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Ref: LON/LVT/1383/01

**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
S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: Cadogan Holdings Limited in the capacity of special executor of the late the Right Honourable William Gerald Charles Seventh Earl Cadogan

Respondent: Anthony Michael Vincent Coombs

RE: 18 Cheyne Walk, London SW3

Date of Tenant's Notice: 3 September 2000

Application to the Tribunal dated: 16 March 2001

Heard: 18 and 19 December 2001, 18 January 2002

Appearances:

Miss K Holland of Counsel
Mrs L Barge of Messrs Hammond Suddards Edge, Solicitors
Mr J Shingles of Justin Shingles Limited
Mr A M V Coombs

For the Tenant

Mr K Munro of Counsel
Miss L Blackwell and Mr J W May of Messrs Pemberton Greenish, Solicitors
Mr K D Gibbs, FRICS of Messrs Gerald Eve
Mr A J McGillivray of Messrs W A Ellis

For the Landlord

Members of the Leasehold Valuation Tribunal

Mrs J Charles LLB (Chairman)
Mr J C Avery BSc FRICS
Mr A D Ring

Date of the Tribunal's Decision: 15 FEB 2002

This was an application under Section 21(A) of the Leasehold Reform Act 1967 ("The Act") by the Landlord, Cadogan Holdings Ltd for the Tribunal to determine the price payable under Section 9(1C) of the Act for the freehold of 18 Cheyne Walk, London SW3.

Mr K Munro, counsel instructed by Mr J W May of Messrs Pemberton Greenish, appeared for the applicant (Cadogan Holdings Ltd) and Miss K Holland, counsel instructed by Mrs L Barge of Hammond Suddards Edge, for the respondent (Mr A M V Coombs). Expert evidence was given by Mr K D Gibbs FRICS of Messrs Gerald Eve and Mr A J McGillivray of Messrs W A Ellis for the Applicant and by Mr J Shingles of Justin Shingles Ltd for the Respondent.

The Issues that remain in dispute are:

1. the form of the transfer
2. the disregard and value of tenants improvements
3. the freehold value
4. the existing lease value

No other issues were in contention.

Background

The subject property at 18 Cheyne Walk is a five storey (including basement) terrace house with a small garden, originally built about 1717 in a prestigious location on the Chelsea Embankment overlooking at the front the River Thames and at the rear the garden areas of other houses.

The current lease is for 51¼ years from 29 September 1972 with a fixed ground rent of £250 per annum. The Respondent, Mr Coombs, took an assignment on 14 June 1996 for the sum of £1,180,000. 22.3 years remained unexpired as at the agreed valuation date of 6 September 2000.

The Tribunal inspected the subject property and the relevant comparables on 18 January 2001 in the company of Mr McGillivray and Mr Shingles.

1. The form of Transfer

The Applicants sought to include a clause in the Transfer as follows:-

"There is excepted and reserved:-

4 (i) to the Transferor and any person or persons authorised by him full right at any time or times to rebuild or alter any adjoining or adjacent buildings or erect new buildings on his adjoining or neighbouring property to such height elevation extent or otherwise as he may think fit without payment of compensation to the Transferee it being hereby agreed that the access of light and air to any building now standing or hereafter to be erected on the Property 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 and accordingly that the enjoyment thereof shall not nor shall these presents prevent any such rebuilding alteration or erection as aforesaid"

It was argued on behalf of the respondents that this clause differed from the original clause A on page 4 of the lease in that it sought to confer additional rights not included in the lease including

1. Rights for the benefit of "The Transferor and any person or persons authorised by the Cadogan Estate" in place of "the Lessor and the Company".
2. More specific description of the type of works covered by clause 4(i) of the Transfer.

Furthermore a whole new clause which had no equivalent or similar provision in the lease had been proposed for the Transfer as follows:

3. *"It is hereby agreed and declared that the Transferee shall not be entitled to any right of light or air which would restrict or interfere with the full and free use by the Transferor of any of his adjoining or neighbouring properties for building or any other purposes"*.

Miss Holland argued that the effect of section 10 (2) (ii) of the Act was to prevent the inclusion of clauses 3 and 4 (i) in the Transfer.

As regards clause 4(i) it was argued for the applicants that the extension of rights to "any person or persons authorised" did not detract from the respondent's rights set out in the lease while the more specific wording was substantially the same as in the provision in the lease.

The Tribunal were aware that at the time of the 1972 lease, all properties were owned by the Cadogan Estate and it had been reasonable to limit the works to those to be carried out by them. However, under revisions to the 1967 Act, neighbouring houses could now be bought freehold by individual owners who may wish to build or alter their property. Such works could only be carried out with the authority of the Transferor and the proposed clause would not increase the rights previously enjoyed by the Lessor under the lease.

The Tribunal were of the opinion that, the proposed clause 4(i) in the draft transfer was substantially the same as the original Clause A in the 1972 lease. The clause should therefore be included in the Transfer document.

As far as clause 3 is concerned, as submitted by counsel for the applicant, it does not appear to cover any new ground. However, in cases where an issue is of importance, Haigh on Leasehold Enfranchisement (3rd Edition) suggests at page 130, that any express reservation of a right should be incorporated in the conveyance in order to remove doubts in the matter.

Therefore the Tribunal considered that Clause 3 should also be included in the Transfer document.

2. Tenant's Improvements and potential for extension

Considerable arguments had been put forward as to the number of leases which could be aggregated under section 3 (3) of the Act where a link can be shown between the leases. Evidence was produced seeking to provide such a link in leases going back to 1926. Miss Holland requested the Tribunal to link those leases for the purpose of the disregard of the tenant's improvements. It was common ground that improvements made since the 1972 lease was granted should be disregarded, as should improvements back to the previous lease granted in 1950. Mr Shingles further claimed that improvements back to 1926 should also be disregarded.

In addition to the legal argument, the expert witnesses were in disagreement over the treatment in the valuation of any of the improvements made to the house.

Mr Shingles' view was that the improvements carried out over the 75 or so years must have conferred some value, mainly because fittings now needed only replacing, rather than installation from nothing. He attributed £300K to the improvements. He acknowledged in cross examination that his lists of improvements did include some that were replacements of earlier improvements, and that some would by now have come to the end of their design lives.

Mr McGillivray's view was that there was no value in any of the improvements. He had valued the house, as it would have been without any lessees' alterations, certainly since 1950. There was some discussion about whether the house had a bathroom at all in 1926 but Mr McGillivray's advice to the Tribunal was that it made no difference. The thrust of his evidence was that he believed that buyers for houses in Cheyne Walk regarded them as little more than shell that they would then make into the house they wanted, and cited No 20A as an example.

The Tribunal are satisfied that any improvements in fittings made to the house between 1926 and the purchase by Mr Coombs had long lost their value. They would have come to the end of their economic life and been disregarded by any purchaser and replaced by fittings that were more up to date or more in the taste of the new owner. The small kitchen extension is said to have created the potential for the additional breakfast room. However, the area is needed as a route between the kitchen and the dining room and is so small that it serves more as a passage than as a room. The Tribunal saw in some of the comparables (eg No 19) that even modern kitchens are quickly replaced and find that any value in the kitchen extension would be lost in modernisation work to the kitchen areas as a whole.

Since his purchase of the lease in June 1996 the Respondent has made a number of alterations that improve the enjoyment by himself and his family of the house. Mr Shingles values them at £50K. Several of the alterations however reflect the Respondent's personal requirements (eg in the study area) or are repairs (eg the damp proofing).

Since the Tribunal did not consider that the alterations prior to the grant in 1972 would have any value as at 6 September 2000, the valuation date, they did not find it necessary to decide the legal issue as to how many leases could be aggregated under section 3(3) of the Act. As far as more recent works were concerned, the Tribunal were of the opinion that the works either before or since 1996 would not be considered as conferring any additional value by a purchaser looking for a property in Cheyne Walk.

There was some discussion about whether the house had potential for adding a further floor. No 18 is the only house in that section of Cheyne Walk which has a flat roof. Every other house has a pitched roof, several (including those either side) with dormer windows. The flat roof of No 18 is therefore noticeably lower, and Mr Gibbs argued that planning permission could be obtained to add a further floor. Mr Shingles' view was that the local planning authority would not permit such an extension – they liked the “gap in the tooth”. Mr McGillivray had not added any value for this potential but felt it rendered his valuation, if anything, conservative.

Although they accept that an application relating to No 20A has been refused, the Tribunal do not regard the likelihood of obtaining listed building and planning consent for No 18 as out of the question. Nevertheless, they note that neither Mr McGillivray nor Mr Shingles suggest that any additional adjustment should be made and accordingly the Tribunal need reach no decision on this issue of local authority development control.

3. Freehold Valuation

Comparables

The expert witnesses analysed sales relating to five houses and a further two LVT decisions, one of which included an agreed freehold value. Three of the sales (20A, 30 and 49 Cheyne Walk) and one LVT decision (19 Cheyne Walk) were common to both experts. Of the other three, Mr McGillivray analysed the sale of the lease of No 18 to the respondent and No 26 Cheyne Row, and Mr Shingles analysed the LVT decision on 20 Cheyne Walk. He also analysed an eighth house - an unaccepted offer made for No 15 Cheyne Walk. The facts of the cases were generally agreed but the experts differed in the result of their analysis.

During the hearing it was agreed by the experts that Nos 30 and 49, Cheyne Walk and 26 Cheyne Row should no longer be considered relevant.

20A Cheyne Walk

Mr McGillivray regarded this sale as the clearest guide to the freehold value of the subject house. It is a similar house and was sold for £3.75m three months before the valuation date. Although it was well fitted with bathrooms etc it was in a poor state of repair and the purchasers had embarked on major modernisation and refurbishment.

On the statutory hypothesis that No 18 was in good repair he believed that any value attaching to existing modernisation of No 20A and its outdoor pool was offset by its condition and the rate per sq ft, adjusted for time to £1026, emerging from the sale could be used to value No 18. However he reduced this rate to £958 to make an allowance for the fact that the advantages of the pool, a ground floor extension and slightly longer garden more than outweighed the disadvantages of poor condition.

Because of the purchaser's proposed refurbishment works Mr McGillivray made no further adjustment to reflect the fact that No 18 was in a 1950, or even a 1926 state. He accordingly would apply his rate of £958 to No 18 without further adjustment.

Mr Shingles considered it to be a "lucky sale" – the purchaser being unaware of the difficulties he would face from the planners in implementing his plans for alteration.

20 Cheyne Walk

Mr Shingles cited this LVT decision that incorporated an agreed freehold value of £2.5m. He considered it to be a better house and that the agreement reached with the estate prior to the LVT, of £2.5m for the freehold, was authoritative for a rate per sq ft of £796.

Mr Gibb provided background from the point of view of the freeholder, that the reversion had been 48 years away so that the figure had little impact on the enfranchisement price. In the absence of good market evidence a low (with hindsight) figure had been agreed.

19 Cheyne Walk

The valuation experts referred to the LVT decision that the freehold value of this house was £3.9m. Mr McGillivray gave his opinion that the LVT had been wrong, in deciding No 19, to dilute the strong market evidence of No 20A by combining it with the negotiated freehold value

for No 20, which with the benefit of hindsight had been too low. The experts differed in their interpretation of the resulting rate per sq ft. Mr Shingles calculating £780 and Mr McGillivray £911. The LVT decision records £911 as the rate adopted. It may be that Mr Shingles had included the area of the fourth floor in his divisor.

18 Cheyne Walk

Mr McGillivray analysed the sale of the leasehold interest to Mr Coombs in the light of the more recent transactions and his own advice given to the vendor at the time. He had considered the freehold to be worth £1.65m – a figure which adjustment for time inflates to £3.3m.

15 Cheyne Walk

Mr Shingles analysed the market activity on this house which, after two abortive sales at £5.5m and £6m respectively, and two further offers of £4.5m having been received, is understood to be offered for sale again in the Spring of 2002 at £5m. Mr McGillivray doubted the validity of using a figure that was not the subject of a contracted transaction.

In analysing the above comparables both experts adopted an approach that resulted in a rate per sq foot, which they then adjusted to reflect the differences between the house analysed and the subject property. However they also adjusted by reference to inflation – measured by the index prepared by FPD Savills of the movement in property prices in Central London.

Mr McGillivray had found that neither the Central London House index nor the Central London South West index gave an answer that was consistent with his own experience but that an average of the two did so. He had accordingly adopted that practice in adjusting prices for time.

Mr Shingles relied mainly on the two LVT decisions relating to Nos 19 and 20 Cheyne Walk but had regard to his “basket” which included all the transactions to which he referred, and used a rate per sq ft of £823 to arrive at £2.65m, after deducting for recent improvements. He then made a further deduction for older improvements of £200K, arriving at a freehold value of £2.45m.

Mr McGillivray relied mainly on the sale of No 20A Cheyne Walk, reduced the rate revealed to reflect the possible advantages of 20A over No 18, and made no deduction for improvements, on the basis that they were too old to confer any value. His rate was £958, resulting in a freehold value of £3.2m.

Inspection

No purpose is served by describing in detail the accommodation of the subject property, 18 Cheyne Walk, which is substantially altered from its state at the commencement of any of the three leases back to 1926. The Tribunal imagined the house to be entirely unmodernised over the last seventy five years. The only structural alteration consisted of a small single storey kitchen extension which had enabled the formation of a small breakfast room between it and the dining room.

However, for the purpose of comparison with the transactions it is useful to record that the house has 323 m² (3475 sq ft) on lower ground, ground and three upper floors, is single fronted, has a flat roof and a small paved garden at front and back. The staircase runs front to back and the main rooms overlook the Embankment and river.

20A Cheyne Walk is slightly larger at 363 m² (3906 sq ft) and is also single fronted with lower ground, ground and three upper floors. Part of the ground floor accommodation is a large studio at the back and the small back garden has a pool. The Tribunal understand that the alteration work includes filling in the pool and converting the studio into a music room with a new window modelled on those in Talgarth Road. The house had been stripped of its fittings down to virtually a bare shell but the sale particulars show that it had been elegantly decorated and had a kitchen and four bathrooms.

19 Cheyne Walk is much bigger than the subject with 495 m² (5332 sq ft) and an additional floor. Although single fronted its staircase runs across the middle of the house so that the flexibility of alteration of layout had been reduced (e.g. the main bedrooms on the second and third floors do not have bathrooms en-suite). The house had been extensively modernised since the LVT decision on which this comparable is based.

20 Cheyne Walk is larger than the subject house, with 415 m² (4470 sq ft), but has the same number of floors. Like No 19 its staircase runs across the centre of the house and all the most important rooms face the back rather than the river. In addition to the small rear garden, similar to the other comparables, there is a large lawn but this is the subject of a separate lease.

15 Cheyne Walk is larger again, with 457 m² (4917 sq ft) and has the same number of floors but is double fronted and has a more imposing appearance. The rear faces onto the side of a house in Cheyne Gardens, and this property therefore lacks the open rear views of the houses further west. The house was unmodernised.

Conclusion on freehold value

The Tribunal agree with Mr McGillivray that the sale of No 20A Cheyne Walk is the clearest guide to the freehold value of the subject house. It is a similar house and was sold three months before the valuation date. Although it was well fitted with bathrooms etc, the purchasers have stripped them out in their major modernisation and refurbishment and are filling in the pool.

It is recognised that it may have been difficult for the buyer of 20A to persuade the local planning authority to permit the desired alterations, but such issues "go with the territory". Development and alteration in Cheyne Walk is severely constrained by the local planning authority and part of the value of houses in the area lies in the protection this affords. Mr Shingles considered it to be a lucky sale, but uncontradicted evidence was given that there were several purchasers interested and the transaction is accepted as representing the market.

The valuation of the subject house involves a number of robust judgements on the relevance of differences between it and No 20A, all of which have a significant potential impact on the result. With regard to Mr McGillivray's adjustment for time by reference to an average of two FPD Savills tables, the Tribunal consider, in that context, that the difference in result in the case of 20A between using one table alone and using the average of them both is too small to be material. The Tribunal are prepared to accept his calculation of the rate per sq ft of £958.

The Tribunal prefer market evidence to either LVT decisions or settlement evidence. Furthermore, both 19 and 20 Cheyne Walk are larger than the subject house and have the layout that, in one case, hinders flexibility and, in the other, has major rooms at the back. Mr McGillivray's analysis of the sale of the lease of 18 Cheyne Walk to the Respondent is helpful in demonstrating his consistency but is not good evidence of a transaction.

15 Cheyne Walk is comparable, in that its condition is probably similar to the hypothetical state of the subject premises. However, the house is in a different category, being more imposing, larger and double fronted. It is therefore of less assistance than are houses more comparable in size and type. Furthermore, although offers are believed to have been made, the Tribunal understand that the house is not yet being marketed and, in any event, no transaction has yet resulted.

The Tribunal are reluctant to decide a value on the basis of a single transaction but find that none of the other evidence is as strong as the sale of No 20A which is close both in time and type to the subject house. All the other transactions require more adjustments to be made and, by their nature, the more adjustments made, the wider is the margin for error. They accordingly accept Mr McGillivray's freehold valuation of £3.2m and, in view of their finding in relation to improvements, make no deduction.

4. Value of existing leasehold interest

Both experts concurred that it was very difficult to find market evidence of the sale of leases at prices that ignored rights to enfranchise. Mr McGillivray considered that the effect of the Act was demonstrated in Mr Coombs' purchase, from his analysis of which he concluded that, of the £1.180m paid, some £280K was attributable to the rights he would acquire after a qualifying period.

Accordingly, the valuation experts sought to arrive at a "No Act World" lease value by reference to graphs prepared by a number of agents to show the relativity, according to the term unexpired, of lease values to freeholds. Mr McGillivray produced one prepared some years ago by Gerald Eve in co-operation with John D Wood and Mr Shingles produced others prepared by Cluttons, by Boston, Carrington, Pritchard and in a new John D Wood version. Mr McGillivray found from the Gerald Eve graph that the relativity for 22.3 years is 46.25% and adopted that figure, even though he thought that other cases could justify something lower and the absolute prohibition in the lease on alteration would further depress the leasehold value. His valuation of the lease was accordingly £1.48m.

Mr Shingles adopted a more complicated mathematical approach that involved a lease decay rate and a further adjustment for rights under the Act. His result was a relativity of 61.74% giving a leasehold value of £1,512,650.

The experts disagreed on the appropriateness of using the graphs, whether they included flats and houses, and what the basis of them was. The Tribunal has found in the past however that, though they may be imperfect, they do fill the gap created by the absence of market evidence for "No Act" sales and have the merit of consistency.

Mr Munro mentioned the "graph of graphs", which was not produced but is known to the Tribunal. This incorporates graphs prepared by the firms mentioned above, as well as Kemp and Hawley, Langley Taylor and W A Ellis. In that composite graph the Gerald Eve and W A Ellis graphs show under 50% for 22.3 years whereas the other firms' indices (for houses when analysed separately from flats) show the middle to high 50%.

The Tribunal concludes from its own experience that Mr Shingles' relativity is too high and Mr McGillivray's is too low. Assessing relativity from the graphs cannot be an accurate calculation but the Tribunal prefers Mr McGillivray's approach and considers a relativity of 50% to be more reasonable.

Accordingly the value of the present leasehold interest, at 50% of £3.2m, is £1.6m. The enfranchisement price calculated in accordance with the Act is £1237,850 as set out in the calculation in Appendix I.

Name: *J. Chale*

Date: *15 - 2 - 02*

Appendix I

Valuation of 18 Cheyne Walk, Chelsea

Date of valuation	September 6, 2000
Expiry of lease	December 28, 2022
Term unexpired at date of valuation	22.3
Appropriate yield for term	6%
Appropriate yield for reversion	6%
Multiplier for term (YP single rate)	12.122
Multiplier for reversion (PV of £1)	0.2727
Lessor's share of marriage value	50%
Ground rent	£250
Value of unimproved freehold	£3,200,000
Value of unimproved existing lease	£1,600,000

Calculation

Value of freehold £3,200,000

Lessee's interest

(a) Value of existing leasehold interest £1,600,000

Freeholder's interest

Ground rent			£250	
YP	22.3	6%	12.122	
(b) Value of term				£3,031

Freehold value with vacant possession			£3,200,000	
PV in	22.3	6%	0.2727	
(c) Value of reversion				£872,640

(d) Value of freeholder's interest (b) + (c) £875,671

Marriage value

Deduct Total of existing interests (a) + (d)	<u>£2,475,671</u>
Marriage value	£724,330
Landlord's share	50%
	<u>£362,165</u>
Add value of Freehold interest	£875,671
	<u>£1,237,835</u>

Enfranchisement price Say £1,237,850