

**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: Cadogan Holdings Limited (Landlord)

Respondent: Michael Bernstein (Tenant)

Re: 26 Cheyne Walk, London SW3

Application to Tribunal by Cadogan Holdings Limited: 24 April 2001

Hearing: 25 February 2002

Appearances: Mr. A. Radevsky (Counsel)
Mr. D. Greenish of Pemberton Greenish, Solicitors
Mr. A. McGillivray of W.A. Ellis

for the Applicant

Mr. E. Johnson (Counsel)
Mr. S. Kerrigan of Boodle Hatfield, Solicitors
Mr. N.A.V. Flint MRICS of Knight Frank
Mr. M. Bernstein

for the Respondent

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 tenant's claim: 13 September 2000

Date of notice of reply to tenant's claim: 6 November 2000

Landlord's proposed price (as amended): £1,324,400

Tenant's proposed price (as amended): £ 901,500

Leasehold Valuation Tribunal's determination £1,245,000

Date of Tribunal's Decision: 22.3.02

26 Cheyne Walk, London SW3

A. Introduction

1. This is an application by the Applicant landlord Cadogan Holdings Limited to determine the enfranchisement price payable by the Respondent Mr. M. Bernstein for the freehold of the property at 26 Cheyne Walk, London SW3 under Section 9 (1C) of the Leasehold Reform Act 1967.

2. The Respondent is the tenant of the property under a Lease dated 14 July 1980 for a term of 70 years from 25 December 1979 to 25 December 2049 at a rent of £2,000 per annum until 25 December 2001, thereafter £4,000 per annum until 25 December 2023 and thereafter £8,000 per annum for the remainder of the term. The Lease restricts the use of the basement to a caretaker's flat, save that while Mr. Bernstein is the lessee and lives in the premises then he personally may occupy the basement or use it for storage purposes. The 1980 Lease was granted on the surrender of a former Lease dated 24 April 1953 relating to 26 Cheyne Walk and 1 Cheyne Mews.

3. The property at 26 Cheyne Walk is a Grade II listed Georgian terrace house built about 1760 on lower ground, ground and four upper floors and is currently arranged as a maisonette on lower ground, ground and first floors and three flats on the second, third and fourth floors. There are two three-storey rear additions, with a roof terrace on one of the rear additions at second floor level. The property is set back from the pavement behind a paved front garden, and there is a rear garden approximately 100' in length.

4. On 13 September 2000 the tenant gave notice of his claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 6 November 2000 the landlord Cadogan Holdings Limited served notice in reply admitting the tenant's right to acquire the freehold. On 24 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 £2,760,000. Directions were given by the Tribunal on 24 September 2001.

B. Hearing

5. The hearing took place on 25 February 2002. The Applicant landlord was represented by Mr. A. Radevsky of Counsel instructed by Pemberton Greenish, Solicitors. The landlord's valuation witness was Mr. A. McGillivray of W.A. Ellis. The Respondent tenant was represented by Mr. E. Johnson of Counsel instructed by Mr. S. Kerrigan of Boodle Hatfield, Solicitors. The tenant's valuation expert was Mr. N.A.V. Flint MRICS of Knight Frank.

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

- (1) The claim date and the relevant valuation date was 14 September 2000, at which date the unexpired term of the Lease was 49.28 years.
- (2) The gross internal area of the property was 5,952 sq. ft. excluding vaults of 118 sq. ft.
- (3) No licences had been granted under the current Lease for tenant's improvements. There were in fact no tenant's improvements to be disregarded.
- (4) There had been freehold sales of 20A, 30 and 92 Cheyne Walk. There was also a leasehold sale of 11 Cheyne Walk. LVT decisions had been issued relating to 19 Cheyne Walk and

4 Cheyne Gardens. More recently there had been the settlement of an appeal relating to 4 Cheyne Gardens, the settlement of a claim to purchase the freehold of 25 Cheyne Walk and 5 Cheyne Mews, and a further LVT decision in respect of 18 Cheyne Walk.

(5) With regard to the capitalisation of the term, it was agreed that the appropriate rate was 4.5% for 1.28 years and 6% for the remainder of the term.

(6) The deferment rate was agreed at 6%.

(7) The marriage value was to be apportioned equally between the freeholder and the tenant.

(8) The unimproved value of a 49.25 year Lease of ground - fourth floors (excluding basement flat) with vacant possession was agreed at £2,100,000. The additional unimproved value of the basement flat with vacant possession and 49.25 years unexpired for private residential use and assuming no unusual restrictions was agreed at £300,000.

7. At the outset of the hearing, the Tribunal were informed that the unimproved value of the existing leasehold interest in the whole property (including basement flat subject to Lease restrictions) was agreed at £2,180,000.

8. The only issue for the Tribunal to determine was the unimproved freehold vacant possession value of the property.

9. Both valuers gave evidence in accordance with their respective proofs of evidence, which they supplemented with written comments on the other party's proof of evidence and in their oral evidence. The landlord also produced from Mr. P. Thatcher BSc, MRICS a budget estimate for minimum works required to convert the existing flats back to a single

family house as per proposed drawings but without the benefit of an inspection, the estimate being in the sum of £20,000 including fees.

10. The Tribunal had written proofs of evidence from Mr. K.D. Gibbs FRICS for the landlord and from Mr. R.J. Orr-Ewing of Knight Frank for the tenant, together with revised valuations for the parties. Neither Mr. Gibbs nor Mr. Orr-Ewing were called to give evidence in view of the matters agreed by the parties.
11. Mr. McGillivray for the landlord valued the freehold of the property at £4,500,000 (£756 per sq. ft.) as at 14 September 2000, resulting in a proposed enfranchisement price of £1,324,400 in accordance with Mr. Gibbs' revised valuation at Appendix 1. Mr. Flint for the tenant valued the freehold of the property at £3,700,000 (£622 per sq. ft.), resulting in a proposed enfranchisement price of £901,500 in accordance with Mr. Orr-Ewing's revised valuation at Appendix 2.

C. Inspection

12. The Tribunal inspected the subject property at 26 Cheyne Walk on 26 February 2002.
13. In addition, the Tribunal inspected internally 20A Cheyne Walk where contractors were on site. The Tribunal also inspected externally 11, 18, 19, 25, 30 and 92 Cheyne Walk and 4 Cheyne Gardens.

D. Decision

14. The issue for the Tribunal to determine was the freehold value of the subject property at

26 Cheyne Walk as at the valuation date of 14 September 2000.

15. The parties were agreed that the best evidence was provided by the open market sales that had taken place. The open market sales evidence consisted of the freehold sales of 20A, 30 and 92 Cheyne Walk and the leasehold sale of 11 Cheyne Walk.
16. In addition to the open market sales, there was the recent settlement in respect of 25 Cheyne Walk and 5 Cheyne Mews, and the LVT decisions in the case of 18 and 19 Cheyne Walk and 4 Cheyne Gardens. It is to be noted that 4 Cheyne Gardens was the subject of an appeal which was compromised, the settlement being analysed by Mr. McGillivray as producing a freehold figure of £3,000,000 (being lower than the LVT's figure of £3,190,000).
17. With regard to the open market sales evidence, the Tribunal have the following comments:-
 - (1) 11 Cheyne Walk: The property was sold in March 1999 for £2,400,000 with an existing unexpired Lease term of 79 years. It has an area of 6,782 sq. ft. The property is approximately 800 sq. ft. larger than the subject property. It has the disadvantage of being a leasehold sale and with a sale date of March 1999, compared to the valuation date of the subject of September 2000. It is on the corner of Cheyne Gardens, and is a dissimilar style of property being an unlisted red brick Victorian property. It has no rear garden but benefits from a large double garage.
 - (2) 20A Cheyne Walk: This is the best comparable in the Tribunal's view. The freehold of the

property was sold in June 2000 for £3,750,000. It has an area of 3,659 sq. ft. The property is approximately 2,300 sq. ft. smaller than the subject property. It is in a better location being set behind the island garden and further away from the traffic, occupying a more central position in the terrace. All the floors are restricted because of the siting of the stairs, unlike the subject property where the stair and circulation areas are to the side of the main building. The rooms are of less grand proportions than those of the subject. The rear garden is not as wide, albeit that the far rear of the garden (presently occupied by a swimming pool) is more secluded. It has the disadvantage of the first floor living room at the rear overlooking the ground floor extension pitched roof, which obscures the view over the rear garden. Unlike many of its neighbours including the subject property, 20A Cheyne Walk has not had additional floors added and thus retains from the front its original Georgian appearance.

- (3) 30 Cheyne Walk: The freehold of the property was subject to two sales. It was sold in October 1999 for £2,157,000, and following some internal works of refurbishment was resold in April 2001 for £4,260,000. It has an area of 4,257/4,272 sq. ft. The property is approximately 1,700 sq. ft. smaller than the subject property. The entrance to the property is in Oakley Street facing a modern development of flats above a car showroom, and is not so attractive as having an entrance in Cheyne Walk. Its front door is just off the pavement and the property is very close to traffic lights. It has no front garden, and virtually no garden at the rear. It is a different style of property, being again a red brick Victorian property.

- (4) 92 Cheyne Walk: The freehold of the property was sold in May 2000 for £5,000,000. It

has an area of 6,713 sq. ft. The property is approximately 760 sq. ft. larger than the subject property and occupies a wider plot. The property is situated close to the junction with Beaufort Street, being on the Embankment as opposed to what most people regard as Cheyne Walk, and is currently undergoing a programme of extensive refurbishment. It is too far away from the subject property to be of any real assistance.

18. The open market sales comparables are each arranged as single family houses, unlike the subject property. However, the subject property at 26 Cheyne Walk does not give the impression of being four separate flats but rather has the feel of a single family house. The Tribunal consider that the property clearly does lend itself to conversion back to a single dwelling. The property has not lost its period attractiveness and detail. In the Tribunal's view, minimal structural alterations are necessary to convert the property back to a single dwelling.
19. The Tribunal make two further observations in relation to the subject property at 26 Cheyne Walk. First, there is some reduction in ceiling height on the stairs going up to the fourth floor, but it is not a particular drawback and in the Tribunal's view could be rectified. Secondly, it does have a particularly attractive rear garden with the extra width of the property contributing to the attractiveness of the garden.
20. Reverting to 20A Cheyne Walk which the Tribunal consider to be the best comparable, the freehold of the property was sold in June 2000 for £3,750,000, some 3 months before the present valuation date of September 2000. There is no evidence before the Tribunal that the property oversold or that it was a special purchaser. There was other interest in

the property in the market. At the time it was sold, the property was in very basic condition. It required substantial refurbishment, having not had much attention for many years.

21. In the Tribunal's view, the sale price of 20A Cheyne Walk tends to suggest that 30 Cheyne Walk was undersold in October 1999, when it achieved a sale price of £2,157,000. The property at 30 Cheyne Walk had been on the market for 2 years, with an original asking price, so it is understood, to the order of £3,500,000. It eventually sold for £2,157,000, when the asking price at that time had been reduced to £1,900,000. The Tribunal consider that the first sale of 30 Cheyne Walk was in all likelihood blighted by the way in which it was marketed. There is further support for this view when one comes to consider the resale price of 30 Cheyne Walk in April 2001 of £4,260,000, that being achieved after what both valuers agreed were only cosmetic internal works to the property following its original sale in October 1999. There is no factual evidence to suggest that the resale figure of £4,260,000 was at an over-bid or involved a special purchaser.
22. Having looked at all the evidence and with particular regard to the open market sales evidence, the Tribunal are of the opinion that the freehold value of the subject property as at the valuation date of 14 September 2000 was £4,350,000, which equates to approximately £730 per sq. ft. In the Tribunal's view, this figure fits into the pattern of the analysis of the sales and other evidence before the Tribunal.
23. With regard to Mr. Flint's approach for the tenant, he started with a figure of £5,000,000 for the subject property in a refurbished condition to a high standard. There was no

evidence before the Tribunal as to how he arrived at the figure of £5,000,000. The Tribunal note that the letters which he wrote seeking refurbishment costings talked in fact of a figure in excess of £5,000,000. Mr. Flint deducted £1,300,000 from his refurbished value of £5,000,000 to arrive at an unimproved freehold value for the subject property of £3,700,000. With the figure of £5,000,000 being unsupported by any evidence, his final figure of £3,700,000 must be considered equally suspect.

24. Regarding Mr. Flint's analysis of the comparables, it is not clear how he has used the comparables to support his figure of £3,700,000. Further, the Tribunal are of the view that his adjustments to the comparables are themselves unsupported.

25. The Tribunal generally preferred Mr. McGillivray's approach, albeit that the Tribunal have come to a figure of £4,350,000 for the freehold value of the property being a little below the figure of £4,500,000 contended for by Mr. McGillivray.

E. Determination

26. Having regard to the Tribunal's decision on the freehold value, the Tribunal determine the enfranchisement price payable by the tenant to be £1,245,000 in accordance with the Tribunal's valuation annexed to the decision at Appendix 3.

Chairman *P. Wulwik*

Peter Wulwik

Date *22.3.02*

CADOGAN HOLDINGS LIMITED

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property: 26 Cheyne walk, SW3
 Date of Claim: September 14, 2000
 Unexpired term of lease: 49.28 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	2,000		
Capitalised for 1.28 years @ 4.50%	<u>1,216</u>	2,432	
Ground rent payable on December 25, 2001 at review		4,000	
Capitalised for 22.00 years @ 6.00%	12.04		
Deferred 1.28 years @ 6.00%	<u>0.928</u>	<u>11,173</u>	44,692
Ground rent payable on December 25, 2023 at review		8,000	
Capitalised for 26.00 years @ 6.00%	13.00		
Deferred 23.28 years @ 6.00%	<u>0.258</u>	<u>3,354</u>	26,832
For reversion to -			
Value of freehold in possession		4,500,000	
Deferred 49.28 years @ 6.00%	<u>0.0566</u>	<u>254,786</u>	328,743
Add Lessor's share of marriage value			
Value of freehold in possession		4,500,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value		328,743	
Value of lessee's interest exclusive of marriage value	<u>2,180,000</u>	<u>2,508,743</u>	
Gain on marriage		1,991,257	
Attributed to lessor at 50.0%			<u>995,629</u>
Enfranchisement price			1,324,371
	say	<u>£</u>	<u>1,324,400</u>

26 CHEYNE WALK

Leasehold value:	£2,180,000
Freehold value:	£3,700,000
Leasehold/Freehold relativity	61.6%

Freeholder's Interest

Ground rent	£2,000			
Y.P. @ 4.5%	1.282 yrs	x	1.215	£2,430
Ground Rent on Review	£4,000			
Y.P. @ 6%	22 yrs	x	12.041	= £48,164
Deferred for	1.282 yrs @ 6%	= x	0.928	£44,696
Ground Rent on Review	£8,000			
Y.P. @ 6% for	26 yrs	x	13.003	£104,024
Deferred for	23.282 yrs @ 6%	x	0.257	£26,734
				<u>£73,860</u>
Deferred value of freehold				
Freehold	£3,700,000			
P.V. of £1 for	49.282 yrs @ 6%	x	0.0566	£209,420
				<u>£283,280</u>

Marriage Value

Freehold value less sum of leaseholder's interest and leasehold value.

Freehold Value:	£3,700,000	
Less		
Leasehold Value:	£2,180,000	
Freeholders Interest:	£283,280	
	<u>£2,463,280</u>	
Marriage Value:	<u>£1,236,720</u>	
50% to freeholder		<u>£618,360</u>
So premium is:		<u>£901,640</u>
	Say	<u>£901,500</u>

**LEASEHOLD VALUATION TRIBUNAL'S VALUATION
26 Cheyne Walk, SW3**

Valuation date: 14th September 2000
Unexpired term of lease: 49.28 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	2,000		
Capitalised for 1.28 years @ 4.5%	<u>1.216</u>	2,432	
Ground rent payable on 25 December, 2001 at review	4,000		
Capitalised for 22.00 years @ 6.00% 12.04			
Deferred 1.28 years @ 6.00% 0.928	<u>11.173</u>	44,692	
Ground rent payable on 25 December, 2023 at review	8,000		
Capitalised for 26.00 years @ 6.00% 13.00			
Deferred 23.28 years @ 6.00% 0.258	<u>3.354</u>	26,832	
For reversion to -			
Value of freehold in possession	4,350,000		
Deferred 49.28 years @ 6.00%	<u>0.0566</u>	<u>246,210</u>	320,166
Add Lessor's share of marriage value			
Value of freehold in possession		4,350,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	320,166		
Value of lessee's interest exclusive of marriage value	<u>2,180,000</u>	<u>2,500,166</u>	
Gain on marriage		1,849,834	
Attributed to lessor at 50.0%			<u>924,917</u>
			1,245,083
Enfranchisement price		say	<u><u>£ 1,245,000</u></u>