

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
SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicants: Mr Michael Hogg and Mr Geoffrey Thompson

Respondent: The Trustees of the Portman Family Settled Estates

RE: 19 Montagu Street, London, W1

Date of Tenant's Notice: 15 April 1997

Application to Tribunal dated: 26 February 1998

Heard: 16 February 1999

Agreed valuation date: 15 April 1997

Appearances:

Mr T Bannister, Counsel
Mr D J Greenish, Lee & Pembertons, Solicitors
Mr R J E Steed BSc, FRICS, Cook Steed Associates
Mr M Hogg and Mr G R Thompson (tenants)
for the Tenants

Mr A Radevsky, Counsel
Mr M J W Duncan, W A Ellis
for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs F R Burton LLB LLM MA (Chairman)
Mrs J McGrandle BSc (EstMan) ARICS MRTPI
Mr J J Tomalin

Date of Tribunal's decision: **21 JUL 1999**

The facts

1. The subject property comprises a five storey mid terrace house constructed in the last century. There was a statement of agreed facts prepared by the respective valuers for the applicants and the respondents which detailed the following matters: the accommodation at the beginning of the lease, the location and construction of the property, the improvements made to it, the details of the lease (including the relevant covenants), certain elements of the statutory valuation, (including the valuation date, 15 April 1997, the date of the tenant's notice), the method of valuation (as in Section 9(1) (c) of the Leasehold Reform Act 1967), that there should be an equal split of the marriage value, that the vacant possession value of the existing lease was 80% of the freehold vacant possession value (when ascertained) and that for the purposes of the ground rent reviews, the "Capital Value", as described in the Third Schedule of the Lease, was agreed at 89% of the freehold vacant possession value (when ascertained). It was further agreed that the property was not subject to any scheme of management.

2. The Tribunal was therefore valuing the property on the basis that there was a full repairing and insuring lease in place with approximately 59 years unexpired at the relevant date, at a current ground rent of £400 per annum with reviews in 2000, 2021 and 2042, the property being held on a lease dated 6 April 1987 for a term of 77 years from 24 June 1979, for occupation as a single private residence only.

The hearing

3. Counsel for the applicants called valuation evidence in respect of 2 matters (1) the yield: the landlord was contending for 6%, the applicants for 7%; (2) the freehold vacant possession value: the landlord was contending for £1.2m, the applicants for £950,000.

4. The applicants' valuer, Mr Richard Steed, FRICS, of Cook Steed Associates, Chartered Surveyors, provided a proof of evidence on which he enlarged. He contended that while the property was a large house, the internal layout was not particularly good, especially on the ground floor, where the reception area in the middle of that floor was "a waste of space". The property was the only one in Montagu Street which was in single private occupation (all the others being flats or bedsitting room conversions). There were also 2 purpose built blocks of flats in the street, a "very unsightly" NCP car park directly opposite the property and an adjacent house which had been trading as a brothel. In summary, the location prevented the property from being classed as a prime Portman Estate house. Moreover, the property had not been in good order when purchased by the applicants, who had spent approximately £130,000 + VAT on refurbishment and improvements, including conversion of the two second floor bedrooms and bathrooms into a master bedroom suite with en suite bathroom and walk through dressing area, installation of a small ground floor kitchen (where there had previously been none save for that in the separate basement flat) and the relaying of the entrance hall floor with marble and the front exterior steps with Portland stone. (The basement had been left untouched).

He considered the lease typical of those on the Portman Estate and that the ground rent review provisions, which would effect steep increases, were onerous but did not affect the value of the property.

5. Mr Steed offered as comparables properties at 119 George Street (sold in December 1996 for £570,000 with 102 years unexpired), 121 George Street (sold in June 1996 for £625,000, on a similar lease), 27 Upper Montagu Street (sold in November 1994 for £575,000), 43 Upper Montagu Street (sold in March 1997 for £530,000) and 41 Montagu Square (sold in mid 1995 for £1,050,000 with a lease of about 58 years unexpired). He had made appropriate adjustments for condition, market investment since the sale dates and other variables - such as size (although he considered smaller houses often commanded a higher value per square foot) and significantly different location (as in the case of 41 Montagu Square which, being in a square with gardens, is infinitely superior to Montagu Street, perhaps by as much as 25% in value) and noted, for example, that the existence of a blue plaque on the facade of 27 Upper Montagu Street would increase the value of that property. In cross examination he agreed that he might have included as comparables other properties referred to in the proof of evidence prepared on behalf of the landlord, but considered that these would be dealt with in due course by the landlord's valuer. His analysis placed the freehold vacant possession value of the subject property at £950,000. He insisted that a 6% yield was only appropriate to a prime property on the Portman or any similar large estate and that in preparing his valuation, annexed at Appendix A, he had opted for a 7% yield appropriate to the lower category of the subject property which was of a less than prime quality and in a mixed area (7% having been adopted by the LVT for 15 Upper Berkeley Street nearby, and in enfranchisement negotiations in respect of 4 Spanish Place W1).

6. One of the applicants, Mr G R Thompson, was able to give detailed evidence of the work done on the house and the reasons for it. Prior to his purchase, the property was arranged to provide four double bedrooms with en-suite bathrooms, all therefore on rather a small scale, for letting to the US Embassy. For this reason it had been necessary to create a single master bedroom suite on the second floor as the previous configuration resulted in the doors into the four bedrooms hitting the double beds. The windows had all been replaced in keeping with the appropriate period style (which had not been their style when he had acquired the property) and he had created a proper roof terrace over the rear extension to the house which had previously had only a tarmac roof. The roof had had first to be reinforced and then tiled. The work had been supervised by W A Ellis, the landlord's surveyors. He added that the NCP car park directly opposite the house was a disadvantage and that proposed development of the Portman Hotel banqueting facilities, also opposite, would further detract from the amenity and value of the property.

7. Counsel for the landlord called valuation evidence disputing the tenants' contentions in detail. Mr Michael Duncan of W A Ellis, the landlord's valuer, contended that the subject property was in the heart of the Portman Estate, being an "important period terrace house, wide fronted and with a distinguished facade to the street, incorporating 3 generous windows per floor". Subject to the usual approvals, there was scope to add an extra floor to match the level to which the 2 adjoining houses had been built up. Although the house had no garden there was a superb roof terrace, and the extent of any blight from the NCP car park was very limited, as there was no vehicular access to the car park on Montagu Street and all the windows of the subject property above ground floor level commanded lengthy and open urban

outlooks over the car park roofs and "the broad space between the Portman Hotel and the neighbouring apartment blocks". He stressed that the tenants' works included "no significant element of improvements" as the property was already a "sophisticated house" when the lease was granted. The works were therefore merely "fine tuning", primarily "upgrading of the kitchen and sanitary fittings, decorative finishes and general presentation of the house". He concluded that the house should be valued "as seen".

8. Mr Duncan insisted that the capitalisation and deferment rates should be 6% and in support of this tabled a schedule of enfranchisement prices settled for Grosvenor Belgravia, Mayfair and Cadogan Estates produced by Gerald Eve and showing for leases with unexpired terms (UXTs) of fifty one to sixty nine and three quarter (51/69.75) years capitalisation rates varying between 5% and 8% and deferment rates of 6%. He stated in reply to a question from the Tribunal that at present there was no such list for the Portman Estate. In reply to questions from Mr Bannister on behalf of the applicants, he disagreed that most settlements on the Portman Estate had not been "keener" than 7%. He also disagreed with Mr Bannister that most claimants were happy to settle at an overall figure and were not concerned with the capitalisation and deferment rate. He claimed that the subject property was "high value" house with a significant rent review imminent and that 6% was therefore appropriate. He said that the mixed area did not affect the value of the investment: Cadogan Place also had a hotel and Belgrave Square offices and embassies. He did not agree with the applicants' valuer that smaller houses commanded a higher per square foot value and considered that much of his evidence concerned different length leases and transactions which had taken place at dates distant from the valuation date, and in different market conditions. He had therefore himself adjusted for lease length differentials by reference to his firm's prime residential property index, compiled by averaging the indices kept by Gerald Eve, John D Wood and Savills, and

also adjusted for inflation by reference to Savills Prime Residential Property Index, as these were the most reliable methods for cross referencing comparable evidence.

9. Mr Duncan went on to claim that the evidence of the sales of 119 and 121 George Street was substantially "out of kilter" with more persuasive evidence that he would present, and that anyway the houses were vastly inferior to the subject property as they were only of 2 windows frontage, facing north over a busy street, and were also tall and narrow. 27 Upper Montagu Street was in an inferior part of Marylebone, backing on to the rear premises of shops (including a greengrocer) and at the date of sale to the rear yard of a public house, and also being of inferior scale with a frontage of only 17 ft.

10. The landlord's own comparables comprised 49 Manchester Street, 4 Spanish Place, 5 Spanish Place, 19 Portman Close and 2 maisonettes at 47 Montagu Square. 49 Manchester Street had last sold in December 1997 for £995,000 being then in good order, although the part of Manchester Street in which it is situated is not particularly desirable as it faces an unattractive 1960s development. 4 Spanish Place (facing the unattractive east flank of the Wallace Collection) was currently under offer at £1,150,000 giving an equivalent price at the valuation date of the subject property (for 85% of the current value) of £977,500. Similar figures for 5 Spanish Place (also under offer) were £961,789. 19 Portman Close (in a particularly poor location and near several derelict properties in the mews) had an agreed freehold vacant possession value in May 1997 of £600,000. Although he accepted that maisonettes could not be compared directly with houses, the sale prices of the two at 47 Montagu Square achieved in September 1998 also supported his valuation of the subject property, being respectively £410,000 and £490,000, leasehold for 88½ years.

11. Mr Duncan therefore concluded that there was overwhelming support for a valuation of the freehold interest of not less than £1,200,000 and the vacant possession value of the existing lease (at 80%) £960,000.

12. In cross examination, Mr Duncan insisted that the works done by the tenants were superficial, being mainly refurbishment and/or changes to suit their own arrangements, that the replacement windows might not in fact be an improvement and that the new master bedroom suite, although appropriate to the house, might not necessarily add value. He claimed that although Montagu Square was a better location than the subject property, it was not as superior as had been suggested, and that although comparables were not necessarily always exact they were still normally useful.

13. Mr Duncan's valuation is annexed at Appendix B.

14. Counsel for the landlord submitted in summary that on any view the property was very desirable and the quality of the property as an attractive investment should indicate that Mr Duncan's contention for a 6% rate of capitalisation and deferment was more convincing than Mr Steed's minor arguments about such matters as the mixed use of the area. He appreciated that the various comparables were not entirely satisfactory, as no similar house had sold in the same street at the same time. Nevertheless Mr Duncan's evidence had complied with RICS guidelines and had been as comprehensive as possible. The Tribunal was asked to accept his figures.

15. For the applicants, their counsel submitted that the subject property was not a prime house and the Tribunal was invited to follow the 7% yield adopted in other LVT decisions referred to. It was not feasible to compare Montagu Street to Belgravia, even if the latter included non-residential uses. Moreover, settlement evidence was not the same as that of actual Tribunal decisions. All the arguments were for adhering to a figure of 7%. The transactions relied on as comparables by Mr Duncan, together with the evidence on yields, should be treated with caution. Nevertheless, the basic facts of the George Street transactions cited by Mr Steed were accepted and these were the best available comparables. He therefore argued for Mr Steed's valuation to be accepted.

Inspection

16. The Tribunal inspected the property on 17 February 1999. The subject property was found to be a mid-Victorian 5 storey (including full basement) listed terraced house located off Portman Square and facing east over the Portman Hotel car park. The area was one of mixed use and varying architectural styles, the terrace and the immediate vicinity containing commercial uses and post-war blocks of flats. There was separate rear access at basement level from Montagu Mews. The property had lost its mews cottage at the turn of the century with the building of its 3 storey back addition.

17. Internally, the Tribunal noted the very high standard of maintenance and improvements undertaken since 1987 by the lessees'. These improvements included a first floor west facing roof terrace, replacement of windows at front and rear, the creation of a master bedroom suite at second floor level and a ground floor galley kitchen. The basement, capable of occupation as a separate flat, was in a perfectly sound but dated condition and was now used only for

storage. It had been virtually untouched since 1987 and thus gave the Tribunal a good indication of the property's condition at the start of the lease ie prior to the lessees' improvements to the remainder of the property.

18. The Tribunal inspected externally all the comparables mentioned by the parties. 119-121 George Street were certainly not as grand, had a narrower, less imposing, facade and were in a busier street. However they were in the immediate vicinity and could not be disregarded. The same might be said of 41 Montagu Square, of a similar width to the subject property, albeit in a superior location and of a larger size. 27 Upper Montagu Street was, however, in a completely different category, being much smaller, altogether more modest and less imposing, despite an attractive first floor balcony and the added value of the plaque commemorating the occupation of Jacqueline du Pré. 49 Manchester Street, a house rebuilt behind the facade, was not particularly helpful, as again it was a different type and scale of property, although the more mixed nature of that street suggested that Montagu Street might in general terms be more valuable. The Spanish Place houses were not reliable comparables as the deals in question had not been concluded.

Decision

19. Taking all the evidence into consideration, the Tribunal concluded that there had been a significant element of improvement to the subject property, which was not limited to the roof terrace. Apart from the replacement windows in sympathetic style, there was a good deal of high class joinery, quality floorings in keeping with the period of the house, the modern ground floor kitchen and the master bedroom suite which a house of this style and quality requires.

20. The Tribunal noted that Mr Duncan had denied the existence of a schedule of enfranchisement settlements for the Portman Estate. In fact, one such schedule had been produced by him at a previous LVT in June 1998 in connection with 24 and 54, Stourcliffe Close, W1 (LON/NL/395 & 435/97). This schedule had shown capitalisation and deferment rates ranging from 6% to 8% over a very wide range of unexpired terms.

21. However whatever the figures, it is the Tribunal's experience that these schedules can be less than comprehensive and can be edited to suit the valuation in hand.

22. It is the Tribunal's view that the subject property, although "high value", is not comparable in terms of location and amenity to the majority of those on the distilled Grosvenor/Cadogan schedule. They prefer to rely on their own knowledge and experience of transactions on the Portman Estate and have therefore adopted the 7% yield suggested by Mr Steed. They further considered that the freehold vacant possession value probably lay somewhere between the two extremes claimed. They therefore reworked their own valuation which is attached at Appendix C.

Determination

23. Accordingly, we determine the price payable for the freehold of 19 Montagu Street at £122,400 in accordance with that valuation.

CHAIRMAN F. R. Burt

DATE **21 JUL 1999**

a) Freeholder's Interest

Ground Rent	£400 per annum	
YP 3yrs @ 7%	<u>2.62</u>	£1,048
Reversion to FRV say	£2,113 pa	
YP 56 yrs at 7%	13.96	
PV £1 after 3 yrs at 7%	<u>0.8162</u>	£24,075.84
Capital Value of Reversion	£950,000	
deferred 59 yrs at 7%	<u>0.01846</u>	<u>£17,537.00</u>
		£42,660.84

b) Marriage Value

Freehold vp Value	£950,000	
less fh interest	£42,660.84	
less lessee's interest	<u>£760,000</u>	
	£147,339.16	
Share at 50%		<u>£73,669.58</u>
		£116,330.42
say		<u>£116,000</u>

19 MONTAGU STREET, LONDON W1

**M J W Duncan's Memorandum to the Leasehold Valuation Tribunal
(Proposed Hearing 16th/17th February 1999)**

Computation of Freehold Price (Appendix 'F')

Freeholders' existing interest:		
Current ground rent		400
YP 59 years 6%		16.1311
		6,452
Review June 2000 to 0.25% of £1.068m	2,670	
Less current ground rent	400	
	2,270	
YP 56 years/deferred 3 years	13.4581	30,550
	1,200,000	
Eventual reversion to FH VP value	0.0321332	38,560
Deferred 59 years 6%		75,562
Marriage value:		
FH VP value	1,200,000	
Less freeholders' existing interest	75,562	
And existing lease VP value	960,000	1,035,562
	164,438	
Marriage value therefore	0.5	82,219
Freeholders share 50%		157,781
		157,781

VALUATIONFreehold Interest

		£
Ground rent	£400 per annum	
YP 3 years @ 7%	<u>2,6243</u>	1,050
	(4)	
Reversion to revised ground rent	£2,225 per annum	
YP for 56 years @ 7% 13.9626		
deferred 3 years @ 7% <u>0.8162971</u>	<u>11.397</u>	25,360
Reversion to capital value	£1,000,000	
deferred 59 years @ 7%	0.01846	<u>18,460</u>
		44,870

Marriage Value

Freehold Vacant possession value	£1,000,000	
<u>less freehold interest £44,870</u>		
	(3)	
Lessees' interest <u>£800,000</u>	<u>£844,870</u>	
		£155,130

Share @ 50% 77,565

122,435

Say £122,400

1. Date of Valuation: 15 April 1997
2. U X T = 59 years
3. Vacant possession value of existing lease agreed @80% of freehold vacant possession value
4. For the purpose of ground rent reviews, the "capital value" is agreed @ 89% of the freehold vacant possession value.