

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 SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Application: The Trustees of the Ilchester Estate

Respondent: Mr P A Li

RE: 26 Abbotbury Road, London, W14

RV at date when Tenant's Notice was given: £2,285

Date of Tenant's Notice: 6 May 1998

Application to the Tribunal dated: 9 December 1998

Date of hearing: 14 September 1999

Appearances:

No appearances (Mr Li submitted written representations)

for the Tenant

Mr S Burrell (of Counsel)

Mr I MacPherson MA FRICS (Gerald Eve, chartered surveyors)

Mr J G G Wilson ARICS FCI Arb (Messrs W A Ellis)

Mr G A Dobson (Ilchester Estate)

for the Landlord

Members of the Leasehold Valuation Tribunal

Mrs H Kelly LLB (Chairman)

Mr P M J Casey ARICS

Mr D Z Myer-Smith LLB

Date of Valuation: 6 May 1998

Date of the Tribunal's decision: 1 DEC 1999

A. Preliminary matters

1. This was an application to the Tribunal dated 9 December 1998 and made by the Trustees of the Ilchester Estate (the landlord) for the determination of the price to be paid for the freehold interest in the subject property. This matter falls to be determined in accordance with section 9(1A) of the Leasehold Reform Act 1967, as amended by Section 66 of the Leasehold Reform, Housing and Urban Development Act 1993 by the insertion of Section 9 (1C).
  
2. Section 9 (1A) of the Leasehold Reform Act 1967 provides that the price payable “shall 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” and the assumptions are then set out.

Section 9 (1C) provides 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 interest, 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 of the Leasehold Reform Act 1967 has effect for determining whether any additional amount is payable by way of compensation under that section”.

3. The tenant, Mr Li, by a notice to the trustees dated 6 May 1998 stated that he wished to claim the freehold, his right to make the claim being admitted by the landlord on 21 July 1998.

4. Tenure of the subject house

The house is held on a lease dated 22 February 1982 for a term of 73.75 years from 29 September 1981 expiring at 24 June 2055. At the date of the claim for the freehold the lease had thus about 57 years unexpired.

The lease reserves a rent presently payable of £250 per annum, which is subject to review at 24 June 2005 and 2030 to 0.2% of the capital value attributable on 24 June 2004 and 2029 respectively to a lease for 75 years with vacant possession of the subject house, assuming that the lease would reserve a peppercorn rent throughout the 75 years term and excluding the effect on value of tenant's improvements.

B. Inspection

1. The house is a linked detached house on basement, ground, first and second floors. It now has the following accommodation, which includes the extension into the loft space on the second floor carried out by the tenant.

Ground Floor	Entrance hall 3 Reception rooms Kitchen Cloakroom/wc
First Floor	5 Bedrooms, one with bathroom/wc en suite one with shower room/wc en suite 1 additional bathroom

	1 separate wc
Second Floor	1 Bedroom with bathroom/wc en suite
Basement	Utility room Garage Store rooms

Excluding the tenant's improvements, the gross internal area of the house is 3,833 square feet (356 square metres).

2. By a licence granted on 20 October 1971 and another licence granted on 25 February 1993, the landlord permitted various alterations including a conversion of the loft area, which now comprises a floor area of 708 square feet (66 square metres) additional to the unimproved area of 3,833 square feet (356 square metres).
3. The house is situated on the east side of Abbotsbury Road, adjoining Holland Park in the Holland Park conservation area.

The area is described in the Royal Borough of Kensington & Chelsea's Holland Park Conservation Area Proposals Statement of October 1989 as follows:

“This area with its Regency and Victorian houses was the original backbone of development on which the surrounding township grew up. It sets the tone for the residential areas around it, with its detached villas, terraces and their classically derived architecture set along leafy avenues”.

The area extends between Holland Park Road to the north and Kensington Church Street to the south.

C. Written representations and submissions at the hearing

1. By his written representations submitted by way of a fax, Mr Li, the tenant, stated that the landlord had originally valued the freehold at £327,000; where as he had offered the sum of £280,000. He felt that both sums were too high, having regard to the price paid by neighbours at No 24 and No 28 Abbotsbury Road which was in the region of £200,000 and £180,000 respectively. These houses were close comparables in terms of size and amenities.

He also referred to the purchase price for the freehold for No 8 and No 10, which are larger and more valuable houses, the price being £200,000 and £210,000 respectively.

He stated that the lease lengths for all five properties were identical. He considered that the purchase price of the freehold for No 26 should be similar.

Mr Li was not sure whether or not the valuation of No 26 by the Ilchester Estate fairly reflected the amount of work and the extent of the improvements which had been made to the property since 1992. He mentioned that it had to be entirely rewired and replumbed in order to bring it up to modern safety standards. Air conditioning had also been installed into the principal rooms. All the bathrooms and the kitchen were new.

He was of the opinion that if No 26 were placed on the market in its 1992 condition, it would not have achieved the values put forward by W A Ellis, on behalf of Ilchester Estate, on the open market.

2. The following were the values proposed for the landlord:
- i. The value of a notional freehold interest with vacant possession at 6 May 1998, excluding the effect on that value of improvements undertaken by the tenant                      £2,590,000
  - ii. The value of a corresponding leasehold interest with 75 years unexpired at a peppercorn rent and otherwise on the same basis as
    - (i)                      £2,331,000
  - iii. The value of the existing leasehold interest having 57 years unexpired, with its rent review provisions, at 6 May 1998 but disregarding the effect on that value of the tenant's right to enfranchise and of the improvements undertaken by the tenant              £2,103,000
3. i. The valuation by Mr I MacPherson MA FRICS for the landlord is set out at appendix A
- ii. The schedule showing brief details of the four properties relied on for the landlord to arrive at the valuations at 2(i) - (iii) above is set out at appendix B.

Mr Burrell of counsel addressed the Tribunal on behalf of the landlord. Among other matters, he submitted, quoting from Mr Wilson's evidence, that the leasehold evidence was very sparse so that Mr Wilson used the Gerald Eve/John D Wood &

Co graph and the W A Ellis index of relativities and the settlement evidence relating to 8 Ilchester Place, a property having a similar term of 57 years or thereabouts remaining unexpired at the claim date.

Mr Burrell went on to say that to four voluntary transactions concerning 68, 69, 78 and 81, Addison Road fully justified the pattern of yield rates advocated by Mr MacPherson.

He said that it would be wrong to criticise the voluntary transactions on the basis that they all related to prices paid by special purchasers, namely the tenants of the properties concerned. Special purchasers should not be excluded from the open market: see Inland Revenue Commissioners v Clay, Inland Revenue Commissioners v Buchanan [1914] 3 KB 466, at p. 475.

The presence of tenants as special purchasers in the market to be envisaged in a valuation under Section 9(1C) was also apparent from the fact that there was no equivalent wording in Section 9(1A), as applied by Section 9 (1C), to that which was found in brackets in the opening section of Section 9(1) of the 1967 Act. This expressly excluded the tenant and members of his family residing with him at the premises, from the open market. Mr Burrell went on to say that the wording in brackets in Section 9(1) was obviously felt necessary so as to exclude the tenant and his family from what would otherwise have been an open market that included them. The same open market under Section 9 (1C), with no such exclusion provided for, must therefore include the tenant and his family.

Moreover it would be wrong to criticise the evidence of the four voluntary sales on the basis that the purchaser tenants were “over a barrel” as a result of their not enjoying rights to enfranchise, since it was a market of that very kind, in which no rights to enfranchise exist, which the Tribunal was bound to envisage in reaching a valuation under Section 9(1C) of the 1967 Act.

With regard to the evidence relating to settlements on the Ilchester Estate, Mr Burrell supported Mr MacPherson’s evidence by referring to decisions of the Lands Tribunal (see below). He considered that those cases supported the pattern of yields advocated by Mr MacPherson for the landlord. [See in particular Cadogan Estates Ltd v Sharp (LRA/33 & 35/97 at p.11) where it was said that “the analysis of a large number of settlements will generally produce an accurate overall picture of the component parts of the settlement figures”].

Mr Burrell also quoted from the decisions of the Lands Tribunal to support the proposition that, where possible, each part of the valuation - the capitalisation rate and the deferment rate - should be considered separately: Brett’s case [1998] LRA16 at p. 37 and Saphir’s case [1997] 34 E G 71 at p.77.

Among the decisions drawn to our attention were the following:

Trustees of John Lyons Charity v Brett [1998] LRA/16/1997  
Lloyd-Jones v Church Commissioners for England LRA/29/1980 -[1981] 261 EG 471

Cadogan Estates Ltd v Hows LRA/1&3/1988 [1989] 48 E.G.167  
Cadogan Estates Ltd v Sharp LRA/33 & 35/97

Eyre Estate v Saphir [1997] 34 E.G.71  
Adams v Eyre Estate LRA/11/98  
Eyre Estate v Jaskel LRA/48/1997



D. Decision

The Tribunal carefully considered the tenant's representations set out in his faxed letter. We considered, however, that we had insufficient details as to those transactions, but noted from the schedule of settlements for the landlord that all had significantly earlier dates of valuation.

We were greatly assisted by Mr Burrell's legal submissions for the landlord and by the expert witnesses who produced written proofs of evidence.

The time available to the part time members of the tribunal does not permit without undue delay and expense an adequate summary of all these representations, which are on file and have been carefully considered. We aim in this document to set out the facts as we found them and our conclusions, in the light of the evidence adduced, on the principal issues.

The parties accepted that the subject property was to be valued without any of the improvements carried out by the tenant. At the same time, the parties accepted that the tenant was obliged to keep the house in good repair and to redecorate it and to that extent, any repairs carried out as part of such works would not be classed as improvements.

After considering the evidence provided by the comparables which we inspected externally and after making an external and internal inspection of the subject property, the Tribunal's decision is as follows:

1. The Tribunal had in mind all the open market rent comparables drawn to our attention for the landlord: see appendix B. No 10 Abbotsbury Road was a rather grand house on a large plot, with a swimming pool. Like the subject house, it backed onto Holland Park. We considered it to be superior to the subject house and therefore not directly comparable to it.

The houses at Nos 18, 22 & 26, Ilchester Place were considered by us to be in a quieter and therefore better location than the subject house, situated as it was in a fairly busy road with traffic calming humps. Further, the second floor accommodation in the three houses in Ilchester Place was purpose-built rather than converted. To that extent, the Tribunal considered those houses to be superior.

However, we could not be sure whether the rather small basements in those houses had been included in the gross internal areas cited at the hearing.

2. The gross internal area for the subject house cited on behalf of the landlord by the representatives clearly included the area of the basement. This consisted of the large double length garage, the plant room and the utility room. Mr Wilson included the basement area as though it contained fully finished main living space.
3. Since that area had been included at the same unit price as the rest of the property and since Mr Wilson had added what was, in our view, an excessive amount for the potential use of the loft space for conversion, we considered Mr Wilson's valuation of the freehold interest to be too high.

4. With respect to the freehold value of the subject property, therefore, the Tribunal was of the opinion that this was to be valued at £2,500,000 on the basis that all the tenant's improvements had been excluded.
  
5. Mr MacPherson submitted that a more accurate means of applying the comparable evidence in the valuation of the subject house was to consider separately the yield rates to be applied for capitalising the rental income from those to be applied for deferring the reversion. He submitted that 5% should be applied for the low initial ground rent and 6% in respect of the valuation of rents after the rent reviews.  
  
He also argued that the yield rate used to defer the freeholder's reversion must be considered separately from the rate or rates used to capitalise the rents during the term. In the event he adopted 6% for the reversion.  
  
Since there was no evidence for the tenant on this point in opposition to the argument for the landlord and since there would in fact be very little difference if 6% were to be applied throughout the valuation, the Tribunal decided to accept Mr MacPherson's approach. However the Tribunal was of the opinion that that approach would not necessarily be appropriate in other cases, where different considerations might lead to the adoption of the single rate, as indeed had been the situation in most cases.
  
6. In all the circumstances, therefore, the Tribunal applied different rates ie 5% and 6% to capitalise the rents and 6% for the remainder of the term.
  
7. With regard to the value of the 75 year's headlease interest for the purposes of the rent review provisions, the Tribunal accepted that this should be 90% of the freehold

value, which is in line with the 84% adopted in the valuations of No 80 and No 85, Addison Road by the Leasehold Valuation Tribunal. In each, of those cases, the lease assumption at rent review were for a lease of 65 years.

Applying that percentage to the Tribunal's valuation of the freehold value, we arrived at a figure of £2,250,000 for that value, after excluding the tenant's improvements.

8. As to the valuation of the existing lease of 57 years, excluding the tenant's improvements as before, the only evidence before the Tribunal was that of Mr Wilson and Mr MacPherson, namely that this should be 81.2% of the freehold value. Their submissions were analysed as a result of the most relevant settlements on the Ilchester Estate, with cross reference to the John D Wood and Co/Gerald Eve graph and the W A Ellis index of relativity.
9. After considering the evidence of the settlements on the Ilchester Estate drawn to our attention and the various graphs, the Tribunal adopted 81.5% as the appropriate percentage of the freehold value and arrived at £2,037,500 as the value for the existing lease.
10. With respect to the marriage value, the Tribunal decided that this should be split on a 50/50 basis, which was the statutory minimum and which was proposed on behalf of the landlord.

Determination

Accordingly, after considering the evidence, the argument and our inspection, the Tribunal determine the premium to be paid by the tenant for the freehold interest in possession of 26, Abbotsbury Road, London, W14 to be £301,000 (three hundred and one thousand pounds) in accordance with our valuation which is attached to the decision as appendix C.

CHAIRMAN.....

*Hennietta Kelly*

DATE.....

17 DEC 1999

ILCHESTER ESTATE  
 LEASEHOLD REFORM ACT 1967 AS AMENDED  
 Section 9 (1C)  
 Valuation  
 of  
 26 Abbotsbury Road, London, W14  
 at 8 May 1998

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

	£	£	£
Valuation of lessor's interest exclusive of marriage value			
For remainder of term-			
Ground rent currently payable	250		
Years Purchase for 7 years @ 5.0%	<u>5.786</u>		
		1.447	
Estimated additional rent payable on review in 6/2005			
Estimated capital value of freehold in possession as improved.	2,590,000		
for 75 year lease	2,331,000		
Rent payable @ 0.2%	<u>0.002</u>		
	4,662		
Rentalised @ 0.2%	<u>4,662</u>		
Further rent review after 25 years in 2030			
Years Purchase for 50 years @ 6.0%	15,7619		
Deferred 7 years @ 6.0%	<u>0.6651</u>		
	<u>10,4832</u>		
		48,873	
For reversion to -			
Value of freehold interest with vacant possession	2,590,000		
Deferred 57 years @ 6.0%	<u>0.0361</u>		
		<u>93,499</u>	
			143,819
<u>Add lessor's share of marriage value</u>			
Value of freehold interest with vacant possession		2,590,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	143,819		
Value of lessee's interest exclusive of marriage value	<u>2,103,000</u>		
		<u>2,246,819</u>	
Gain on marriage		343,181	
Landlord's share @ 50%			<u>171,591</u>
Enfranchisement Price			315,410
		Say	315,400

## 26 ABBOTSBURY ROAD, LONDON, W14

DATE OF CLAIM - 6 MAY 1998

ADDRESS	DATE OF SALE	TENURE	ACCOMMODATION	FLOOR AREA Sq. Ft.	PRICE ACHIEVED (net carpets and curtains)	PRICE ADJUSTED TO DATE OF CLAIM USING FPDSAVILLS INDEX PCL WEST	RATE PER Sq. Ft.
10 Abbotbury Road	7.7.97	Freehold	6 Beds, 4 Baths 4 Reception rooms	5580	£3,350,000	£3,735,043	£669
26 Ilchester Place	1.9.97	Freehold	7 Beds, 3 Baths 2 Reception rooms	4045	£2,525,000	£2,756,546	£682
18 Ilchester Place	15.7.98	Freehold	7 Beds, 3 Baths 4 Reception rooms	4333	£2,900,000	£2,881,999	£665
22 Ilchester Place	12.5.99	Freehold	7 beds, 4 Baths 3 Reception rooms	4590	£3,280,000	£3,085,106	£672
ADDRESS	DATE OF NOTICE	TENURE	ACCOMMODATION PRIOR TO IMPROVEMENTS	FLOOR AREA Sq. Ft.		FREEHOLD VALUATION	RATE PER Sq. Ft.
26 Abbotbury Road	6.5.98	Freehold	5 Beds, 3 Baths 4 Reception rooms	3833 + loft 708		£2,590,000	£625 + loft @ £275

LONDON LEASEHOLD VALUATION TRIBUNAL  
LEAEHOLD REFORM ACT 1967 AS AMENDED  
Section 9 (1C)  
Valuation  
of  
26 Abbotsbury Road, London, W14  
at 6 May 1998

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

	£	£	£
Valuation of lessor's interest exclusive of marriage value			
For remainder of term-			
Ground rent currently payable	250		
Years Purchase for 7 years @ 5.0%	<u>5.786</u>		
		1.447	
Estimated additional rent payable on review in 6/2005			
Estimated capital value of freehold in possession unimproved.	2,500,000		
for 75 year lease	2,250,000		
Rent payable @ 0.2%	<u>0.002</u>		
	4,500		
Rent on review	<u>4,500</u>		
Further rent review after 25 years in 2030			
Years Purchase for 50 years @ 6.0%	15.7619		
Deferred 7 years @ 6.0%	<u>0.6651</u>		
	<u>10,4832</u>		
		47,174	
For reversion to -			
Value of freehold interest with vacant possession	2,500,000		
Deferred 57 years @ 6.0%	<u>0.0361</u>		
		<u>90,250</u>	
			138,871
<u>Add lessor's share of marriage value</u>			
Value of freehold interest with vacant possession		2,500,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	138,871		
Value of lessee's interest exclusive of marriage value	<u>2,037,500</u>		
		<u>2,176,371</u>	
Gain on marriage		323,629	
Landlord's share @ 50%			<u>161,814</u>
Enfranchisement Price			300,685
		Say	301,000