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LVT 9

REF: LON/LVT/ 748

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LEASEHOLD REFORM ACT 1967

HOUSING ACT 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

APPLICANT: Grosvenor Estate, Belgravia

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1- JUL 1998

RESPONDENT: Almira Enterprises S.A

RE: 40 Wilton Crescent, London SW1

DATE OF TENANT'S NOTICE: 3 February 1994

APPLICATION TO TRIBUNAL DATED: 11 August 1997

HEARD: 9 December 1997

APPEARANCES: Mr T Bannister (Counsel)
Mr C S R Marr-Johnson FRICS (Messrs Marr Johnson & Stevens)
Mr S Umfreville (Messrs De Groot Collis)
Mr H Hood-Boyd (Almira Enterprises)

For the Tenant

Mr A Radevsky (Counsel)
Mr P Scoble (Messrs Boodle Hatfield, Solicitors)
Mr I Macpherson FRICS (Messrs Gerald Eve)
Mr G Pope FRICS (Messrs John D Wood & Co)

For the Landlord

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL:

Mrs J S L Goulden JP (Chairman)
Mr D E F Baldock FRICS
Mr D J Wills ACIB

Date of Tribunal's decision 17 June 1998.

DESCRIPTION

A substantial Grade II listed six storey stucco fronted mid terrace town house circa 1830 providing the following accommodation (as at February 1994):-

Floor	Description	Dimensions in metres (feet and inches)
Ground	Entrance Hall	
	Dining Room	4.5 x 7.06 (14'7" x 23'2")
	Sitting Room	4.05 x 5.39 (13'3" x 17'8")
	Cloakroom (with WC and wash basin)	
First	Landing	
	Drawing Room	6.46 x 4.79 (21'2" x 15'9") 4.17 x 8.04 (13'8" x 26'5")
Second	Landing	
	Bedroom 1	4.08 x 6.45 (13'5" x 21'2")
	Dressing Room	3.25 x 4.88 (10'8" x 16'0")
	Bathroom en suite	
Third	Landing	
	Bedroom 2	4.11 x 6.99 (13'6" x 22'11")
	Bedroom 3	3.46 x 5.02 (11'4" x 16'6")
	Bathroom	
Fourth	Landing	
	Bedroom 4	3.83 x 4.55 (12'7" x 14'11")
	Bedroom 5	3.25 x 6.07 (10'8" x 19'11")
	Bedroom 6	2.05 x 2.0 (6'9" x 6'7")
	Bathroom	
Basement	Bedroom 7	3.73 x 5.44 (12'3" x 17'10")
	Bathroom en suite	
	Laundry room	
	Bathroom	
	Bedroom 8	3.46 x 4.1 (11'4" x 13'5")
	Kitchen	2.57 x 7.22 (8'5" x 23'8")
	Pantry	
	Wine Cellar	
	Utility Room	3.1 x 3.8 (10'2" x 12'6")

The basement laundry room, separate bathroom, Bedroom 8 and kitchen have been rearranged since February 1994 to comprise only two larger rooms, one of which is now the kitchen.

The ground and basement floors are connected by a service lift as well as stairs.

At the hearing the following points were agreed:-

1. The share of marriage value was agreed at 50%
2. Capitalisation and deferment rates were agreed at 6%, the capitalisation rate on the ground rent being 5.5%
3. The valuation date was agreed as 3 February 1994
4. Apportionment of ground rents was agreed as to £90 per annum in respect of the subject property and £30 per annum for 40 Belgrave Mews North (totalling £120 per annum).

The points in issue were as follows:

1. Improvements
2. Values
3. Additional loss Claim

IMPROVEMENTS

On behalf of the landlords it was stated that the tenants' improvements amounted to no more than £50,000 and it was considered that this was a generous allowance. On behalf of the tenants, the value of the improvements was calculated to be £200,000. The landlord's agents suggested that the tenants' improvements were principally to central heating, alarm system, cupboards and some works to the

basement including damp proofing and tanking, but in their opinion these did not constitute material improvements, but generally items of repairs/renewals or a matter of personal taste. The tenants' agents stated that in addition to this security grilles and a skylight should also be considered an improvement, and the tenant had spent approximately £300,000 on improving the property.

VALUES

The landlord was of the view that the value of the unimproved freehold interest was £3,000,000 with the tenants suggesting a figure of £2,800,000.

With regard to the value of the unimproved lessee's interest, the landlord suggested this should be £1,050,000 and the tenant £1,000,000.

ADDITIONAL LOSS CLAIM

Mr Macpherson for the landlord considered that the damage to the landlord's interest came with the first enfranchisement of the subject property and not of what followed. He said "it is a consequence of the separation in the landlords' ownership by the enfranchisement of 40 Wilton Crescent now that the landlord is denied both the opportunity of realising the value of 40 Wilton Crescent and 40 Belgrave Mews North for occupation together and the opportunity for making good that loss in the enfranchisement price received or premium paid on the grant of an extended lease of 40 Belgrave Mews North. On that basis, it is an additional loss being suffered by the landlord on the enfranchisement of 40 Wilton Crescent in connection with the same landlord's ownership of other property, including 40 Belgrave Mews North, and so should be compensated on the enfranchisement of 40 Wilton Crescent".

The landlord suggest that the difference between the subject property and 40 Belgrave Mews North for sale together and separately was £200,000. The tenant argued

initially that there was no additional loss but later conceded that some figure could be appropriate but no specific figure was suggested.

Mr Macpherson on behalf of the freeholder asked for an enfranchisement price of £1,684,400 (Appendix B). Mr Marr-Johnson requested a revised figure of £1,481,863 (Appendix C).

INSPECTION

The Tribunal inspected the exterior and interior of the subject property and the exteriors of Nos 3, 7, 9, 19, 25 and 29 Wilton Crescent and 49 and 80 Chester Square, being comparables supplied by both parties.

CONCLUSIONS

IMPROVEMENTS

These consisted of works at basement level of the house including tanking against damp, an enlarged kitchen, alarm sensors, window shutters and the installation of central heating. Mr Pope put the value at £50,000 whilst Mr Umfreville considered that to be insufficient and valued them at £200,000. The Tribunal considered the value to be £100,000.

VALUES

On the reversionary value of the freeholder's interest unimproved, there was a difference of £200,000 between the values. £3,000,000 from Mr Macpherson for the freeholder and £2,800,000 from Mr Marr-Johnson for the lessee. The gap largely accounted for by the value of improvements. In respect of the value of the unimproved leasehold interest, the difference was £50,000, £1,050,000 against

£1,000,000. Mr Macpherson went straight to his value whilst Mr Marr-Johnson decided on a differential of 35% on his freehold value resulting arithmetically, in a figure of £980,000 which he rounded to, say £1,000,000.

The Tribunal after considering and examining the primary evidence of Mr Pope and Mr Umfreville preferred the values adopted by Mr Macpherson. Thus the substantive difference between the valuers for the total enfranchisement price was compensation under Section 9A. Mr Macpherson started with a value of £200,000 to be deferred for 15 years and whilst Mr Marr-Johnson did not initially admit this claim, during the hearing put forward a figure of £40/50,000. The Tribunal decided on a value of £150,000 deferred.

ADDITIONAL LOSS CLAIM

The relevant basis of valuation for this enfranchisement is to be found in the Leasehold Reform Act 1967 as amended Section 9(1C), which relevant amendment was introduced by Leasehold Reform, Housing and Urban Development Act 1993 Section 66 and reproduced in Schedule 15. It provides for the enfranchisement price payable to be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions.

“(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold or an extended lease and, where the tenancy has been extended under this Part of this Act, that the tenancy will terminate on the original terms date;”

(b) is not applicable to Section 9(1C)

- “(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part 1 of the Landlord and Tenant Act 1954;
- (d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;
- (e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant’s incumbrances; and
- (f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below”.

The following provisions apply also that,

- “(a) if in determining the price so payable there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall not exceed one-half of it; and

- (b) section 9A below has effect for determining whether any additional amount is payable to by way of compensation under that section.”

Section 9A provides that

“if..... the landlord will suffer any loss or damage to which this section applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

2. This section applies to-

- (a) any diminution in value of any interest of the landlord in other property resulting from the acquisition of his interest in the house and premises; and
- (b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.”

In the view of the Tribunal, the claim for additional loss is well founded in that the ability of the landlord to sell the main house and the adjoining mews property together would be more than the combined values of selling than separately, and it is not considered that there is any real dispute as to this. Mr Pope’s evidence was that the difference would be £250,000 whilst Mr Umfreville thought this should be £175,000. The Tribunal has determined that a figure of £150,000 is appropriate in this case.

ENFRANCHISEMENT

The Tribunal therefore determine the sum to be paid for the freehold interest in 40 Wilton Crescent London SW1 is £1,663,500 (one million six hundred and sixty three thousand five hundred pounds). Details of the Tribunal's valuation is set out in Appendix A.

Chairman



Dated.....

17 June 1998



40 Wilton Crescent London SW1

THE TRIBUNAL'S VALUATIONValue of freeholder's interestGround rent income

Agreed apportioned ground rent	90		
Y.P. for UXT of 15 years @ 5.5%	<u>10.038</u>	903	
<u>Reversion to unimproved freehold V.P. value</u>	3,000,000		
P.V. of £1 in 15 years @ 6%	<u>0.417</u>	<u>1,251,000</u>	1,251,903
<u>Marriage Value</u>			
Value of freehold		3,000,000	
<u>less</u>			
Value of unimproved leasehold interest	1,050,000		
Value of freeholder's interest	<u>1,251,903</u>	<u>2,301,903</u>	
Marriage Value		698,097	
Freeholder's share @ 50%			349,049
Compensation under Section 9A	150,000		
P.V. of £1 in 15 years @ 6%	<u>0.417</u>		62,550
		TOTAL	<u>1,663,502</u>
ENFRANCHISEMENT PRICE		say	<u>£1,663,500</u>



LEASEHOLD REFORM ACT 1967 AS AMENDED

Section 9(1C)

Valuation

of

40 Wilton Crescent, London, SW1

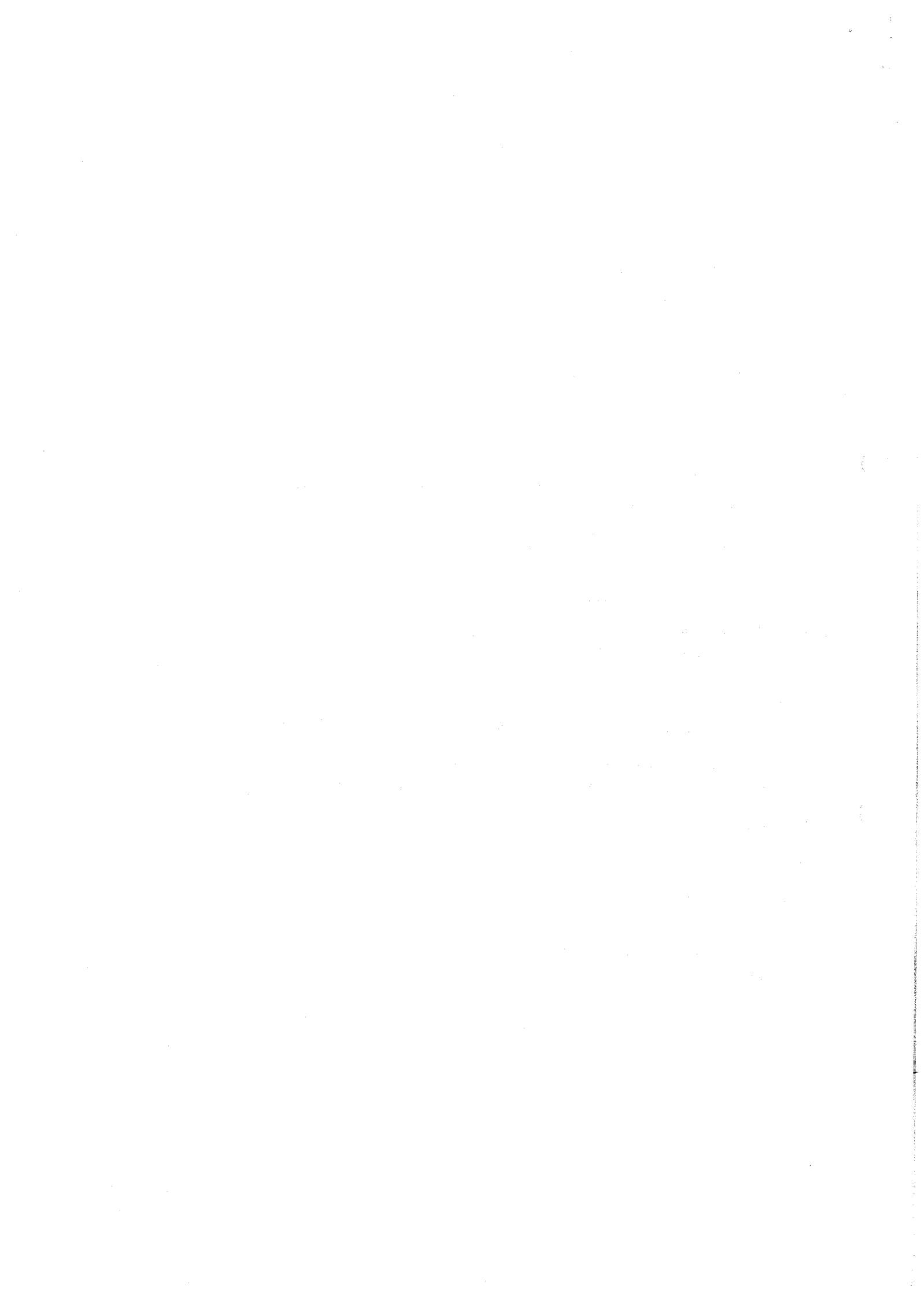
at 3rd February 1994

by

Ian Macpherson M.A. FRICS

APPENDIX B

<u>Valuation of landlords' interest excluding marriage value</u>	£	£	£
For lease term remaining -			
Ground rent currently payable	90		
Years Purchase for 15 years @ 5.5%	<u>10.038</u>		
		903	
For reversion to -			
G M Pope's Valuation of freehold interest with vacant possession Excluding effect on value of Tenants improvements	3,000,000		
Deferred 15 years @ 6.0%	<u>0.417</u>		
		<u>1,251,000</u>	
			1,251,903
<u>Add lessor's share of marriage value</u>			
Value of unimproved freehold interest with vacant possession Excluding effect on value of Tenants improvements		3,000,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	1,251,903		
G M Pope's corresponding valuation of lessee's interest having 15.00 years unexpired	<u>1,050,000</u>		
		<u>2,301,903</u>	
Gain on marriage		698,097	
Landlord's share @ 50.00%			<u>349,049</u>
Enfranchisement price			1,600,952
Add for other loss			
Difference in value between 40 Wilton Crescent and 40 Belgrave Mews North for sale together and separately, as advised by G M Pope	200,000		
Deferred 15 years @ 6.0%	<u>0.417</u>		
			<u>83,400</u>
			<u>1,684,352</u>
			Say 1,684,400



Almira Enterprises SA

APPENDIX C

Leasehold Reform Acts 1967 and 1993

40 Wilton Crescent London SW1

<u>Freehold Valuation as at</u>	Feb 1994 claim	Mar 2009 Expiry	
Ground rent per annum			£90
Years' purchase for 15.1 years at	5.5		<u>9.74</u>
			£903
Reversion to fully repaired but unimproved value, freehold with vacant possession		£2,800,000	
Present value of £1 after: 15.1 years at	6%	<u>0.415389</u>	
			<u>£1,163,089</u>
Open market value of landlords' interest			£1,163,992
Marriage Calculation			
Freehold as above		£2,800,000	
less freeholders' interest	£1,164,258		
and lessee's interest @ 35%, i.e. say (ignoring the right to claim)	<u>£1,000,000</u>		
		<u>£2,164,258</u>	
Total marriage value		£635,742	
Landlords' share @ 50%		<u>0.5</u>	
			<u>£ 317,871</u>
Enfranchisement price exclusive of costs			£1,481,863

C S R Marr-Johnson
9th December 1997