

**DECISION OF LEASEHOLD VALUATION TRIBUNAL
(LONDON RENT ASSESSMENT PANEL)
ON
APPLICATION UNDER SECTION 21 OF LEASEHOLD REFORM ACT 1967**

Re: 90 Park Street, London W1

Applicant: Grosvenor (Mayfair) Estate (Landlord/Freeholder)

Respondent: Stephen Soussan (Tenant)

Hearing: Tuesday 22 June 1999

Appearances:

For Applicant: Mr Anthony Radevsky (of Counsel)
Mr Peter Scoble (of Boodle Hatfield, Solicitors)
Miss Lauren Wohl (of the Landlord)
Mr Julian Clark (of Gerald Eve, Chartered Surveyors)
Mr Peter Wetherell (of Wetherell & Co, Estate Agents)

For Respondent: None

Members of the Tribunal

Dr Julian Farrand QC(Hon) Solicitor FCI Arb (Chairman)
Mr Raymond Humphrys FRICS
Mrs Mavis Cunningham JP MA

Date of Decision: 20 AUG 1999

1. By Notice dated 11 February 1998, the Respondent's predecessor as Tenant claimed the right to acquire the freehold of 90 Park Street. The Applicant admitted that right on 24 March 1998 and on 30 June 1998 proposed an enfranchisement price of £269,200 excluding costs. Evidently no agreement was reached so, by form dated 5 August 1998 the Applicant applied to the Tribunal for determination of the price (repeating £269,200 as appropriate) and of what terms ought to be contained in the conveyance.
2. At the Hearing on 22 June 1999, with no appearance by or for the Respondent, reliance was placed for the Applicant on expert valuation evidence to support a lower price of £216,200.
3. The first expert witness was Mr Peter Wetherell, an estate agent. His 'written proof' addressed the market values as at the relevant valuation date of 11 February 1998
 - (a) of the Applicant's present leasehold interest in 90 Park Street, which was as Tenant of the whole with approximately 45 years of the term unexpired at a ground rent of £550 pa and with vacant possession of the lower of two maisonettes; and
 - (b) of the freehold interest therein with vacant possession.
4. As to (a), essentially he took the price of £390,000 which the Respondent had actually paid for the leasehold interest in March/April 1998 and "assumed" that this was higher because of the enfranchisement claim by £40,000 "which corresponds to approximately 2/3 of the tenant's share of the marriage value which amounts to just under £60,000 as shown by Mr Clark's valuation in his evidence."
5. The Tribunal was not impressed with Mr Wetherell's method of reducing the price paid to a value of £350,000: the cross-reference to the marriage value figure suggested some circularity of approach and also it was not supported by any evidence of market experience either generally or particularly of the purchase in question. Indeed the non-appearance of the Respondent at the Hearing might justify the inference that the enfranchisement claim had not constituted any element in the price he had paid for 90 Park Street. Nevertheless the Tribunal was prepared to accept that the price paid should be discounted to reflect the right of enfranchisement and considered that £20,000 rather than £40,000 would be an appropriate figure producing a market valuation of £370,000 in place of Mr Wetherell's £350,000.
6. As to (b), Mr Wetherell relied principally upon the sale price of £1.1m obtained in March 1998 for a comparable freehold house, namely 17 South Street, also Mayfair W1. He conceded that South Street was a better location than the Oxford Street end of Park Street, where the subject-property is located, which is a busy exit route for northern traffic from Mayfair. He also conceded that 17 South Street, being a widefronted three storey house, was more desirably arranged. In effect, he discounted that price by £100,000 so as to value the freehold of 90 Park Street at £1m. At the Hearing he confirmed that this would be his valuation whether the house was to be sold as a whole or as two maisonettes. However, regarding the house as it is at present, he had valued the upper maisonette at £450,000 and the lower at £550,000, each as if freehold with vacant possession, totaling £1m.
7. Having inspected both properties externally (on 16 July 1999), the Tribunal considered that an insufficient discount had been allowed by Mr Wetherell: 90 Park Street appeared to be a much less attractive house than 17 South Street: not only was it located on a noisy 'rat-run' for cars and lorries but it was also situated on a corner beside a through mews and was a narrow five-storey building with tight-fitting garages at the rear. In the light of this


assessment, the Tribunal considered that the appropriate discount in the valuation should be £200,000, producing a figure of £900,000 instead of £1.m. It was accepted that it would make no difference to the total to value the house as if two maisonettes, nevertheless the Tribunal would value the upper and lower maisonettes at £435,000 and £465,000 respectively. This reflects the sales evidence of both flats, excluding the possible enfranchisement premium, adjusted for date.

8. The Applicant's value of the freehold interest after enfranchisement was a combination of Mr Wetherell's freehold valuation of the lower maisonette at £550,000 with Mr Clark's investment valuation of the upper maisonette of about £75,000. Nether Mr Wetherell nor Mr Clark had relevant experience of selling such freehold properties. Mr Wetherell confirmed that in the market the purchaser would be seeking accommodation, not an income. The Tribunal was not persuaded that such a purchaser "seeking accommodation" in Mayfair would pay some £75,000 for a possible income of say £2,750 and a distant reversion. To the Tribunal's freehold value of the lower maisonette of £465,000 the Tribunal has added £45,000 for this making £810,000.

9. The second expert witness for the applicant was Mr Julian Clark, a 'professional associate' of the RICS, whose 'Proof of Evidence' plus supporting Schedule demonstrated how he had reached the enfranchisement price proposed of £216,200. Essentially he had adopted Mr Wetherell's valuations for the purpose of his own investment calculations.

10. The Tribunal was content to accept Mr Clark's calculations subject to the comparatively small adjustments of Mr Wetherell's valuations already indicated and explained. Mr Clark's valuation as so adjusted is attached as Schedule A. As the result the enfranchisement price determined by the Tribunal for 90 Park Street is **£150,100**.

11. In addition, the Tribunal's approval was sought of a draft form of transfer of 90 Park Street from the Applicant to the Respondent in pursuance of the enfranchisement claim. Mr Peter Scoble of the Applicant's solicitors confirmed at the Hearing that the draft was in standard form for the estate and that it had been submitted to the Respondent's solicitors (Brook Martin & Co) by a document exchange without receiving any objection or, in fact, any response at all. In these circumstances, therefore, the Tribunal was prepared to and did determine that the **draft transfer**, attached as Schedule B, should be **approved** as containing those provisions which it ought to contain (ie for the purposes of section 21(2)(a) of the Leasehold Reform Act 1967.

Chairman 

Date **20 AUG 1999**

90 PARK STREET, LONDON W1
VALUATION AS AT 11 FEBRUARY 1998

VALUATION IN ACCORDANCE WITH SECTION 9(1C) OF THE LEASEHOLD REFORM ACT 1967

| <u>Valuation of lessor's interest exclusive of marriage value</u> | £ | £ | £ |
|---|----------------|----------------|---------|
| For remainder of term- | | | |
| Ground rent currently payable | 550 | | |
| Years purchase for 0.1 years @ 5.0% | <u>0.097</u> | | |
| | | 53 | |
| Full market rental value say | 55,000 | | |
| Rent payable @ 10% 10% | 5,500 | | |
| Years purchase for 44.75 years @ 6.0% | 15.438 | | |
| NB Next rent review after 20 years 0.1 years @ 6.0% | <u>0.994</u> | <u>15.3454</u> | |
| | | | 84,400 |
| For reversion to- | | | |
| Value of freehold interest with vacant possession | | | |
| Upper Maisonette | 435,000 | | |
| Lower Maisonette | <u>465,000</u> | | |
| | | | 900,000 |
| Deferred 44.85 years @ 6.0% | <u>0.073</u> | | |
| | | <u>65,700</u> | |
| | | | 150,100 |
| <u>Add lessor's share of marriage value</u> | | | |
| Value of freehold interest after enfranchisement | 510,000 | | |
| <u>Less</u> | | | |
| Value of lessor's interest exclusive of marriage value | 150,100 | | |
| Value of lessee's interest exclusive of marriage value | <u>370,000</u> | | |
| | | <u>520,100</u> | |
| Gain on Marriage | | | NIL |
| Enfranchisement price | | | 150,100 |

DATED _____ 1999

- (1) GROSVENOR (MAYFAIR) ESTATE
- (2) GROSVENOR WEST END PROPERTIES
- (3) STEPHEN SOUSSAN

TRANSFER

of
90 Park Street
in the City of Westminster

Boodle Hatfield
61 Brook Street
London W1Y 2BL

Tel: 071 629 7411
Fax: 071 629 2621
File No 04001 038
Ref: PEWS LO266662

H M LAND REGISTRY

LAND REGISTRATION ACTS 1925 TO 1986

TRANSFER OF PART

London Borough : City of Westminster
Title Numbers : NGL 286244 & NGL 772348
Property : 90 Park Street London W1
Date : 1999

THIS TRANSFER is made BETWEEN

- (1) GROSVENOR (MAYFAIR) ESTATE (an unlimited company incorporated in the United Kingdom) whose registered office is at 53 Davies Street London W1Y 1FH ("the Freeholder") and
- (2) GROSVENOR WEST END PROPERTIES (an unlimited Company incorporated in the United Kingdom) whose registered office is also at 53 Davies Street London W1Y 1FH ("the Landlord") and
- (3) STEPHEN SOUSSAN of 90 Park Street London W1 ("the Purchaser")

WHEREAS:

(A) The Freeholder is seised of the property herein described for an estate in fee simple in possession subject to the Lease next recited but otherwise free from encumbrances and is registered at H M Land Registry as Proprietor of the same (inter alia) with Absolute Title under title number NGL 286244

(B) By a Lease ("the Headlease") dated 26 February 1999 and made between the Freeholder of the one part and the Landlord of the other part the land and premises known as 90 Park Street in the City of Westminster were demised to the Landlord for a term of 185 years

from 25 December 1998 at a peppercorn rent subject to the covenants on the part of the Tenant and the conditions therein set out

(C) The Landlord is registered at H M Land Registry as Proprietor of the Headlease with Title Absolute under title number NGL 772348

(D) By a Lease dated 12th April 1978 and made between Grosvenor (Mayfair) Estate of the first part and Zacharias Constantinou of the other part the land and premises known as 90 Park Street in the City of Westminster were demised to the said Zacharias Constantinou for a term of 64 years and 291 days from 10 March 1978 subject to the payment of the rent thereby reserved and to the covenants on the part of the Lessee and the conditions therein set out

(E) The Purchaser is registered at H M Land Registry as Proprietor of the Lease with Absolute Title under title number NGL 334898

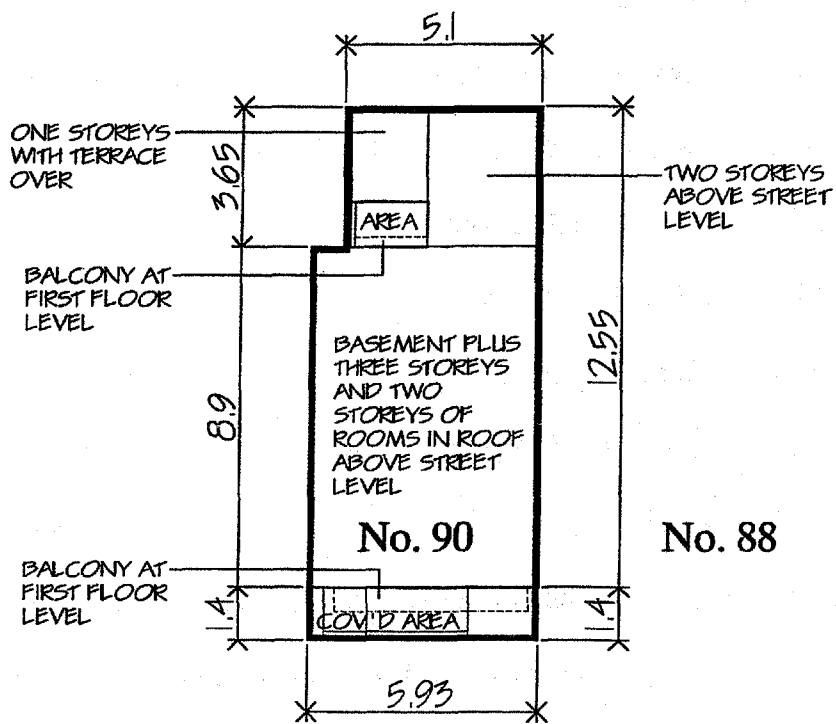
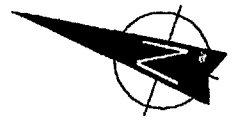
NOW THIS DEED WITNESSES as follows:

1. IN consideration of the sum of

pounds (£) paid by the Purchaser as to pounds (£) to the Freeholder and as to pounds (£) to

the Landlord (the receipt of which the Freeholder and the Landlord hereby respectively acknowledge) and so as to give effect to Section 8 of the Leasehold Reform Act 1967 as amended the Freeholder hereby transfers to the Purchaser ALL THAT the land which with the dimensions thereof (be the same little more or less) is shown edged red on the plan annexed hereto Together with the dwellinghouse situate thereon [and the vaults shown hatched black on the said plan] and known as 90 Park Street in the City of Westminster TO HOLD unto the Purchaser in fee simple so that the Headlease and the Lease are merged with the freehold to the extent it affects the property hereby transferred subject (in addition to all other matters referred to in Section 10 of the Leasehold Reform Act 1967 and as herein mentioned) to the right which

90 Park Street



Park Street

SCALE 1:200

18 May 99 / 15

is hereby reserved to the Freeholder and all persons claiming through or under it at any time hereafter to rebuild or alter any of the adjoining or neighbouring buildings and to build upon or otherwise use any adjoining or neighbouring land notwithstanding any interference thereby occasioned to the access of light or air to the premises hereby transferred (it being hereby agreed that the access of light and air to any buildings now standing or at any time hereafter erected on the premises hereby transferred shall until interrupted be deemed to be enjoyed by virtue of these presents which shall be deemed to constitute a consent or agreement in writing for that purpose within the meaning of Section 3 of the Prescription Act 1832)

2. THIS Transfer is made with limited title guarantee (except that the covenant implied by Section 3(3) of the Law of Property (Miscellaneous Provisions) Act 1994 applies only to charges or encumbrances created by the Freeholder)

3. THE Purchaser for himself and his successors in title and all persons deriving title under him HEREBY COVENANTS with the Freeholder to observe and perform the provisions of the Management Scheme which has been made pursuant to Section 70 of the Leasehold Reform Housing and Urban Development Act 1993 for the management of the Grosvenor (Mayfair) Estate in London and which said Scheme has been approved by a Leasehold Valuation Tribunal pursuant to Section 70 as aforesaid so far as the said Scheme affects the property hereby transferred

4. IT IS HEREBY AGREED by and between the Freeholder and the Purchaser as follows:

- (a) that this Transfer constitutes the Original Transfer for the purposes of the said Management Scheme and (with reference to paragraph 6(2) of the said Scheme) the year in which the exterior of the property hereby transferred is next to be painted is 1999

(b) that the walls and/or fences separating the property hereby transferred from adjoining properties are party walls and/or fences and shall be used maintained and repaired as such

5. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £

IN WITNESS whereof the Freeholder and the Landlord have caused their respective Common Seals to be hereunto affixed and the Purchaser has set his hand as a Deed the day and year first above written

THE COMMON SEAL of GROSVENOR)
(MAYFAIR) ESTATE was hereunto)
affixed in the presence of:)

Director

Director

THE COMMON SEAL of GROSVENOR)
WEST END PROPERTIES was hereunto)
affixed in the presence of:)

Director

Director

SIGNED and DELIVERED as a Deed)
by the said STEPHEN SOUSSAN)
in the presence of the undersigned)
witness:-)