

(75)

Ref: LON/LVT/1031/98

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**

Applicant: The Trustees of the Eyre Estate

Respondent: Mrs J B Rosenberg

RE: 48 Queen's Grove, London, NW8

Date of Tenant's Notice: 31 July 1997

Application to the Tribunal dated: 15 October 1998

Heard: Thursday 3 February 2000, Friday 4 February 2000

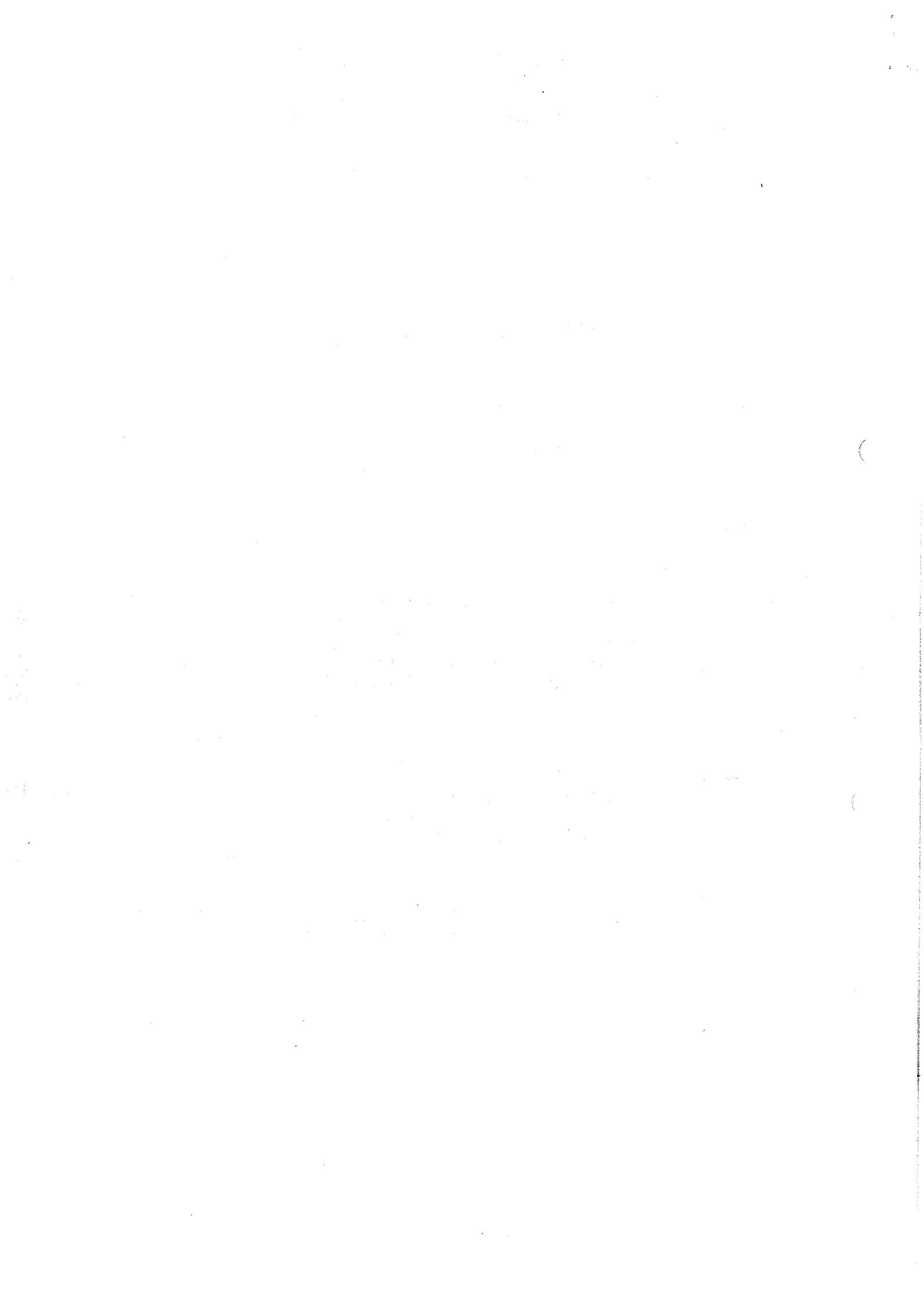
Appearances: Mr E Johnson (Counsel)
Mr G C Alterman, David Conway & Co
Mr K G Buchanan BSc ARICS, Conrad Ritblat & Co
Mr V R Belcher MA

for the Tenant

Mr J Small (Counsel)
Miss K Glanville, Lee & Pembertons
Mr J E C Briant BA ARICS, Cluttons
Mr P Drury FSA ARICS JHBC

for the Landlord

Date of the Tribunal's decision: - 4 MAY 2000



The Tribunal was dealing with an application under Section 9 (IC) of the Leasehold Reform Act 1967 ("the Act") for the determination of the enfranchisement price.

The subject property, a detached 2 storey house, circa 1938, on a corner plot, was inspected by the Tribunal on 13 March 2000. Within the curtilage was a separate coach house which had a frontage to St John's Wood Park.

The present accommodation was as follows:

Ground Floor

	(m²)
Drawing Room	= 44.62
Dining Room	= 21.74
Garden Room	= 43.43
Study	= 10.26
Kitchen	= 20.31
Laundry Room	
Cloakroom	

First Floor

Master Bedroom	= 24.76
Bedroom 2	= 16.15
Bedroom 3	= 20.15
Bedroom 4/Study	= 14.06
Dressing Room 1	= 10.19
Dressing Room 2	= 6.14
Ensuite Bath 1	
Ensuite Bath 2	
Bathroom	
Shower Room	

Coach House

Bedroom	= 10.05
Living Room	= 13.28
Kitchen	= 5.57
Bathroom	
(Garage)	(6.89m x 6.62m) = (45.61m ²)

The total Effective Floor Area of the existing accommodation excluding the bathrooms, wcs, and circulation space is **261m² (2809 sq ft)**.

The Tribunal also inspected externally the comparables at 25, 39, 41 and 42 Queen's Grove and 23 Avenue Road.

AGREED FACTS

Valuation date: **31 July 1997**

Marriage Value: **50:50**

Property to be valued as unimproved

Schedule of comparables

MATTERS TO BE DETERMINED

1. **Improvements to be disregarded**
2. **Value of unimproved freehold interest**
3. **Value of unimproved leasehold interest**
4. **Yield**
5. **Terms of transfer.**

There was dispute between the parties as to method of valuation and there were therefore three bases of valuation to be considered by the Tribunal as follows:-

The First Basis (Site Value):	That the construction of the house and coach house constituted an improvement carried out by the Respondent's predecessor in title (the builder, Mr Sugden).
The Second Basis (Carcass):	The improvements to be disregarded included substantial completion works carried out by the original tenant (Mr Rydemark) in the 5 months after the grant of the lease to him in January 1945.
The Third Basis (Full Value):	The improvements were limited to improvements carried out pursuant to licences for alterations of 5 January 1955 and 8 July 1955.

The Applicant's case was that the appropriate basis for valuation of the freehold and the leasehold was the third basis (full value) and suggested an enfranchisement price of £620,215.

The Respondent's case was that the appropriate basis for valuing the freehold and the leasehold was the first basis (site value) and suggested an enfranchisement price of £223,264.

The respective valuations are attached as Appendices B and C.

HEARING

Chronology

The Chronology is attached as Appendix A from which it can be seen that the main dates are as follows:-

November 1938 – District Surveyor notified LCC that structure and external envelope had been completed.

December 1939 – The obligation to enter into a lease was stated to be overdue.

January 1941 – Coach house requisitioned and used as store and offices.

January 1945 – Lease for 96 ½ years from 25 December 1937 granted by the Estate to Mr J E Rydemark.

June 1945 – Mr Rydemark started to pay rates and both parties at the hearing accepted that this was evidence of occupation.

1. **Improvements to be disregarded**

There were three categories of improvement – (a) the building of the house itself (b) the completion works and (c) later works

Both items (a) and (b) above were in dispute although the cost of item (b) had been agreed at £200,000. Item (c) concerned works carried out following licences granted in 1955; it was agreed that these later works fell to be disregarded.

The First Basis – site value

Mr Johnson, for the Respondent, argued that the construction of the house itself amounted to an improvement and therefore should be disregarded in its entirety. The correct basis of valuation should be site value. He said that the building agreement between the Estate and Mr Sugden “gave rise to a lease in equity of the property on the terms of the lease” for the following reasons:-

“The Agreement was an agreement for the grant of the Lease of which Mr Sugden would have been entitled to seek specific performance if the Trustees had sought, at any stage, to repudiate their obligation to grant the Lease. Such specific performance could have been granted at any stage of the Agreement; whether or not construction of the House had been completed. As such Mr Sugden fell to be treated, once the Agreement had been granted, as if he was the tenant of the Property under the Lease; in other words he was the tenant of the Property in equity”.

Mr Small for the Applicants argued that Mr Johnson’s approach was incorrect – no building agreement could be traced although it was acknowledged that it was dated 1 March 1938 and “there was no equitable lease in existence when Sugden was building the house. Sugden can only have an equity if the agreement is capable of specific performance. While the house remained unbuilt he had no right to call for a lease. Thus on any view he cannot be a predecessor in title” and the tenant had to show that the work was carried out by a predecessor in title. He concluded “In any event, even

if Sugden is a predecessor of the Tenant, the building of the house itself cannot be regarded as an improvement for the purposes of section 9 (1A) (d): see Rosen-v-Trustees of Campden Charities [1999] 2 EGLR 213".

The Second Basis – carcass

Mr Johnson argued that when the lease was granted to Mr Rydemark on 4 January 1945 certain works still remained to be completed and were only completed by the time he took occupation in June 1945. These included glazing of windows, final painting of woodwork, joinery work such as the provision of doors, door-cases, skirting and panelling, decorative plasterwork, installation of chimney pieces, the installation of kitchen, bathroom and sanitary fittings and final decoration.

In support of this argument he said the lease specified a firm time limit for completion; the Estate's requirements for the standard of completion prior to grant of lease varied; the delay of five months between the grant of the lease and Mr Rydemark's occupation could be explained by the need for ongoing building works; had the subject property been useable it would have been requisitioned; the onset of war made the completion of building works extremely difficult.

Mr Small said that the house was fit for habitation as at the grant of the lease and the only outstanding matters were no more than decorations. In support of his argument he maintained that the Estate had a "particularly stringent" requirement for the standard of completion prior to the grant of leases and produced supporting correspondence and insurance details; the six month time limit in the lease could not

be taken at face value and was a reasonable period to cover dilapidations, decorations and cleaning, particularly in view of wartime shortages; notification to the rating authorities in January 1945 indicated that the house was habitable.

The Third Basis – Full Value

Mr Small, for the Applicants, maintained that this was the correct basis of valuation. Mr Johnson for the Respondent disagreed and invited the Tribunal to find as a question of fact that the second basis (carcass value) was correct should it reject his argument for site value under the first basis.

2. Value of unimproved freehold interest

Mr Briant, for the Applicant, had assessed the freehold vacant possession on the third basis (full value) at £2,400,000 and invited the Tribunal to agree.

He reached his valuation by analysing the schedule of agreed comparables, namely 25 and 37 Queens Grove, 123 Hamilton Terrace and 23 Avenue Road. As a valuation exercise he also produced figures on the other two bases. On the first basis (site value) this was £1,700,000 and on the second basis (carcass) this was £2,200,000. He supported his site value figures by reference to transactions.

Mr Buchanan, for the Respondent, had valued the improved freehold on the third basis of valuation (full value) at £2,050,000. In support of this figure he quoted comparables namely, 25 and 41 Queen's Grove and 8 St John's Wood Park.

On the second basis of valuation (carcass) his value was £1,850,000 adopting the same approach as Mr Briant. He nevertheless invited the Tribunal to adopt the third basis of valuation (Site Value) for which his figure was £1,150,000. In support of this figure he quoted as his preferred comparable a transaction at 39 Queen's Grove making a number of adjustments to the sale price.

3. Value of unimproved leasehold interest

Mr Briant, in support of his figure of £1,440,000 for the unimproved leasehold value on the third basis (full value), stated that this was 60% of his estimated unimproved freehold value and accorded with Leasehold Reform Act settlements in St John's Wood. He stated that a differential of 60% "is correct with a property of this type with 36.93 years unexpired".

Corresponding unimproved leasehold values on the first and second bases were £1,020,000 and £1,320,000 respectively.

Mr Buchanan, putting forward a figure of £1,450,000 on the third basis (full value), had relied on three open market transactions of short leasehold interests – 39, 41 and 42 Queens Grove. Using this figure as a starting point he reached a figure of £1,310,000 for the unimproved leasehold value on the second basis applying a proportionate discount for the value of the completion works. His valuation on the first basis (site value) was £816,500.

4. Yield

Mr Briant argued for 6%. In support of this he cited Lands Tribunal determinations in respect of 43 and 139 Hamilton Terrace and 30 Marlborough Place (6%) and 85 Avenue Road, 11 Loudoun Road (6.25%) together with a range of settlements made by his firm in St John's Wood.

Mr Buchanan argued for 6.5% based on the locational disadvantage of the subject property; the fact that the lease had a long unexpired term and a relatively low fixed ground rent. To counter these points, he conceded that the subject property was of high value in the context of St John's Wood.

5. Terms of transfer

The Tribunal was given a copy of the draft terms of Transfer. The Tribunal was informed that all terms were agreed save for the following clauses:-

"3.3 Not to use or permit the Property to be used otherwise than as a private dwelling house in one occupation nor carry on or permit to be carried on upon the Property or any part thereof any profession trade or business other than that of a qualified medical practitioner without a panel practice or a qualified member of the Royal Institute of British Architects.

3.7 Not to....park on the area coloured blue on the plan attached hereto any vehicles except private motor cars."

By way of explanation, the Tribunal was informed that the area coloured blue was the area in front of the coach house. No submissions were made by the Respondent, the main issue was in respect of the user of the house, the Respondent's suggested clause being as follows:

"Subject to the provisions of clause 3.3.2 not without the prior written consent of the Transfers such consent not to be unreasonably withheld or delayed to use or permit that part of the Property coloured pink on the plan annexed hereto and that part of the Property coloured pink hatched black on the said place (sic) to be use (sic) otherwise than as private dwelling houses either in one occupation or in separate occupations".

Mr Small argued that "the substantive difference is that it permits the tenant to use the premises "*in one occupation or in separate occupation*". This would have the result of permitting the tenant to sell off or rent the coach house thus increasing the density of households and traffic in the Estate. Further the coach house or the main house could be sold off or let off exclusively for the permitted business use".

Mr Johnson argued that "the Tribunal is reminded that the Trustees are only entitled to include within the transfer those restrictions which the Respondent is willing to agree to or which, in the absence of agreement, can be shown to fall within the terms of Section 10(4) of the Act. The Respondent does not agree to the Trustees' proposed user covenant. The burden is upon the Trustees to show that their proposed user

covenant falls within the terms of Section 10(4)". He said they could not show this and it was unreasonable to insist on an absolute restriction.

DETERMINATIONS

1. Improvements to be disregarded

The Tribunal was presented with three bases of valuation as set out on page 3 of this decision.

With regard to the first basis (site value), the Tribunal prefers Mr Small's argument and does not consider Mr Sugden (the builder) to be a predecessor in title. The construction of the house itself did not therefore constitute an improvement to be disregarded. Although the Tribunal was requested to place a value on the site notwithstanding its findings, it is not considered appropriate to do so.

With regard to the second and third bases (carcass and full value) a figure of £200,000 separated the parties.

Both expert witnesses could only speculate as to the finished condition of the subject property in January 1945. Neither expert could provide any material evidence.

On the one hand, requisitioning of only the coach house could have supported the theory that the main house was incomplete as maintained by Mr Belcher. On the other hand, given wartime shortages of tradesmen and building materials, a five month period to complete the outstanding works appeared to be unrealistically short.

As stated earlier, both parties agreed that the value of all completion works as at the valuation date was £200,000. The Tribunal determines that 25% of these works, namely £50,000, was outstanding in January 1945. This sum should therefore be disregarded as representing an improvement carried out during the term of the lease.

The Tribunal has adopted the third basis (full value) discounted to reflect the £50,000 referred to above.

2 **Value of unimproved freehold interest**

On this basis, ie discounting the £50,000, the respective figures for the unimproved freehold interest become £2,350,000 for the Applicant and £2,000,000 for the Respondent.

The Tribunal determines that the appropriate figure is £2,200,000.

3. **Value of unimproved leasehold interest**

The respective figures for the unimproved leasehold interest, discounting for the £50,000 improvements, now become £1,410,000 for the Applicant and £1,420,000 for the Respondent.

Mr Buchanan had reached his figure by an analysis of open market comparables. Mr Briant had relied upon a settlement graph and derived his value by applying a percentage of the freehold value.

The Tribunal prefers Mr Buchanan's approach and accordingly determines the unimproved leasehold interest at £1,420,000.

In the Lands Tribunal case of Trustees of the Eyre Estate v Saphir and Another, both parties agreed that the use of settlement graphs was no more than a method of checking valuations arrived at by different routes. The Tribunal agrees with this and considers that open market evidence should be used when available rather than relying on settlement graphs alone, as Mr Briant did in this case.

4. **Yield**

The Tribunal determines the appropriate yield is 6%.

5. **Terms of transfer**

Although the Respondent clearly does not agree with the absolute prohibition, the Tribunal considers that it is caught under Section 10(4)(b)(i) of the Act which provides that restrictions contained in the lease may be included in the transfer providing they are "capable of benefiting other property and..... are such as materially to enhance the value of other property.....". In addition Section 10(4)(C) of the Act enables a landlord to include other restrictions in a transfer if they

"will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest".

In the view of the Tribunal the continued use of the main house and coach house as one hereditament must enhance the value of the Estate as a whole. Furthermore, the Tribunal considers that the coach house is an integral part of the freehold interest, and any severance of this coach house from the freehold title would reduce the residential amenity of the main house, given the proximity, siting and outlook of the two dwellings.

The Tribunal's valuation, determining an enfranchisement price of £522,660, is attached as Appendix D.

CHAIRMAN.....



DATE.....4 May 2000.....

CHRONOLOGY

Appendix A

- 25.12.36 Previous leases of the pair of houses on the site (Nos 48 & 49 Queen's Grove) expired
- 1.3.38 Building Agreement between Estate and Mr Sugden; Sugden obliged to build **48 Queen's Grove**; Estate obliged to grant a lease to Sugden; premium payable on completion being £1,375.
- 14.3.38 Planning permission for building of new house.
- 25.3.38 District Surveyor receives notice of commencement of building.
- 16.5.38 Planning permission for chauffeur's house.
- 14.11.38 The District Surveyor notified the London County Council that the house was complete ie, the structure and external envelope were finished.
- 22.6.39 Sun Insurance note the interest of the developer, Mr Sugden.
- 3.9.39 Outbreak of War
- 20.12.39 Sugden requests Estate to permit him to postpone taking up his lease.
- 21.12.39 Estate's agents write to Estate's solicitor's in the following terms:
"[Sugden]... has spent a considerable sum of money, put up a very good house and is out of pocket by the interest"
- 1.1.41 Coach house requisitioned and used as store and offices.
- 8.12.44 Sugden exchanged contracts with a Mr J E Rydemark (a dentist) by this date; total premium: £10,000
- 4.1.45 Lease between (1) the Estate, (2) H D Sugden and (3) J E Rydemark.

In consideration of payment, by direction of Sugden by Rydemark of £1375 to the Estate, and £8625 to Sugden and the erection of the dwelling-house by Sugden, the Estate, at the direction of Sugden, demises **48 Queen's Grove** to Rydemark for a term of 96½ years from 25.12.37. *Rydemark covenants (Clause 2) that he will "completely finish the said premises with the party walls and fence walls thereof fit in all respects of habitation within six months....."*, however no schedule of works to be completed.
- 26.1.45 House assessed for rates
- 14.6.45 Rydemark paid rates (ie in occupation)

- 30.7.46 Aircraft company vacates coach house
- 1.1.55 Licence for alterations
- 5.7.55 Licence for alterations
- 31.7.97 Tenant's Notice to acquire freehold: **valuation date**

BASIS 1
(HOUSE CONSTITUTES A TENANT'S IMPROVEMENT)

Valuation Date: 31/07/97

LEASE TERMS:

Lease commenced:	25/12/37
Lease to expire:	25/06/34
Unexpired Term:	36.93
Ground rent (pa):	£90
Site Value	£1,700,000

FHVP	£1,700,000	
Value of Underlease:	£1,020,000	60.00%

FREEHOLD PRESENT INTEREST:

Term:

Ground Rent:	£90			
YP	36.93	@	6%	14.73
				£1,326

Reversion:

FHVP Less improvements:	£1,700,000			
PV £1	36.93	@	6%	0.12
				£197,699
Landlord's present interest				£199,024

MARRIAGE VALUE:

FHVP: (less improvements)	£1,700,000
Less	
Landlords Present Interest:	£199,024
Leasehold Interest: (less improvements)	£1,020,000
Total Marriage Value:	£480,976
Take 50% MV	£240,488

Freeholders interest:

£439,512

BASIS 2
(HOUSE CONSTITUTES A PART TENANT'S IMPROVEMENT)

Valuation Date: 31/07/97

LEASE TERMS:

Lease commenced:	25/12/37
Lease to expire:	25/06/34
Unexpired Term:	36.93
Ground rent (pa):	£90

Freehold value	£2,200,000
Value of Underlease:	£1,320,000
	60.00%

FREEHOLD PRESENT INTEREST:

<u>Term:</u>	
Ground Rent:	£90
YP 36.93 @ 6%	14.73
	£1,326

Reversion:

FHVP Less improvements:	£2,200,000
PV £1 36.93 @ 6%	0.12
	<u>£255.845</u>

Landlord's present interest	£257,171
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MARRIAGE VALUE:

FHVP: (less improvements)	£2,200,000
Less	
Landlords Present Interest:	£257,171
Leasehold Interest: (less improvements)	<u>£1,320,000</u>
Total Marriage Value:	£622,829
Take 50% MV	<u>£311,415</u>

Freeholders interest:	£568,585
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BASIS 3
(HOUSE DOES NOT CONSTITUTE A TENANT'S IMPROVEMENT)

Valuation Date: 31/07/97

LEASE TERMS:

Lease commenced:	25/12/37
Lease to expire:	25/06/34
Unexpired Term:	36.93
Ground rent (pa):	£90

	Improved	Unimproved	
FHVP	£2,500,000	£2,400,000	
Value of Underlease:		£1,440,000	60.00%
Tenants' Improvements	£100,000		

FREEHOLD PRESENT INTEREST:

<u>Term:</u>				
Ground Rent:			£90	
YP	36.93	@	6%	14.73
				£1,326

Reversion:

FHVP Less improvements:	£2,400,000	
PV £1 36.93 @ 6%	0.12	
		<u>£279.104</u>
Landlord's present interest		£280,430

MARRIAGE VALUE:

FHVP: (less improvements)	£2,400,000	
Less		
Landlords Present Interest:	£280,430	
Leasehold Interest: (less improvements)	<u>£1,440,000</u>	
Total Marriage Value:	£679,570	
Take 50% MV		<u>£339,785</u>
 Freeholders interest:		 £620,215

First Basis of Valuation

(1)

48 QUEEN'S GROVE, LONDON NW8

Valuation as at 31st July 1997

Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as amended by the Leasehold Reform Housing and Urban Development Act 1993

1. Value of Freeholders Interest

Term I

Ground Rent	£90 pa	
YP 37 yrs @ 6½%	13.88	£1,249

Reversion

Freehold Site Value	£1.15m	
Freehold value		
PV £1 37 yrs @ 6½%	.0972	£111,780

£113,029

Marriage Value

Freehold Site Value	£1.15m	
Less (i) Freeholders Interest		£113,029
(ii) Leasehold Site Value		<u>£816,500</u>
Marriage Value		£220,471
Freeholders share at 50%		£110,235

£223,264

Second Basis of Valuation

(2)

48 QUEEN'S GROVE, LONDON NW8

Valuation as at 31st July 1997

Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as amended by the Leasehold Reform Housing and Urban Development Act 1993.

1. Value of Freeholders Interest

Term I

Ground Rent	£90 pa	
YP 37 yrs @ 6½%	13.88	
		£1,249

Reversion

Freehold Value disregarding	
Completion Works and Later Works	£1.85m
PV £1 37 yrs @ 6½%	.0972
	£179,820
	£181,069

Marriage Value

Freehold Value disregarding	
Completion Works and Later Works	£1.85m

Less	(i) Freeholders Interest	£181,069
	(ii) Leasehold Value disregarding	

Completion Works and Later Works £1.310m

Marriage Value £358,931

Freeholders share at 50% £179,465
£360,534

Third Basis of Valuation

(3)

48 QUEEN'S GROVE, LONDON NW8

Valuation as at 31st July 1997

Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as amended by the Leasehold Reform Housing and Urban Development Act 1993

1. Value of Freeholders Interest

Term I

Ground Rent	£90 pa
YP 37 yrs @ 6½%	13.88
	£1,249

Reversion

Unimproved Open Market	£2.05m
Freehold value disregarding the Later Works	
PV £1 37 yrs @ 6½%	.0972

£199,260
£200,509

Marriage Value

Freehold Value disregarding the Later Works	£2.05m
Less (i) Freeholders Interest	£200,509
(ii) Unimproved Open Market	<u>£1.45m</u>
Leasehold Value disregarding the Later Works	
Marriage Value	£399,491
Freeholders share at 50%	
	£199,745
	£400,254

Appendix D

48 QUEENS GROVE, NW8

THE TRIBUNAL'S VALUATION

Freeholder's Present Interest

Ground Rent	£90 per annum	
YP for 36.93 years @ 6%	<u>14.73</u>	<u>£1,326</u>
<u>Reversion to unimproved freehold interest</u>		£2,200,000
PV of £1 in 36.93 @ 6%		<u>0.12 £264,000</u>
Landlord's Present Interest	£265,326	£265,326

Marriage Value

Unimproved freehold interest	£2,200,000	
<u>Less</u> Landlord's present interest	£265,326	
L/h unimproved interest	<u>£1,420,000</u>	<u>£1,685,326</u>
<u>Marriage value</u>		£ 514,674
Freeholder's share @ 50%	£257,337	<u>£257,337</u>
Enfranchisement price		£522,663
		Say £522,660