

Date of notice of tenant's claim: 30 July 2002

Date of notice in reply to tenant's claim 20 September 2002

Landlord's proposed price (as amended): £1,453,600

Tenant's proposed price: £997,262

Agreed valuation date: 31 July 2002

Leasehold Valuation Tribunal's determination: £1,218,919

Date of Tribunal's decision **25 JUN 2003** 2003

14 Chelsea Square, 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. Evans for the freehold of the property at 14 Chelsea Square, London SW3 under Section 9 (1C) of the Leasehold Reform Act 1967 (as amended).
2. The Respondent is the tenant of the property under a Lease dated 25 March 1936 for a term of 99 years from 25 December 1928 at a fixed rent of £85 per annum.
3. The property is a terraced property comprising 3 storeys plus basement built about 1928 and situated on the east side of Chelsea Square overlooking the large central garden. There is access to the rear of the property through an archway opening to a paved courtyard which is shared with the neighbouring property and provides access to the garage.
4. There were Licences for Alterations dated 26 February 1937, 2 December 1968, 11 November 1991 and 27 February 2001. The gross internal area including the garage but net of tenant's improvements is 4,239 sq. ft. or 393.78 m².

5. On 30 July 2002 the tenant gave notice of his claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 20 September 2002 the landlord Cadogan Holdings Limited served notice in reply admitting the tenant's right to acquire the freehold. On the same date, 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 £1,695,000.

B. Hearing

6. The hearing took place on 26 February and 15-16 May 2003. The Applicant landlord was represented by Mr. K.S. Munro of Counsel instructed by Pemberton Greenish, Solicitors. The landlord's experts were Mr. A.J. McGillivray of W.A. Ellis and Mr. K.D. Gibbs FRICS of Gerald Eve. The Respondent tenant was represented by Miss J. Wicks of Counsel instructed by Bates, Wells & Braithwaite. The tenant's expert was Mr. T.J. Curran BA, MSc, MRICS, MRTPI of Stiles Harold Williams Limited. The tenant Mr. Evans was also present.
7. The parties had agreed a statement of facts including the following matters:-
- (1) The valuation date was 31 July 2002. At that date, the Lease had 25.4 years unexpired.
 - (2) The condition of the property at the valuation date was good throughout.
 - (3) The parties were agreed as to the alterations carried out, the value of which was to be disregarded.

(4) The marriage value was to be divided equally between the parties.

8. A yield rate of 6% was agreed on the tenant's instructions. The terms of the transfer were also agreed.

9. The matters in issue between the parties were:-

(1) The unimproved freehold vacant possession value of the property.

(2) The unimproved leasehold vacant possession value.

(3) The valuation fee payable by the tenant.

The disbursements of £77.43 plus VAT for travelling expenses and copying plans and documents were agreed.

10. The experts gave evidence in accordance with their respective proofs of evidence including supplemental proofs, which they added to in their oral evidence. The tenant Mr. Evans also gave evidence. The landlord now proposed an enfranchisement price of £1,453,600. The tenant proposed an enfranchisement price of £997,262.

C. **Inspection**

11. The Tribunal inspected the subject property at 14 Chelsea Square on 27 February 2003.

12. The property is a 3 storey plus basement terraced property built about 1928 and

occupying a very good position in Chelsea Square overlooking the central garden. There is access to the rear of the property through an archway, where there is the garage.

13. The Tribunal considered that the master bedroom at the front on the first floor and the living room at the front on the ground floor were particularly attractive features of the property. With regard to the basement, neither of the two rooms there had natural light; they could only be used for storage.

14. The Tribunal inspected internally the comparable at 11 Chelsea Square and externally the comparables at 12, 25, 26, 33, 38, 41, 43 and 51 Chelsea Square and at 5, 14 and 39 Carlyle Square. The Tribunal have the following comments on the comparables:-
 - (1) 11 Chelsea Square was situated slightly more forward than the subject property.

 - (2) 12-17 Chelsea Square were of similar architectural appearance to the subject property. 12 Chelsea Square was situated next door but one.

 - (3) 25 and 26 Chelsea Square were situated at the other end of the Square and did not have a view over the central garden.

 - (4) 33 Chelsea Square occupied a corner position and appeared to back onto the central garden. It was undergoing major works.

 - (5) 38 Chelsea Square was a detached new build property occupying a corner position and

with no view over the central garden. It was a very different property.

- (6) 41 Chelsea Square faced the central garden but was a very different style of property from the subject.
- (7) 43 Chelsea Square was a detached property. It was a different type of property and much grander.
- (8) 51 Chelsea Square occupied a corner position. It was of similar architectural appearance to 11 Chelsea Square.
- (9) 5, 14 and 39 Carlyle Square were different types of property. They were older, more substantial properties and of different architectural appearance from the subject property. Carlyle Square was very different in character from Chelsea Square.

D. **Decision**

(i) **Unimproved freehold value**

- 15. Mr. McGillivray for the landlord arrived at an unimproved freehold value of £3,950,000. Mr. Curran's figure for the tenant was £3,675,000.
- 16. Mr. McGillivray's approach was to work from the leasehold sales of 11 and 51 Chelsea Square. Mr. Curran did likewise, but in addition referred to other properties in Chelsea Square and Carlyle Square for completeness. There was no dispute between the two

valuers that the best comparables were 11 and 51 Chelsea Square.

17. Mr. McGillivray's valuation approach was set out in his amended tables A and B in Appendix 1 to his Third Addendum of 9 May 2003. Mr. McGillivray's updated figures were £4,210,726 for 11 Chelsea Square and £4,587,477 for 51 Chelsea Square. Mr. Curran's figures were £4,222,226 for 11 Chelsea Square and £4,520,833 for 51 Chelsea Square, before adjustment in each case for improvements and other differences with the subject property at 14 Chelsea Square.
18. Mr. McGillivray considered that 11 Chelsea Square was very dated and required modernisation as per the sales particulars. With regard to 51 Chelsea Square, that was on the west side of the Square which in his view tended to be more popular than the east side of the Square. Houses on the west side of the Square had west facing gardens and were quieter with less traffic than on the east side. Based on his figures for 11 and 51 Chelsea Square, he arrived at a figure of £3,950,000 for the unimproved freehold value of the subject property.
19. By comparison, Mr. Curran adjusted both 11 and 51 Chelsea Square for improvements by the same amount of £200,000 and he made further deductions for there being no garden at 14 Chelsea Square (there was originally a small yard), no staff accommodation at 14 Chelsea Square (when compared to 51 Chelsea Square), a less attractive dining room at 14 Chelsea Square (when compared to 11 Chelsea Square) and a shared drive at 14 Chelsea Square. He made an adjustment for these latter features of 5% when

compared to 11 Chelsea Square and 7½% when compared to 51 Chelsea Square.

20. With regard to the deduction for improvements, Mr. Curran's figure of £200,000 was an arbitrary figure which was not supported by any breakdown or arithmetical calculation. Mr. Curran stated that he imagined a 1936 property with 1936 fittings in a repaired condition and that any alteration to them was an improvement and must have a positive value which had to be excluded.
21. This was a full repairing Lease, and over the years since 1936 the Tribunal would have expected the fixtures and fittings to be replaced and/or upgraded several times. The Tribunal also consider that with properties of this calibre purchasers regularly buy with the intention of stripping out existing kitchens and bathrooms. The existing kitchen and bathrooms would therefore have had little if any value in real terms. This is supported by the fact that the Tribunal were told that the tenant had spent some £210,000 on works to the property since his purchase, including replacement of the kitchen and bathrooms.
22. The floor area relied on by the valuation experts for 14 Chelsea Square of 4,239 sq. ft. was net of tenant's improvements. The property was thereby being valued without physical improvements, in particular the conservatory. It was being valued with its original yard.
23. With regard to 11 and 51 Chelsea Square, the Tribunal had seen 11 Chelsea Square internally. The property was in a poor state of decoration and modernisation and was in

need of a total refurbishment of fixtures and fittings. It was not in repair. According to the agents' particulars, 51 Chelsea Square required updating and a programme of refurbishment. The Tribunal were unable to see in the case of either 11 or 51 Chelsea Square how an adjustment of £200,000 for improvements was justified when compared to 14 Chelsea Square.

24. On the question of the garden, there had been an open yard at 14 Chelsea Square which allowed the potential to an occupier to create a garden. In addition, 14 Chelsea Square had a large roof terrace on the second floor which 11 and 51 Chelsea Square did not have.
25. With regard to staff accommodation, in the Tribunal's view 14 Chelsea Square with its secondary staircase at the rear had originally been designed for staff. A housekeeper was in fact presently accommodated at 14 Chelsea Square.
26. Turning to the matter of living rooms, 11 Chelsea Square had large intercommunicating living rooms in comparison to 14 Chelsea Square which had a living room at the front, then a hall and a dining room at the rear. However 14 Chelsea Square had a better hall.
27. The property at 11 Chelsea Square did have a good courtyard garden and garage at the rear. It was preferable to the shared drive at 14 Chelsea Square.
28. There was a slight difference in the number of rooms and size between 14 Chelsea Square

and 11 and 51 Chelsea Square. 11 and 51 Chelsea Square had the disadvantage of basement and attic accommodation.

29. It was necessary to stand back and look at the unimproved freehold value of 14 Chelsea Square in the light of all the information relating to the leasehold figures for 11 and 51 Chelsea Square. Subject to the question of subsidence, the Tribunal were of the view that Mr. McGillivray's figure of £3,950,000 was in the right region for the unimproved freehold value of 14 Chelsea Square as at the valuation date.
30. The sale dates of June and January 2002 for 11 and 51 Chelsea Square were not very far apart from the valuation date of 31 July 2002 for the subject property. In the Tribunal's view, Mr. McGillivray's figure of £3,950,000 appropriately updated for the difference in time between the transaction dates of 11 and 51 Chelsea Square and the valuation date of 14 Chelsea Square.
31. Mr. McGillivray's revised Tables A and B made an adjustment for the unpalatable ground rent of 14 Chelsea Square.
32. With regard to the question of subsidence, in buying a property that requires expenditure of some £210,000 there will inevitably be some disturbance and inconvenience with the latter works. The Tribunal do not consider that the market in those circumstances would make a deduction as high as £25,000 for the inconvenience of subsidence works, as argued by Mr. Curran. The Tribunal are of the view that there should be a deduction for

the subsidence problems but only of £10,000.

33. In the Tribunal's opinion, the unimproved freehold value of 14 Chelsea Square as at the valuation date was therefore £3,940,000.

(ii) Unimproved leasehold value

34. Mr. McGillivray's unimproved leasehold value for the landlord was £1,943,400, whereas Mr. Curran's figure for the tenant was £2,518,000.

35. Mr. McGillivray relied on the Gerald Eve/John D. Wood 1996 graph of relativities, which he stated showed a relativity of 49.2% for a lease with 25.4 years unexpired when compared to the freehold figure.

36. Mr. Curran relied on the figure of £2,325,000 paid by the tenant for the subject property at 14 Chelsea Square in June 1999 and on the sale price of £2,100,000 for 26 Chelsea Square in February 1999. He recognised that comparisons between the subject property and 43 Chelsea Square were difficult to make, the latter being a detached house towards the southern end of Chelsea Square and a different type of property.

37. Looking at Mr. McGillivray's figure of £1,943,400 for the unimproved leasehold value of the subject property excluding rights under the Act, the Tribunal note that when adjusting market evidence for the effect of the Act having regard to the unexpired length of the subject Lease Mr. McGillivray suggested a deduction of about 20% (see the graph

at Appendix 2 to his Third Addendum). Accordingly, Mr. McGillivray's open market value of the Lease including rights in July 2002 would be $\pounds 1,943,400 \times 100/80 = \pounds 2,429,250$, say $\pounds 2,430,000$. Adjusting backwards for time using Mr McGillivray's averaging of Savills PCL houses and PCL South-west indices from June 2002 to June 1999 would produce a figure of $\pounds 2,430,000 \times 279.1/407.8 = \pounds 1,660,000$. That compares to the reality of the subject property having been marketed at $\pounds 2,300,000$ and sold for $\pounds 2,325,000$ to Mr. Evans in June 1999.

38. Mr. McGillivray also suggested that purchasers of short leaseholds paid the freehold value less the cost of acquiring the freehold. The question then is what was the freehold worth in June 1999?

39. In the Tribunal's opinion, the unimproved freehold value in July 2002 was $\pounds 3,940,000$. Adjusting backwards for time, that would produce a figure of $\pounds 3,940,000 \times 279.1/407.8 = \pounds 2,696,000$, say $\pounds 2,700,000$ for the freehold value in June 1999.

40. Mr. McGillivray's evidence from the sale files of 14 and 26 Chelsea Square suggested that the cost of the freehold would be $\pounds 650,000 - \pounds 700,000$. The evidence of the tenant Mr. Evans was that Knight Frank had mentioned a figure of $\pounds 700,000$ after he had made his bid for the property. On this basis, it would follow that the leasehold value of the property including rights under the Act as at June 1999 was $\pounds 2,700,000$ less $\pounds 700,000$, that is, $\pounds 2$ million.

41. The figure of £2 million including rights under the Act is clearly closer to the actual sale price of £2,325,000 for the subject property paid by Mr. Evans in June 1999 than the figure of £1,660,000 based on the relativity graph relied on by Mr. McGillivray.
42. While recognising the difficulties in adjusting for time and enfranchisement costs having regard to the period involved, the Tribunal are satisfied that the actual market evidence relating to the sale of 26 Chelsea Square in March 1999 and 14 Chelsea Square in June 1999 cannot be ignored and replaced by an historic graph. Any agent in the market in June 1999 would have had to have taken into account the sale price of 26 Chelsea Square in advising as to the price to be paid for 14 Chelsea Square.
43. Turning to the price paid by Mr. Evans in June 1999, the Tribunal are satisfied that he did not seek any formal independent professional valuation advice. Moreover, his evidence suggests that he was not concerned about a few hundred thousand pounds either way. His assertion that he checked that the leasehold price could be justified by rental yield was not supported by any hard market evidence.
44. The Tribunal are of the view that Mr. Evans did pay over the odds for the leasehold interest in the property in June 1999 and that the reasonably expected sales price would have been £2 million including rights under the Act for the leasehold interest in June 1999, less £10,000 for the subsidence problem giving a figure of £1,990,000.
45. Adjusting forwards to July 2002 in accordance with the average of Savills PCL houses

and PCL South-west indices produces a figure of $\pounds 1,990,000 \times 407.8/279.1 = \pounds 2,907,638$, say $\pounds 2,900,000$ for the leasehold value of the subject property including rights under the Act as at July 2002.

46. There is then the question of the appropriate deduction for rights under the Act. Mr. Curran for the tenant deducted 10% to reflect the effect of the Act. Mr. McGillivray's deduction would have been 20% had he had to make a deduction from market evidence, the same equating in his opinion to 50% of marriage value. As it was, the Gerald Eve/ John D. Wood 1996 graph of relativities relied on by Mr. McGillivray gave a figure excluding rights under the Act.
47. In the Tribunal's view, it is appropriate to make a deduction of 15% that is, $\pounds 435,000$ for rights under the Act. This produces a figure of $\pounds 2,465,000$ excluding rights. Standing back and having regard to the Lease being 3 years shorter and the difficulty of adjusting by reference to indices for such a period of time, the Tribunal arrive at an unimproved leasehold value for the subject property excluding rights under the Act of $\pounds 2,400,000$ as at the valuation date.
48. Notwithstanding the paucity of evidence of short leasehold sales in July 2002, the Tribunal has had regard to the fact that the rate of price increases and the market had slowed down as at the date of valuation.
49. In a rising market where both valuers recognise the difficulty of using indices to adjust

over such a long period of time, the Tribunal gained little assistance from the long leasehold sales of 12 Chelsea Square in 1996 for £1,400,000 and in 1997 for £2,230,000. The short leasehold sales of 26 Chelsea Square in 1993 for £775,000, in 1996 for £1,750,000 and in 1999 for £2,100,000 also indicated not only modernisation but considerable market movement for a short leasehold interest.

50. The Tribunal's unimproved leasehold value of £2,400,000 is 60.9% of its freehold value of £3,940,000. The Tribunal consider that their figures are justified by the analysis of actual transactions of short leaseholds namely 14 and 26 Chelsea Square in 1999 and the time adjustment of the Tribunal's freehold figure for the subject property from 2002 to 1999 in accordance with the evidence before the Tribunal.

51. The freehold figure adopted by the Tribunal of £3,940,000 less the enfranchisement price arrived at by the Tribunal of £1,218,919 is £2,721,081. This is below the figure of £2,900,000 including rights under the Act arrived at by the Tribunal for the subject property as at July 2002. However in the Tribunal's view it is within valuation tolerances for this type of property and is supported by Mr. Evans' evidence to the effect that for properties of this nature purchasers are not necessarily concerned with the precise figure they have to pay.

(iii) Valuation fee

52. Mr. Gibbs for the landlord sought to justify a valuation fee under Section 9(4) of the Act of £4,400 plus VAT. Mr. Curran for the tenant proposed a figure of £2,850 plus VAT.

There was no dispute about the disbursements of £77.43 plus VAT, the tenant agreeing to pay that figure.

53. Section 9(4) of the Act requires the tenant to pay the reasonable costs of or incidental to the valuation of the property.
54. The tenant contended that the landlord's figure of £4,400 was unreasonable, referring to the figures put forward by Mr. Curran (£1,400), George Pope (£1,500), Angus Fanshawe (£2,000) and Savills (£3,000 - £3,500).
55. The landlord maintained that it was not obliged to go to the cheapest valuer or to seek competitive quotations every time. There was considerable benefit to the landlord who had many applications to deal with to instruct a practice familiar with that landlord. It was argued that the figure of £4,400 fell within a range of reasonable valuation fees.
56. There was no evidence before the Tribunal of the landlord having sought competitive quotes for valuations and if so when and with what results, other than the bare assertion of the landlord's Counsel that at some stage the landlord had sought competitive quotes for fees.
57. In the Tribunal's opinion, the figure sought by the landlord of £4,400 is too high and not reasonable for the valuation of the subject property. The Tribunal accept that the landlord is not obliged to go for the cheapest valuation or to seek quotes every time it needs a

valuation. However the Tribunal are satisfied that the figure of £4,400 is out of touch with the level of valuation fees being paid in the market place. In the Tribunal's view, a figure of £3,500 (being the higher of the two quotes obtained from Savills) represents the top end of what is reasonable and acceptable for the work involved.

58. The Tribunal therefore allow a valuation fee of £3,500 plus VAT, together with the agreed disbursements of £77.43 plus VAT.

E. **Determination**

59. The Tribunal determine the enfranchisement price payable by the tenant to be £1,218,919 in accordance with the Tribunal's valuation annexed to the decision. In addition, the Tribunal allow a valuation fee of £3,500 plus VAT, together with the agreed disbursements of £77.43 plus VAT.

Chairman *P. Wulwik*
Peter Wulwik

Date: **25 JUN 2003**

LEASEHOLD VALUATION TRIBUNAL'S VALUATION

Property: 14 Chelsea Square, London SW3

Date of Claim: 31 July, 2002

Unexpired term of lease: 25.40 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 the remainder of term -				
Rent currently payable		85		
Capitalised for 25.40 years @ 6.00%		<u>12.87</u>	1,094	
For reversion to -				
Value of freehold in possession		3,940,000		
Deferred 25.40 years @ 6.00%		<u>0.2276</u>	<u>896,744</u>	897,838
Add Lessor's share of marriage value				
Value of freehold in possession			3,940,000	
<u>Less</u>				
Value of lessor's interest exclusive of marriage value		897,838		
Value of lessee's interest exclusive of marriage value		<u>2,400,000</u>	<u>3,297,838</u>	
Gain on marriage			642,162	
Attributed to lessor at 50.0%				<u>321,081</u>
Enfranchisement price				<u>£1,218,919</u>