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Ref: No. LON/LVT/1390/01

**LEASEHOLD VALUATION TRIBUNAL FOR THE
LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 OF THE
LEASEHOLD REFORM ACT 1967**

Applicant: John Lyon's Charity (Landlord)

Respondents: William Simon Fattal and Francine Fattal (Tenants)

Re: 81 Hamilton Terrace, London NW8

Application to Tribunal by John Lyon's Charity: 9 April 2001

Hearing: 27 and 28 November 2001

Appearances: Mr. A. Radevsky (Counsel)
Miss V. Walton of Pemberton Greenish, Solicitors
Mr. J.E.C. Briant BA, MRICS of Cluttons
Mr. J.P. Hamilton of Cluttons

for the Applicant

Mr. E. Johnson (Counsel)
Mr. M. Grace of Julian Holy, Solicitors
Mr. K.G. Buchanan BSc (Est.Man), MRICS
of Colliers Conrad Ritblat Erdman
Mr. V. Belcher MA

for the Respondents

Members of the Leasehold Valuation Tribunal:-

Mr. P.D. Wulwik LLB (Chairman)
Mr. J.R. Humphrys FRICS
Mr. P.S. Roberts Dip.Arch. RIBA

Date of notice of tenants' claim: 31 August 2000

Date of notice of reply to tenants' claim: 8 December 2000

Landlord's proposed price (as amended): £2,541,455
Tenants' proposed price: £ 847,355
Agreed valuation date: 31 August 2000
Leasehold Valuation Tribunal's determination: £2,468,895
Date of Tribunal's decision: 12 FEBRUARY 2002

81 Hamilton Terrace, London NW8

A. **Introduction**

1. This is an application by the Applicant landlord John Lyon's Charity to determine the enfranchisement price payable by the Respondents Mr. and Mrs. W.S. Fattal for the freehold of the property at 81 Hamilton Terrace, London NW8 under Section 9 (1C) of the Leasehold Reform Act 1967.
2. The Respondents are the tenants of the property (formerly known as 57 and 57A Hamilton Terrace) under two Leases dated 9 December 1927 and 6 March 1928, each Lease relating to a different part of the property and being for a term of 80 years expiring on 28 September 2007 at a fixed rent of £50 per annum and £5 per annum respectively without review.
3. The property comprises a detached house on ground, lower ground and two upper floors and is situated in the St. John's Wood Conservation Area.
4. On 31 August 2000 the tenants gave notice of their claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 8 December 2000 the landlord John Lyon's Charity served notice in reply admitting the tenants' right to acquire the freehold. On 9 April 2001 the landlord issued the present application to determine the enfranchisement price payable for the freehold of the property. The landlord's application

proposed a price of £2,550,000. Directions were given by the Tribunal on 24 September 2001.

B. **Hearing**

5. The hearing took place on 27 and 28 November 2001. The Applicant landlord was represented by Mr. A. Radevsky of Counsel instructed by Pemberton Greenish, Solicitors. The landlord's valuation expert was Mr. J.E.C. Briant BA, MRICS of Cluttons. The Respondent tenants were represented by Mr. E. Johnson of Counsel instructed by Julian Holy, Solicitors. The tenants' valuation expert was Mr. K.G. Buchanan BSc (Est. Man.), MRICS of Colliers Conrad Ritblat Erdman. The tenants' historical expert was Mr. V. Belcher MA.

6. The parties had agreed a statement of facts, including the following matters:-

- (1) The valuation date was 31 August 2000. At that date, the Leases had 7.07 years unexpired.
- (2) With regard to yield, the freeholder's interest was to be valued at 6%.
- (3) The marriage value was to be apportioned equally between the freeholder and the lessees.
- (4) There was an agreed schedule of comparables.

7. The form of transfer was also agreed.

8. In opening the matter for the landlord, Mr. Radevsky informed the Tribunal that neither Mr. Fattal nor the historical expert Mr. Belcher were required to be cross-examined on their evidence. Mr. Fattal had made a statement dated 26 November 2001. There was both a résumé and a detailed description of improvements undertaken by Mr. and Mrs. Fattal. Mr. Radevsky stated that the only comment that he had in relation to the résumé of improvements was that in paragraph 1.2 it was stated that “There was a garden at the front and a rear garden (probably a field)”. The landlord did not accept that it was probably a field. It was mere speculation. The landlord otherwise accepted the details of the works set out. The landlord contended that some of the works were repairs and not improvements.

9. The matters in issue between the parties at the commencement of the hearing were the following:-

- (1) The unimproved freehold value of the property.
- (2) The unimproved existing leasehold value of the property.
- (3) Whether Section 3 (3) of the Leasehold Reform Act 1967 applied so that tenant’s improvements carried out under an earlier Lease granted in 1847 fell to be disregarded.
- (4) The effect on value of tenant’s improvements, in particular whether the time taken to obtain relevant permissions and carry out the improvements was part of the value of the

improvements to be disregarded, thus enabling the valuation to be effectively backdated to August 1996.

10. During the course of the hearing, the parties accepted the following further matters:-
 - (1) The landlord accepted that the garage of 250 sq. ft. was a tenant's improvement and therefore to be disregarded, leaving the approximate gross internal area of 4001 sq. ft. for the unextended 1927 house.
 - (2) In view of the evidence given by Mr. Buchanan of the lack of impact on the valuation of the extra 85 sq. ft. alleged by the tenants to have been added to the property between 1847 and 1927, the tenants did not pursue the linkage argument under Section 3 (3) of the 1967 Act in order that tenant's improvements carried out under the earlier 1847 lease might fall to be disregarded. In not pursuing the point, Mr. Johnson stated that the tenants did not accept that the linkage point was wrong in law. The decision not to pursue the point was made on the basis of its lack of impact on valuation. Mr. Johnson stated that he nevertheless sought to reserve the tenants' position in the event of an appeal, were it in fact to turn out that the point had some more significant impact on the valuation.
11. Both valuers gave evidence in accordance with their respective proofs of evidence, which they supplemented in their oral evidence. Mr. Briant for the landlord proposed an unimproved freehold vacant possession value of £3,500,000 and an unimproved value for the existing leases of £735,000. Mr. Briant's proposed enfranchisement price was £2,541,455 in accordance with his valuation at Appendix 1.

12. Mr. Buchanan for the tenants had prepared two valuations. His primary approach was that the four year period during which improvements were carried out by the tenants should be disregarded, with the property to be valued effectively as at August 1996. On that basis, he proposed an unimproved freehold vacant possession value of £1,200,000 and an unimproved value for the existing leases of £300,000. Using the August 1996 figures, Mr. Buchanan's proposed enfranchisement price was £847,355. On the basis of values as at 31 August 2000, he arrived at an unimproved freehold vacant possession value of £2,000,000 and an unimproved value for the existing leases of £500,000. Using the August 2000 figures, his enfranchisement price was £1,412,155. Mr. Buchanan's valuations are at Appendix 2.

13. Both parties' valuers subsequently prepared a further analysis of the comparables. They were given the opportunity to comment on the analysis of the other party, and each provided further comments in writing.

C. **Inspection**

14. The Tribunal inspected the subject property at 81 Hamilton Terrace on 13 December 2001.

15. In addition, the Tribunal inspected internally further comparables, namely 43, 82, 90 and 96 Hamilton Terrace. Extensive building works were taking place at 90 and 96 Hamilton Terrace. The Tribunal also inspected externally 97, 102, 123 and 152 Hamilton Terrace.

D. **Decision**

16. The parties had agreed during the course of the hearing that the garage of 250 sq. ft. was a tenant's improvement and was to be disregarded. Further, in the light of the evidence given by Mr. Buchanan as to the lack of impact on valuation of the extra 85 sq. ft. said by the tenants to have been added to the property between 1847 and 1927, the tenants had not pursued the linkage argument that by virtue of Section 3 (3) of the Leasehold Reform Act 1967 tenant's improvements carried out under the earlier 1847 lease fell to be disregarded.

17. In the result, the Tribunal had to value the property at 81 Hamilton Terrace in its 1927 form and layout and kept in good repair under the terms of the Leases dated 9 December 1927 and 6 March 1928.

18. The remaining issues were:-
 - (1) The unimproved freehold value of the property. That involved consideration of development potential. There was also the question whether the four year period during which the improvements had been carried out by Mr. and Mrs. Fattal should be treated as a material factor in increasing the value of the house as contended by Mr. Buchanan, with the adjustment to be made by looking at the value of the property in August 1996 as opposed to August 2000.

 - (2) The unimproved existing leasehold value of the property.

Unimproved freehold value

(i) **The issue of development potential**

19. The assumptions that the Tribunal are to make are set out in Section 9 (1A) of the 1967 Act, including the disregard of the value of tenant's improvements under Section 9 (1A) (d) of the Act.
20. The Tribunal agree with the landlord's Counsel that in relation to the development potential of the unimproved property there is nothing in the 1967 Act which precludes the Tribunal from taking into account any features of the unimproved property which would be taken into account in the market.
21. The Tribunal are valuing the property at an agreed valuation date. At the agreed valuation date, 31 August 2000, the property had planning permission for alterations and additional accommodation. There is nothing in the Act to say that one disregards these facts which were in existence at the valuation date. There was a potential to add to the order of 430 m² of floor area.
22. The Tribunal note that Mr. Buchanan in his valuation report had allowed 1,000 - 1,500 sq. ft. (92.9-139.35 m²) for development potential on the basis of there being no planning consent.
23. In fact, there was planning consent at the valuation date. There is therefore no reason not to value the property on the basis of the full and actual development potential of the unimproved property at the valuation date that is to the order of 430 m² of space in

accordance with the planning consents previously obtained and implemented at the valuation date.

24. The Tribunal are therefore satisfied that they are able to value the property on the basis of the actual development potential of the unimproved property at the valuation date of 31 August 2000.

25. The Tribunal are not valuing the property on the basis of the improvements having been carried out, there being a distinction between development potential and improvements carried out.

(ii) **The delay or 4 year point relating to tenant's improvements**

26. This was an extremely novel argument in the Tribunal's experience, as Mr. Buchanan accepted.

27. The Tribunal agree with the landlord's Counsel that what Section 9 (1A) (d) of the Act requires is the disregard of the value of improvements carried out by the tenant. The Tribunal is not concerned with the time it took to do the works, nor with how long it took the tenants to obtain planning permission.

28. The Tribunal consider that Mr. Buchanan's approach is little more than a transparent attempt to backdate the valuation date from the agreed date of 31 August 2000.

(iii) **Unimproved freehold value**

29. On the basis of a valuation date of 31 August 2000, the landlord's proposed unimproved freehold value for the property was £3,500,000. The tenants' figure was £2,000,000.
30. In general terms, Mr. Buchanan's approach, based on 90 Hamilton Terrace as his benchmark comparable, was to value the improved subject property at 81 Hamilton Terrace as it is at around £5,000,000 (a figure which the landlord says should be to the order of £7,000,000) and then to take off what Mr. Buchanan thinks is the value of the improvements, namely £3,000,000, to bring the value of the unimproved freehold back to £2,000,000. He then further reduces this figure to £1,750,000 to go back to the original house in the 1840s.
31. Mr. Buchanan's second approach using what he considers to be the best comparable of 82 Hamilton Terrace is to arrive at an adjusted unimproved freehold value of £2,250,000.
32. Mr. Buchanan then averages the two figures to arrive at his suggested valuation for the unimproved freehold value of £2,000,000, which he then sought to backdate four years to arrive at £1,200,000 (a deduction of 40%).
33. Again, in general terms, Mr. Briant had three main comparables of 82, 92 and 96 Hamilton Terrace. His approach was to analyse the sales and add for the development potential at 40%.
34. The difficulty with this approach can be seen from Mr. Briant's analysis of the

comparables at 82 Hamilton Terrace in that when he has found the basic price of approximately £2,450,000 he adds another approximate £1,067,000 for the potential to extend, which is not supported by any market evidence but owes its existence to site value valuations for leasehold enfranchisement purposes.

35. Mr. Briant did not do the same exercise in relation to 96 Hamilton Terrace. That property already had development potential. Mr. Briant went straight to the final figure.

36. The Tribunal consider that the potential to extend 96 Hamilton Terrace was clear in August 2000. The market had already considered its development potential. The most recent transaction date was August 2000.

37. The Tribunal have found 96 Hamilton Terrace an extremely helpful comparable. The transaction in August 2000 requires no adjustment for time. It is the same date as the valuation date of 81 Hamilton Terrace. The development potential of 96 Hamilton Terrace was similar to the development potential of the subject property 81 Hamilton Terrace.

38. The Tribunal are of the view that people in the market for this type of property are purchasing the property with a view to gutting the same and carrying out major restructuring of the property. It is what happened in the case of the subject 81 Hamilton Terrace. It is what is currently happening at 90 and 96 Hamilton Terrace, and is what is proposed to happen at 82 Hamilton Terrace where the property has been sold with a view to conversion back to a single house.

39. The figure of £3,100,000 for 96 Hamilton Terrace in August 2000 is a good starting point for 81 Hamilton Terrace. The Tribunal consider that the figure needs adjusting upwards for the fact that the subject has a superior plot in terms of both width and depth to the comparable properties and a better outlook and privacy at the rear. The garden of 81 Hamilton Terrace is quite exceptional. The Tribunal add the sum of £300,000 for better plot, outlook and privacy. The Tribunal thereby arrive at an unimproved freehold value for 81 Hamilton Terrace at the valuation date of 31 August 2000 of £3,400,000.
40. By way of cross-check, the Tribunal have looked at the sales of 82 and 90 Hamilton Terrace which the Tribunal consider are the other two best comparables. 90 Hamilton Terrace was sold in July 1999 for £3,000,000. Contracts were exchanged on 82 Hamilton Terrace in August 2001 at £3,150,000, with completion fixed for 31 January 2002.
41. The Tribunal consider that these two comparables of 82 and 90 Hamilton Terrace support the Tribunal's opinion of the unimproved freehold value of the subject property 81 Hamilton Terrace as at the valuation date of 31 August 2000, after making all necessary adjustments. 90 Hamilton Terrace is one year's difference in terms of the valuation date. It is a leasehold transaction and not a freehold transaction. It is inferior in terms of plot, outlook and privacy to the subject property. 82 Hamilton Terrace is also one year's difference in terms of the valuation date. It is attached to a converted coach house at one side which directly overlooks part of the garden of 82 Hamilton Terrace. There is a poorer outlook at 82 Hamilton Terrace, overlooking flats at the back. It is a considerably smaller plot and with less development potential than the subject property.

Unimproved existing leasehold value

42. Again, on the basis of a valuation date of 31 August 2000 the landlord's proposed unimproved leasehold value was £735,000. The tenants' figure was £500,000.
43. Mr. Buchanan took 25% of his unimproved freehold value of £2,000,000 to come to his figure of £500,000 for the unimproved existing leasehold value. The 25% figure was derived from his own experience and settlement evidence.
44. Mr. Briant maintained that the John Lyon's and Eyre Estate graphs showed that for approximately a 7 years' unexpired term the leasehold value was about 25% of freehold value. Mr. Briant then reduced the 25% to 21% because he stated that one should ignore the development potential within the figure of £3,500,000 which he proposed for the unimproved freehold value, since he considered that no one properly advised would buy the short leasehold interest in the property at 81 Hamilton Terrace with the intention of extending the property in the way that it had been extended. The existing leasehold value in his view should therefore be a smaller proportion of the freehold value.
45. The Tribunal agree with Mr. Briant's view. The unimproved existing leasehold value of the property is to be 21% of the freehold value, that is, £714,000.

E. Determination

46. The Tribunal determine the enfranchisement price payable by the tenants to be

£2,468,895 in accordance with the Tribunal's valuation annexed to the decision at Appendix 3.

Chairman *P. Wulwik*

Date *12 FEBRUARY 2002*

Peter Wulwik

THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

DATE: 15/11/01

PROPERTY 81 HAMILTON TERRACE (formerly 57 and 57A)

VALUATION DATE 31/08/00

LEASE DETAILS

	57	57A
DATE	09/12/27	06/03/28
TERM	80 years	80 years
EXPIRY DATE	28/09/07	28/09/07
UNEXPIRED TERM	7.07 years	7.07 years
GROUND RENT	£50	£5

VALUES UNIMPROVED

FHVP	£3,500,000
UNEXPIRED TERM	£735,000 21.0%

VALUE OF FREEHOLDER'S PRESENT INTEREST

<u>TERM</u>	GROUND RENT	£55
	x YP 7.07 years @ 6.00%	<u>5.6305</u>
		£310

<u>REVERSION</u>	FHVP (unimproved)	£3,500,000
	x PV 7.07 years @ 6.00%	<u>0.6622</u>
		<u>£2,317,603</u>
	Lessor's Interest	£2,317,912

MARRIAGE VALUE

	FHVP (unimproved)	£3,500,000
Less	Freeholder's Present Interest	£2,317,912
	Lessees' Interest unimproved	<u>£735,000</u>
	Marriage Value	£447,088
	Take 50% Marriage Value	<u>£223,544</u>

ENFRANCHISEMENT PRICE £2,541,455

VALUATION I

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE: November 2001
PROPERTY: 81 Hamilton Terrace, London NW8
VALUATION DATE: 31 August 2000

LEASE DETAILS (2 Leases)
DATE 09/12/1927 and 06/03/1928
TERM 80 years from 29/09/1927
EXPIRY DATE 28/09/2007
UNEXPIRED TERM 7.1 years
GROUND RENT £55 p.a.

<u>VALUES</u>	<u>UNIMPROVED</u>
FHVP	£1,200,000
UNEXPIRED TERM	£300,000
LESSEE'S IMPROVEMENTS	

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM</u>	GROUND RENT	£55 p.a.	
	x YP 7.1 years 6%	5.63	
			£310
<u>REVERSION</u>	FHVP (less improvements)	£1,200,000	
	x PV 7.1 years 6%	.662	
			£794,400
		Lessors interest	£794,710

MARRIAGE VALUE

	FHVP (less improvements)	£1,200,000	
Less	Lessor's Present Interest	£794,710	
	Lessee's Interest (less improvements)	£300,000	
			£105,290
Marriage Value			
		50% Marriage Value	£52,645
		TOTAL	£847,355

VALUATION II

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE: November 2001
PROPERTY: 81 Hamilton Terrace, London NW8
VALUATION DATE: 31 August 2000

LEASE DETAILS (2 Leases)
DATE 09/12/1927 and 06/03/1928
TERM 80 years from 29/09/1927
EXPIRY DATE 28/09/2007
UNEXPIRED TERM 7.1 years
GROUND RENT £55 p.a.

<u>VALUES</u>	<u>UNIMPROVED</u>
FHVP	£2,000,000
UNEXPIRED TERM	£500,000
LESSEE'S IMPROVEMENTS	

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM</u>	GROUND RENT	£55 p.a.	
	x YP 7.1 years 6%	5.63	
		_____	£310
<u>REVERSION</u>	FHVP (less improvements)	£2,000,000	
	x PV 7.1 years 6%	.662	
		_____	£1,324,000
		Lessors interest	£1,324,310

MARRIAGE VALUE

	FHVP (less improvements)	£2,000,000	
Less	Lessor's Present Interest	£1,324,310	
	Lessee's Interest (less improvements)	£500,000	

Marriage Value		£175,690	
		50% Marriage Value	£87,845
		TOTAL	£1,412,155

Leasehold Valuation Tribunal's Valuation

THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

81 HAMILTON TERRACE, LONDON NW8

VALUE OF FREEHOLDER'S PRESENT INTEREST

<u>TERM</u>	GROUND RENT		£55
	x YP	7.07 years @	6.00%
			<u>5.6305</u>
			£310
<u>REVERSION</u>	FHVP (unimproved)		£3,400,000
	x PV	7.07 years @	6.00%
			<u>0.6622</u>
			£2,251,480
		Value of Lessor's interest	£2,251,790

MARRIAGE VALUE

	FHVP (unimproved)	£3,400,000
Less	Freeholder's Present Interest	£2,251,790
	Lessees' Interest unimproved	<u>£714,000</u>
	Marriage Value	£434,210
	Take	50% Marriage Value
		<u>£217,105</u>

ENFRANCHISEMENT PRICE

£2,468,895