM ACT 1967 (As Amended)

PROPERTY 25 Norfolk Road

NOTICE DATE 22/12/93

LEASE DETAILS

DATE 24/06/64
 TERM 60
 EXPIRY DATE 24/06/24
 UNEXPIRED TERM 30.53
 GROUND RENT £400 p.a. fixed

VALUES

FHVP £1,150,000
 UNEXPIRED TERM £625,000 (54%)
 LESSEE'S IMPROVEMENTS £150,000

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM</u>	<u>GROUND RENT</u>		<u>£400</u>
x YP	30.53 years @	6.00%	13.85
			<hr/>
			£5,541

<u>REVERSION</u>	<u>FHVP</u>		<u>£1,000,000</u>
x PV	30.53 years @	6.00%	0.1688544
			<hr/>
			£168,854

Lessors Interest £174,395

MARRIAGE VALUE

	FHVP	£1,000,000
Less	Lessor's Present Interest	£174,395
	Lessees Interest	£475,000
		<hr/>
Marriage Value		£350,605

Take 50% Marriage Value **£175,302**

TOTAL £349,698

25 NORFOLK ROAD, LONDON NW8

Valuation as at 22nd December 1993

Under the provisions of the Leasehold Reform Act 1967 Section 9(1c) as amended by the Leasehold Reform Housing and Urban Development Act 1993

2. WITH ADJUSTMENTSValue of Freeholders InterestTerm I

Ground Rent	£400 pa	
YP 30.5 yrs @ 7%	12.47	£4,988

Reversion to

Adjusted unimproved open market Freehold Value	£765,000	
PV £1 30.5 yrs @ 7%	.127	<u>£97,155</u>
		£102,143

Marriage Value

Adjusted unimproved open market Freehold Value	£765,000	
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Less (i) Freeholders Interest	£102,143	
(ii) Unimproved open market Leasehold Value	£625,000	
(iii) Costs	<u>£25,000</u>	

Marriage Value	£12,857	
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Freeholders share at 50%		<u>£6,428</u>
		£108,571

Less value of restrictive covenants		<u>£50,000</u>
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Enfranchisement Price		£58,571
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25 NORFOLK ROAD, LONDON NW8

Valuation as at 22nd December 1993

Under the provisions of the Leasehold Reform Act 1967 Section 9(1c) as amended by the Leasehold Reform Housing and Urban Development Act 1993

1. NO ADJUSTMENTSValue of Freeholders InterestTerm I

Ground Rent	£400 pa	
YP 30.5 yrs @ 7%	12.47	£4,988

Reversion to

Unimproved open market Freehold Value	£850,000	
PV £1 30.5 yrs @ 7%	.127	<u>£107,950</u>
		£112,938

Marriage Value

Unimproved open market Freehold Value	£850,000	
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Less (i) Freeholders Interest	£112,938	
(ii) Unimproved open market Leasehold Value	<u>£625,000</u>	

Marriage Value	£112,062	
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Freeholders share at 50%		<u>£56,031</u>
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Enfranchisement Price		£168,969
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I would therefore ask the Tribunal to determine an Enfranchisement price of £58,571. However, if the Tribunal decides that there should be less or no adjustment I would request the Tribunal to determine an Enfranchisement price of not more than £168,969.


K G Buehanan BSc ARICS
Conrad Ritblat

25 NORFOLK ROAD, LONDON NW8

Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
25 NORFOLK ROAD	A 2 storey gothic Victorian style detached stucco fronted villa .	183 m ² 1970 sq ft	INTERNAL : 4 bedrooms, 3 bathrooms (1 en suite), sauna, 2 studies, kitchen/breakfast room, dining room, double reception room, maid's bedroom/kitchenette/bathroom, conservatory. EXTERNAL : Separate garage, OSP 1, summer house, swimming pool, terrace, landscaped garden.	30.53 years unexpired.	£400 fixed for the duration of the term.		Valuation date: 22/12/93
LEASEHOLD COMPARABLES							
58 QUEENS GROVE	A low built red brick 1930's house	164 m ² 1765 sq ft	INTERNAL : Entrance hall, guest WC, 2 reception rooms, kitchen/ breakfast, utility, 5 bedrooms , 1 dressing room, 3 bathrooms (1 en suite), separate WC EXTERNAL : Garage , rear garden, off street parking for 1/2 cars	35 years unexpired.	£75 p.a fixed for the duration of the term.	£795,000	October 1996
2 NORFOLK ROAD	Gothic Victorian stucco fronted house	166 m ² 1788 sq ft	INTERNAL : 4 bedrooms, 3 bathrooms, 2 reception rooms, kitchen, study, playroom. EXTERNAL : Garage, OSP 1	62 ½ years unexpired.	£400 p.a. Reviewable on 24/3/2008 and 24/3/2033 to 1/60 th of the land value.	£1,150,000	November 1993
4/4A NORFOLK ROAD	A 2 storey gothic Victorian style detached stucco fronted villa .	242 m ² 2605 sq ft	INTERNAL : Dining room, drawing room, kitchen/breakfast room, study, utility room, 4 bedrooms 2 bathrooms (1 en suite). Coach House : 3 bedrooms, bathroom, kitchen playroom, garage, OSP 2, garden.	69 ½ years unexpired	£450 p.a. Reviewable in 2005 and every 21 years thereafter to 1/60 th of the land value.	£1,286,000	September 1993
37 QUEEN'S GROVE	A grade II Listed semi detached Victorian villa.	179 m ² 1923 sq ft	INTERNAL : 5 bedrooms, 3 bathrooms, 4 receptions, kitchen, 2 cloakrooms, EXTERNAL : garage OSP 1	99 years unexpired.	£1,200 Reviewable every 21 years to ½ % of the freehold value.	£1,385,000	August 1996
30 MARLBOROUGH PLACE	Semi-detached double fronted Victorian Gothic house rendered in white stucco.	276 m ² 2971 sq ft	INTERNAL :4 reception rooms, kitchen. conservatory, 6 bedrooms, 3 bathrooms EXTERNAL : Rear garden, in and out driveway with off street parking for 4 cars.	42 years unexpired. Sold with the benefit of valid claim.	£200 pa. Reviewable on 25/3/1999 and every 21 years thereafter to 1/30 th of the land value.	£1,000,000	June 1994

25 NORFOLK ROAD, LONDON NW8

Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
25 NORFOLK ROAD	A 2 storey gothic Victorian style detached stucco fronted villa .	183 m ² 1970 sq ft	INTERNAL : 4 bedrooms, 3 bathrooms (1 en suite), sauna, 2 studies, kitchen/breakfast room, dining room, double reception room, maid's bedroom/kitchenette/bathroom, conservatory. EXTERNAL : Separate garage, OSP 1, summer house, swimming pool, terrace, landscaped garden.	30.53 years unexpired.	£400 fixed for the duration of the term.		Valuation date: 22/12/93
FREEHOLD COMPARABLES							
8 ST JOHN'S WOOD PARK	A low brick built detached house arranged over three floors.	278 m ² 2992 sq ft	INTERNAL : 5 Bedrooms, 2 bathrooms, shower room, games room, Study, 3 reception rooms, kitchen, utility room, guest cloakroom. EXTERNAL : Double Garage, OSP 3.	FREEHOLD	N/A	£1,025,000	September 1993
28 ACACIA ROAD	Semi detached house Victorian house.	115 m ² 1238 sq ft	INTERNAL : 3/4 bedrooms, 2 bathrooms, kitchen, 2/3 reception rooms EXTERNAL : Front and rear gardens, garage.	FREEHOLD	N/A	£675,000	September 1996
33 ACACIA ROAD	"Double-fronted" semi-detached residence, attractive Stucco-Plasterwork finish.	191 m ² 2056 sq ft	INTERNAL : 5 bedrooms, 3 bathrooms (1 en suite), dressing room, drawing room, TV area, reception room, dining room, kitchen/breakfast room, utility room, guest cloak. EXTERNAL : Garage OSP 1, small front garden, rear garden.	FREEHOLD Bank arranged sale. Tired condition. On market @£985,000	N/A	£860,000	July 1996
26 LOUDOUN ROAD	Grade II listed gothic style period residence.	141 m ² 1527 sq ft	INTERNAL : 4 reception rooms, 4 bedrooms, 3 bathrooms (2 en suite), dressing room, en suite shower room/WC, top floor studio room EXTERNAL : Front and rear gardens.	FREEHOLD	N/A	£660,000	February 1994

APPENDIX 'D'

25 NORFOLK ROAD, ST JOHN'S WOOD, LONDON NW8VALUATION BY THE LEASEHOLD VALUATION TRIBUNAL

NOTICE DATE 22/12/1993

LEASE DETAILS

DATE	24/06/1964
TERM	60
EXPIRY DATE	20/06/1924
UNEXPIRED TERM	30.53 say 30.5
GROUND RENT	£400 p.a fixed

VALUES

FREEHOLD VACANT POSSESSION	£1,125,000
LEASEHOLD IMPROVED	£ 650,000
LESSEES IMPROVEMENTS	175,800

Value of Freehold interest

Term

Ground Rent	£	400	
YP 30.5 yrs @ 6.5%		13.132	5253

Reversion

Unimproved Freehold Vacant Possession Value	949200
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PV £130. 5 yrs @ 6.5%	0.146572	<u>139126</u>
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144379

Marriage Value

Unimproved Freehold Vacant Possession Value	949200
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Less: (i) Freeholders Interest	144379
(ii) Unimproved Leaseholders Interest	<u>548600</u>

692979
<u>256221</u>

Freeholders share at 50%	<u>128110</u>
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272489

But say £272,500