

LON/LVT/1100/99

SV

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

Applicant: Earl Cadogan

Respondent: Sir John Anthony Craven

RE: 20 Cheyne Walk, London SW3

Date of Tenant's Notice: 28 May 1997

Application to Tribunal dated: 15 March 1999

Heard: 9 & 10 November 1999 Inspection 10 November 1999.

Valuation Date: 28 May 1997 (agreed)

Appearances: Mr T Bannister of Counsel
Mr J Stephenson of Messrs Bircham & Co, Solicitors
Mr J Shingles of Messrs Strutt & Parker
for the Tenant

Mr G Cowan of Counsel
Mr D Greenish of Messrs Lee & Pembertons, Solicitors
Mr K Gibbs, FRICS of Messrs Gerald Eve
Mr A McGillivray of Messrs W A Ellis
Mr M Yardley of Cadogan Holdings Co
for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs B M Hindley LLB (Chairman)
Mr D L Edge FRICS
Mr J M Power MSc FRICS FCI Arb

Date of Tribunal's decision 14 March 2000

1. This decision is made on the application of the landlord, Earl Cadogan, for a determination under section 9(1A) of the Leasehold Reform Act 1967, as amended, of the price to be paid for the freehold interest in the dwelling house, garden and extended garden known as 20 Cheyne Walk, London SW3.
2. The tenant holds the subject property and immediate garden under a lease made 24 June 1980 for a term of 65 years at an initial ground rent of £700 rising to £4600 on 24 June 1990. The tenant holds the extended garden under a lease made 24 June 1980 for a term of 20 years at an initial rent of £300 per annum, which was subject to 5 yearly reviews becoming £425 per annum in 1985 and £1500 in 1990.
3. At the commencement of the hearing the Tribunal was informed of the agreed facts (see Annex 1)
4. The issues to be determined were agreed by the parties as:-
 - a) The additional value attributable to the extended garden. Size agreed at 6165 sq ft (111.5 ft x 55.4ft) as shown edged in blue on the plan attached at Annex 2
 - b) The rental value of the extended garden as at the review date - 24 June 1995
 - c) The effect on the value of the property as a whole of the right of way (foot traffic only) from the extended garden across the garden of No 21 Cheyne Walk to Cheyne Mews.
 - d) The effect on the reversionary value of No 21 Cheyne Walk as a result of the enfranchisement of the right of way across its garden.

The additional value attributable to the extended garden.

5. It having been agreed by the parties prior to the hearing that the value of the house and the immediate garden, as at the valuation date of 28 May 1997, was £2.5m it was argued on behalf of the applicants at the hearing that the entirety value of the house and the extended garden was £3,000,000 and thus £500,000 was the value to be attributed to the extended garden. However, Mr Gibbs, in his written submission had added a further £45,000 for the additional benefit of the right of way and he based his valuation on £3,045,000 (see Annex 3).
6. Mr Shingles proposed £152,500 as the value of the extended garden. (See his valuation at Annex 4).
7. Both sides found support for their figures from the sales of 39 and 41 Egerton Terrace and, to a lesser extent, 49 Egerton Crescent but their extrapolations differed substantially both in their methodology and their adoption of a variety of percentage adjustments. This is shown by the Tribunal in table form below (the figures having been adjusted to the valuation date of 28 May 1997:-

Freehold Value 39 Egerton Terrace	Freehold Value 41 Egerton Terrace	Therefore value of extended garden of 39 Egerton Terrace	Additional value of garden as a % of freehold value
Mr Gibbs * £3,440,000	£2,895,000	£545,000	18.83%
Mr Shingles * £3,885,133	£3,722,628	£162,505	4.36%

*Mr Shingles calculated this figure by reference to the sale of £2.85m in July 1997 whilst Mr Gibbs calculated by reference to the earlier underbid of £2.5m in June 1997.

8. In view of the lack of agreement between the parties on even the starting point of their calculation by reference to comparables, the Tribunal considered that it was a matter for their judgement to determine the value of the extended garden within the overall bracket of

£545,000 and £152,500. They gained no assistance from the information provided by Mr Shingles in relation to an offer of £250-£300,000 for the extended garden of 49 Egerton Crescent which they regarded both as unsubstantiated and as relating to land somewhat remote from that property. Furthermore, they considered that no reliance could be placed on the letters written to the respondent by his immediate neighbours suggesting, prices for the extended garden at 20 Cheyne Walk of between £33,000 and £35,000 (No 19) and £150,000 (No 21).

9. Accordingly, doing the best they could with the provided limited and conflicting information, the Tribunal determined the value of the extended garden at the valuation date of 28 May 1997 to be £300,000.

The rental value of the extended garden

10. The rents previously charged were:-

24 June 1980 - £300 per annum

24 June 1985 - £425 per annum

24 June 1990 - £1500 per annum

The rent requested by the applicants for the unresolved rent review from 24 June 1995 was, initially, £45,000 per annum (6.1.96). This was subsequently amended to £28,250 per annum (18.9.99) and, finally at the hearing, to £17,500 per annum. From this last figure Mr Gibbs then deducted 15% in recognition of the onerous covenants and restrictions contained in the lease to produce a final proposal of £14,875 per annum.

11. Mr Shingles in his written submission proposed a rent of £1295.12p based on FPD Savills PCL SW rental index which produced a rent below that passing in 1990 and was, therefore, contrary to terms of the lease which provided for upward only rent reviews.
12. The Tribunal was of the opinion that the demand for a lease of the extended garden was very limited since access was difficult and the cost of upkeep considerable. Moreover, were lease terms not agreed, the applicants would be responsible for the upkeep.
13. Noting that the rent passing in relation to the extended and larger garden of No 21 Cheyne Walk (held on a lease for 65 years from 25 December 1982 at an initial rent of £600 per annum, increasing to £1,000 per annum in September 1983 and £3000 per annum in 1988) the Tribunal was satisfied that the assessment of the rent for the land comprising the extended garden should be linked to the property indices and the retail price index and accordingly, they determined the rent payable as from 24 June 1995 to be £2,500 per annum.

The value of the right of way

14. Mr Gibbs attributed to it a value of £45,000 being a point mid way between £30,000-£60,000 which he considered a purchaser of No 21 Cheyne Walk would pay to extinguish it. Mr Shingles put no separate value on it considering it to be included in his chosen value for the extended garden of £152,500.
15. The Tribunal was satisfied that some value could be attributed to it, particularly since without it, access for contract gardeners was available only through the house. However, they were not persuaded by the approach adopted by Mr Gibbs. They preferred to value its perceived convenience factor in relation to No 20, rather than its potential detrimental effect on No 21. On this basis they considered £10,000 properly reflected its convenience value.

Nevertheless, since the Tribunal was not persuaded that a purchaser would pay any less for the extended garden without such a right of way they, like Mr Shingles, preferred to attribute no additional value to it.

The effect on the reversionary value of No 21

16. The Tribunal was not persuaded that this was a matter relating to the enfranchisement of the subject property and, therefore, they made no determination on this issue.

Valuation

17. Accordingly the Tribunal made the following valuation:-

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property: 20 Cheyne Walk, London SW3
 Date of Valuation: May 28, 1997
 Unexpired term of lease: 48.08 years

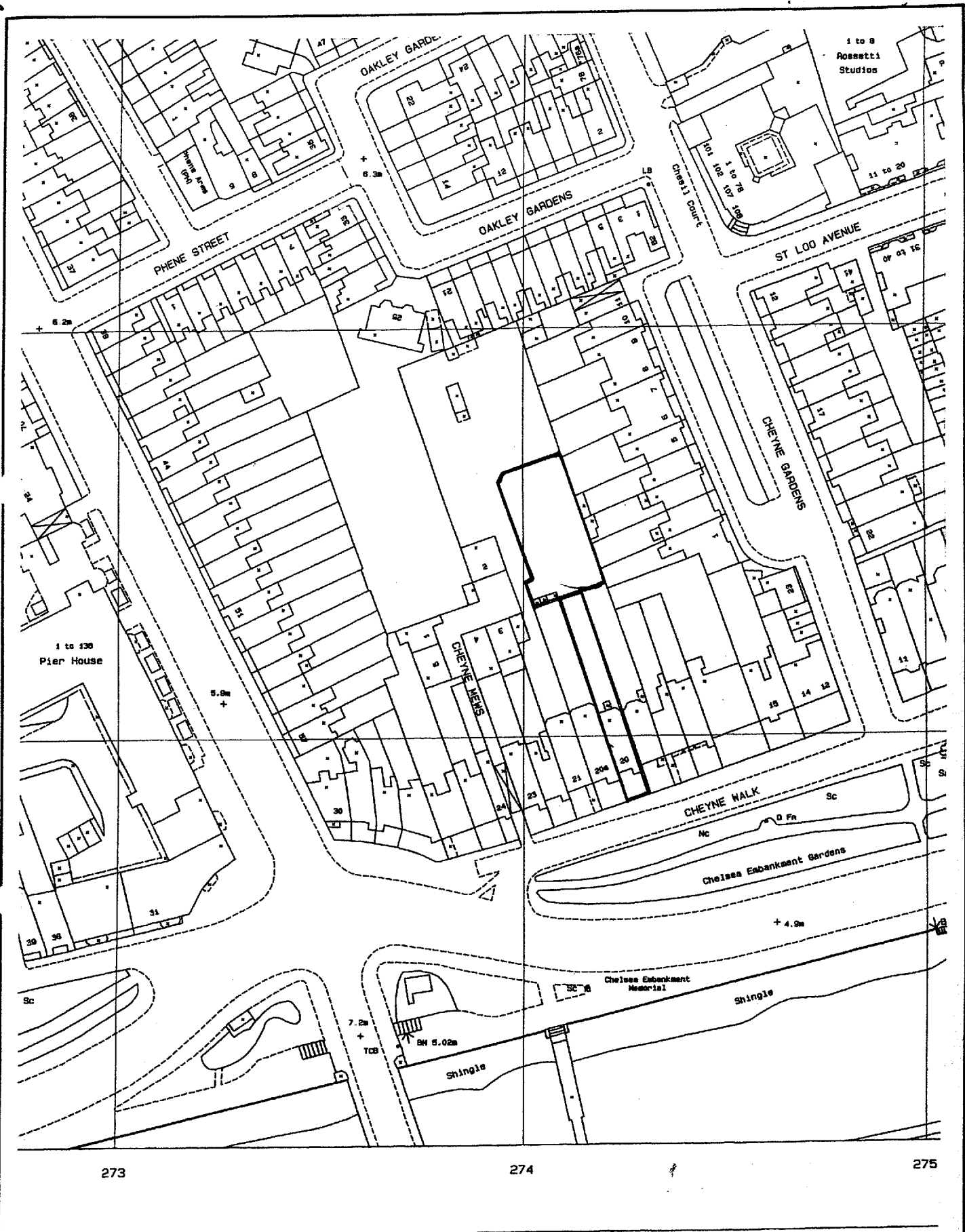
VALUATION IN ACCORDANCE WITH SECTION 9(1C) OF THE LEASEHOLD REFORM
 ACT 1967 (AS AMENDED)

Value of Lessor's interest excluding marriage value	£	£	£
For remainder of term -			
Rent currently payable	4,600 pa		
Capitalised for 3.08 years @ 5.00%	<u>2.791</u>	12,837	
Reversion to rent review to 0.20% FVP commencing on 24 June 2000 with 10 yearly subsequent reviews			
Capitalised for 45.00 years @ 5.50%	16.548		
Deferred 3.08 years @ 5.50%	<u>0.848</u> <u>14.032</u>	70,160	
For reversion to -			
Value of freehold in possession			
Deferred 48.08 years @ 6.00%	2,500,000 <u>0.061</u>	151,787	234,784
Add for Garden:			
Capitalised for 3.08 year @ 5.00%	2,500 pa <u>2.791</u>	6,978	
Reversion to freehold with vacant possession 300,000			
Additional value of right of way 300,000			
Deferred 3.08 years @ 6.00%	<u>0.836</u>	<u>250,800</u>	<u>257,778</u>
Lessor's interest exclusive of marriage value			492,562
Add Lessor's share of marriage value			
Value of freehold in possession		2,500,000	
plus freehold vacant possession value of garden		<u>300,000</u>	
			2,800,000
<u>Less</u>			
Value of lessor's interest exclusive of marriage value			492,562
Value of lessee's interest in house exclusive of marriage value:			1,800,000
			2,292,562
Gain on marriage			507,438
Attributed to lessor at 50.0%			253,719
Enfranchisement price			746,281
			Say <u>£746,300</u>

18. Therefore, the Tribunal determined that the sum to be paid for the freehold interest in the extended garden of 20 Cheyne Walk, London SW3 was £746,300.

CHAIRMAN *R. D. Hardy*

DATE *14/3/2000*



This plan is for identification purposes only. Its accuracy can no way be guaranteed.

Reproduced from the Ordnance Survey Map with permission of the Controller H.M.S.O. Crown copyright reserved. Licence No. ES758043.

20 Cheyne Walk, London SW3

NOT TO SCALE Date: **28/2/1996**



66 Sloane Street, London SW1X 9SH
 Tel: 0171-235 9959 Fax: 0171-245 1230

KDG 1

CADOGAN HOLDINGS COMPANY

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property: 20 Cheyne Walk, London SW3

Date of Claim: May 28, 1997

Unexpired term of lease: 48.08 years

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

Value of Lessor's interest excluding marriage value				£	£	£
For remainder of term -						
Rent currently payable				4,600 pa		
Capitalised for	3.08 years @	5.00%		<u>2,791</u>	12,837	
Reversion to rent review to 0.20% FVP commencing on 24 June 2000 with 10 yearly subsequent reviews.						
Capitalised for	45.00 years @	5.50%	16.548	5,000 pa		
Deferred	3.08 years @	5.50%	<u>0.848</u>	<u>14,032</u>	70,160	
For reversion to -						
Value of freehold in possession						
Deferred	48.08 years @	6.00%		2,500,000		
				<u>0.061</u>	<u>151,787</u>	234,784
Add for Garden:						
Rent				17,500 pa		
Less for lease restrictions:						
			15.0%	<u>2,625</u>	pa	
					14,875	
Capitalised for	3.08 years @	5.00%		<u>2,791</u>	41,509	
Reversion to freehold with vacant possession				500,000		
Additional value of right of way				<u>45,000</u>		
					<u>545,000</u>	
Deferred	3.08 years @	6.00%		<u>0.836</u>	<u>455,464</u>	496,974
Lessor's interest exclusive of marriage value						731,757
Add Lessor's share of marriage value						
Value of freehold in possession				2,500,000		
X plus freehold vacant possession value of garden				500,000		
plus value of right of way				<u>45,000</u>		
						3,045,000
<u>Less</u>						
Value of lessor's interest exclusive of marriage value						731,757
Value of lessee's interest in house exclusive of marriage value:						^{2,000,000} 1,775,000
<u>Add extra garden</u>						
profit rent from restrictions, above				2,625 pa		
Capitalised for	3.08 yrs @	6.5%	3.0%			
tax			40.0%	<u>1.70</u>	<u>4,452</u>	<u>1,779,452</u>
						1,804,452
						<u>2,511,210</u>
Gain on marriage						2,536,209
						533,790
Attributed to lessor at	50.0%					<u>266,895</u>
Enfranchisement price						998,653
						say
						<u>£ 999,000</u>
						986,152

The reserves were made by The Gilbe at the hearing.

VALUATION OF HOUSES IN ACCORDANCE WITH THE LEASEHOLD REFORM ACT 1967

Property 20 Cheyne Walk SW3 LON/LVT/1100/99

Date of Claim 28-May-97 Figures in *Italics* are the agreed elements of the valuation

Unexpired term of lease 48.08 Yrs

LANDLORDS INTEREST**HOUSE**

1)Ground rent payable-				£4,600	
Years Purchase in	3.08	Yrs @	5.0%	2.791	
					£12,837

2)Reversion on review to-

Rent Review Cap val	0.200	% @	£2,500,000	£5,000	
Review rent increase in	3.08	Yrs			
Years Purchase for	45.00	Yrs @	5.5%	16.548	
resent Value of £1 in	3.08	Yrs @	5.5%	0.848	
				14.032	£70,160

3)Reversion to end value-

Freehold value with vacant possession		Unimproved Value		£2,500,000	
Deferred	48.08	Yrs @	6.0%	0.061	
					£151,787

GARDEN

4)Rent payable-				£1,523.67 pa	
Less restrictions:			15%	£228.55 pa	
				£1,295.12 pa	
Years Purchase in	3.08	Yrs @	5.00%	2.791	
					£3,614

5)Reversion to end value-

Freehold value with vacant possession				£152,500	
Deferred	3.08	Yrs @	6.0%	0.836	
					£127,446

Landlords value before marriage value

£365,844

TENANTS INTEREST**HOUSE**

Unexpired lease 48.08 Yrs

Freehold value house £2,500,000

Freehold value Garden £152,500

Percentage of value 72.00

Amount of value £1,800,000

Value of short lease before marriage value £1,800,000

GARDEN

Profit rent from restrictions above £228.55 pa

Years Purchase in	3.08	Yrs @	6.5%	3.0%		
		tax @	40.00%	1.70	£389	

Total Tenants Interest

MARRIAGE VALUE £1,800,389

Combined Freehold Val £2,652,500

less Landlords interest (£365,844)

less Tenants interest (£1,800,389)

£486,267

PRICE FOR FREEHOLD INTEREST

Landlords Interest £365,844

50% Marriage value £243,134

£608,978

£609,000