

London Rent Assessment Panel File Ref No.

LON/00BK/OAF/2008/0047

Leasehold Valuation Tribunal: decision

Leasehold Reform Act 1967 section 21

Address of Premises

The Committee members were

12 Wilton Crescent, London SW1X 8RN	Mr Adrian Jack Mr Pat Casey MRICS
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The Landlord Grosvenor Estate Belgravia (an unlimited company)

The Tenant: Mr Yogesh Mehta

Procedural

1. By application dated 23rd May 2008 the landlord sought a determination of the price payable by the tenant under section 9 of the Leasehold Reform Act 1967 in respect of the enfranchisement of 12 Wilton Crescent, London SW1.
2. The lease in question was granted on 8th December 1961 for a term of 54¾ years from 29th September 1960, expiring on 24th June 2015 at a rent of £120 per annum. The premises comprise 12 Wilton Crescent and the mews house at the back, 22 Kinnerton Street. 22 Kinnerton Street is held by other tenants on an underlease of 54¾ years (less one day) from 29th September 1960.
3. By a claim form dated 4th January 2008 and received by the landlord on 7th January 2008 the executors of the former tenant sought to enfranchise the lease held by him. On 8th January 2008 the executors transferred the lease to the current tenant, Mr Mehta, at a price of £5,175,000 and assigned the benefit of the claim to enfranchise. By notice in reply dated 14th March 2008 the landlord admitted the tenant's right to enfranchise.

4. The Tribunal heard this matter on 28th and 29th October and on 3rd and 12th December 2008. The landlord was represented by Mr Kenneth Munro of counsel instructed by Boodle Hatfield; the tenant by Mr Timothy Dutton of counsel instructed by Speechly Bircham. The Tribunal heard evidence from Mr George Pope FRICS and Mr Jeremy Dharmasena MRICS on behalf of the landlord and from Mr James Wyatt MRICS on behalf of the tenant.

Inspection

5. The Tribunal inspected 12 Wilton Crescent internally on 31st October 2008 in the presence of the tenant but without any lawyers for the parties and without any representative of the landlord. The Tribunal was only able to inspect 22 Kinnerton Street externally. It also inspected externally the comparables in Wilton Crescent, Wilton Place and Chester Square on which the experts relied.

6. 12 Wilton Crescent itself is an imposing mid-terrace house with accommodation over six floors. There are five bedrooms, three reception rooms, two dining rooms, four bathrooms, three cloakrooms, plus staff accommodation in the basement. There was a small garden which was overgrown and two roof terraces which were in poor condition. Structurally and externally the house appeared to be in fair condition. The building appeared to be waterproof and there was no damp problem which we could see. Internally the decorative condition is poor and requires complete redecoration and recarpeting. In order to bring it up to a standard commensurate with the quality of the building and area, extensive works are required and we consider this further below.
7. All the experts considered that 12 Wilton Crescent was "uninhabitable." In the Tribunal's judgment this is an exaggeration. The Tribunal fully accepts that substantial works need to be done, but it is only because the valuers have probably only rarely occasion to get out of central London that they reach the view that the property was uninhabitable.

Statement of agreements and disagreements

8. The experts were able to agree a number of matters.
 - (a) The valuation date is 7th January 2008.
 - (b) The unexpired lease term was 7.46 years.
 - (c) The capital value of the ground rent was £588.

- (d) The gross internal area of 12 Wilton Crescent is 552.4 square metres or 5,948 square feet.
 - (e) The gross internal area of 22 Kinnerton Street is 158.9 square metres or 1,710 square feet.
 - (f) The property was unimproved.
9. The following matters were not agreed:
- (a) The freehold vacant possession value of the property.
 - (b) The deferment rate to apply in valuing the freeholder's reversion.
 - (c) The value of the existing lease for 7.46 years with vacant possession subject to the requirement to put it into repair and convert to a single private dwelling house.
 - (d) The extent to which there is a claim for "other loss" for severance of the mews house, 22 Kinnerton Street.
 - (e) The enfranchisement price of the property.
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10. In addition there was originally an issue as to whether the landlord was entitled to "hope value" in respect of its reversionary interest. In the course of the hearing, however, the House of Lords gave its decision in *Sportelli* (sub.nom. *Earl Cadogan v Pitts* [2008] UKHL 71) and the landlord abandoned its claim to hope value.

The law

11. Part I of the Leasehold Reform Act 1967 gives a tenant such as Mr Mehta the right to acquire the freehold of his house. Section 1(1ZA) provides that:
- "Where a house is for the time being let under two or more tenancies, a tenant under any of those tenancies which is superior to that held by any tenant on whom this Part of this Act confers a right does not have any right under this Part of this Act."
12. The effect, it was common ground, was that the tenant of 22 Kinnerton Street had a separate right to enfranchise and that Mr Mehta's enfranchisement was limited to 12 Wilton Crescent. On the transfer of the freehold of 12 Wilton Crescent, the whole lease (including that over 22 Kinnerton Street) would be surrendered by operation of law, so that the tenant of 22 Kinnerton Street would hold directly from the Grosvenor Estate Belgravia.
13. The former rateable value of 12 Wilton Crescent is such that it was common ground that the valuation was to be determined in accordance

with section 9(1A) of the 1967 Act, which provides (so far as relevant) that “the price payable for a house and premises... shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:-- (a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold...”

14. Section 9A of the Act gives a right to additional compensation in respect of:--

- “(a) any diminution in value of any interest of the landlord in other property resulting from the acquisition of his interest in the house and premises; and
- (b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.”

15. Section 21 of the Act gives the Leasehold Valuation Tribunal jurisdiction to determine the price payable for the house and premises under section 9 of the Act.

The experts

16. The Tribunal in general preferred the evidence of Mr Pope and Mr Dharmasena to that of Mr Wyatt. The Tribunal will deal with the individual issues separately below, but it is convenient to give a general overview of the reasons for the Tribunal reaching this conclusion.
17. Mr Pope is a valuer of immense experience going over many decades and has appeared very regularly before the Tribunal and the Lands Tribunal. He expressed his views in a measured and balanced way. He was careful to point out the limits of his expertise. Mr Dharmasena too had many years experience and has appeared before the Tribunal. He was also a careful and measured witness. When we come to the individual items, we shall identify the evidence on which they relied.
18. Mr Wyatt by contrast was very much less experienced forensically. He had given evidence in court proceedings only four times before and this was in fact the first occasion on which he had given evidence before the Tribunal. This inexperience showed itself in a number of respects. A Tribunal comprised of less tolerant members than the present might have been irritated by his tendency whilst giving evidence to model his pose on

that of Rodin's statue *The Thinker*, as it might have been by his giving details of the dining establishments he frequented when acquiring information as to market trends. The Tribunal ignored these idiosyncrasies in considering his evidence.

19. The Tribunal did not, however, ignore the substantive criticisms which were justifiably made against Mr Wyatt's evidence. We shall deal with the individual criticisms when we deal with the individual items. The cumulative effect, though, was very damaging to the reliance we were able to place on his evidence. Often Mr Wyatt drew conclusions based on inadequate data. He did not indicate (and may not have recognised) the uncertainties which necessarily existed in the views which he expressed, so that he did not qualify his opinion as he should have done. At times he came close to exceeding the boundaries of his expertise, but without showing awareness of the limitations on the evidence which he could give.

The indices

20. It was common ground between the experts that Prime Central London ("PCL") real estate in fact comprised a number of sub-markets. In the current case, the experts limited their evidence to Belgravia and Chelsea, so it was not necessary to examine the extent to which other areas, like St John's Wood, might be included in PCL. Within PCL, however, there was a distinction to be drawn between "ordinary" prime, which included property valued at between one and ten millions, and property above ten million which constituted "superprime" or "überprime" (although Savills for some reason leave off the umlaut).
21. Both Mr Pope and Mr Wyatt agreed that in the latter half of 2007, ordinary prime and überprime performed differently. The summer of 2007 marked the start of the credit crunch and by the third quarter of 2007 the price of ordinary prime had peaked and was coming down, a process which continued in the fourth quarter of 2007 and on into 2008. By contrast überprime continued to rise in the third and fourth quarters of 2007 and was still performing well in the first half of 2008.
22. All the experts referred to the various indices covering PCL. The best known is perhaps the Savills PCL Residential Capital Value Index. Both Mr Pope and Mr Wyatt criticised this index for being based on valuation opinion rather than on actual transactions. Both were also concerned that überprime was given very little weight in the index. Mr Pope estimated that there were probably less than 25 überprime sales in the whole of

2007. The index therefore put very much greater weighting on ordinary prime sales than on überprime.

23. The other main index referred to was the John D Wood Large House Index. This was based on transactions involving houses of over 3,500 square feet in Central London. The geographical compass of the index was greater than just Belgravia and Chelsea and the size of the houses meant that most were in the upper half of ordinary prime rather than überprime. There were also technical issues as to the way in which this index was smoothed. As can be seen from the graph at Tab 9 to Mr Wyatt's report, the index is much "spikier" than other graphs. This is particularly serious on the facts of the current case because there is a sharp spike upwards in January 2008. The index in November 2007 was 243. It rose in December 2007 to 268, before peaking in January 2008 at 282. Thereafter it fell to 267 in February 2008 and 266 in March 2008.

24. The experts were in agreement as regards the inadequacies in the indices, but both Mr Pope and Mr Wyatt referred to them at points in their reports in order to bolster particular arguments which they were advancing. The reason they did this was to overcome the lack of actual transactional evidence of valuation. The Tribunal understands why the experts were doing this, but considers that the evidence from these indices is of little help in interpreting the überprime market over the relevant period.

25. Between the first two days of hearings in October and the resumption of the case on 3rd December 2008, Savills produced a report dated 14th November 2008 entitled "Market Overview and Forecasts" by Yolande Barnes and Lucian Cook. Mr Pope had concluded his evidence and no application to recall him was made. Mr Wyatt had not seen the document before, when it was put to him by Mr Munro. The report includes a graph entitled "Prime Central London", which showed "super-prime" starting to show negative growth in the fourth quarter of 2007 and hitting a low of minus 3 per cent per quarter in the second quarter of 2008. By contrast "ultra-prime" continued to show positive growth of about 2 per cent per quarter. The document does not define what it means by super-prime and ultra-prime. Mr Wyatt hazarded a guess that ultra-prime was thirty or forty million plus, but the number of transactions at that level must be so small that it is likely to be virtually impossible to construct a meaningful index.

26. The Tribunal did not consider that in view of these uncertainties it could attach independent weight to this graph, however, they noted that it was

much more consistent with Mr Pope's evidence than with that of Mr Wyatt.

The Quantity Surveyor's evidence

27. Mr Wyatt on the tenant's behalf commissioned a report from David Longstaff MRICS of Millbridge, quantity surveyors, to show the likely cost of refurbishment of the property. Both sides relied on the report in respect of a number of different aspects of the case. It seemed to the Tribunal, however, that there were limitations on the practical use which could be made of the report.
28. Millbridge were asked to provide an expert opinion firstly on the likely cost of a dilapidations claim, if such were made by the landlord at the end of the current lease; and secondly on the likely cost of carrying out a full remodelling of 12 Wilton Crescent to bring it up to "full marketable standard." Millbridge's view on the first question was that, if the electrics and the roof did not require replacement, the property could be put in repair at a cost of £293,525 (including all overheads, professional fees etc but not including VAT). If the electrics and roof required replacement, the cost would be £453,950 (on the same basis).
29. To answer the second question Millbridge looked at the cost of a similar project in Eaton Square. The total cost of bringing the property up to "marketable standard" was put at £2,664,000, or £526 per square foot.
30. On the basis of these figures Mr Wyatt constructed an elaborate scheme of adjustments to the purchase price on some of the comparables on which he relied. Thus a wholly unmodernised "uninhabitable" comparable would require £526 per square foot of works to put it in "immaculate" condition, whilst the same property could be made a "habitable" property at a cost of £89 per square foot. Improving a "habitable" property to "immaculate" would cost £436 per square foot.
31. The Tribunal does not accept that a detailed calculus of this type is possible. One issue concerns the definition of the state of premises. We have already commented on the valuers' view that 12 Wilton Crescent is uninhabitable. We have equal difficulties with the concept of "full marketable standard." One of the features of these very expensive homes is that the occupier is likely to want to personalise the property to a greater or lesser extent. A vendor is unlikely to spend large sums making the property "immaculate" if the purchaser is immediately likely to rip out

what the vendor has put in, so that the property can be adapted to the purchaser's taste. An owner seeking to let the property is likely to put the property only into a good basic, probably fairly bland, condition, so that a tenant can carry out works in accordance with his preferences.

32. Similarly, the amount which can be expended on properties is almost literally without limit. £526 per square foot is simply an arbitrary figure based on the cost expended on one property. It would be perfectly possible to spend more, just as in our judgment a perfectly satisfactory standard could be achieved for very much less.

The freehold vacant possession value

33. Although both Mr Pope and Mr Wyatt referred to other properties as comparables, both agreed that the key comparable was the sale of 14 Wilton Crescent in August 2008 at a price of £15,500,000. We agree and do not consider it necessary to examine the other comparables cited. Exchange of contracts took place in July 2008 and both valuers agreed that this was the relevant date from which the value of 12 Wilton Crescent in January 2008 needed to be calculated. 14 Wilton Crescent was in a very similar condition to 12 Wilton Crescent. Accordingly in order to arrive at a value of 12 Wilton Crescent in January 2008, both valuers had to consider what change there had been in the überprime market between January and July 2008.
34. Mr Pope in his report (section 5) says that in general he uses the Savills graph (tab 3 of his report) which showed a decline in south-west houses from December 2007. He accepted, however, that the überprime market carried on increasing in the first half of 2008. He considered that an allowance of 5 per cent should be made for the increase in that period.
35. Mr Wyatt attempted to show the movement in the market, which he put at 20 per cent over the six months, on a number of different bases. Firstly he looked at price movements in Chester Square. He identified 9 Chester Square as a property sold in November 2007 for £10,000,000. The floor area was 4,726 square feet, so that the price equated to £2,116 per square foot. The property was described by the selling agent as being "in excellent condition, having been recently extensively refurbished including air condition [*sic*] to the principal rooms."
36. Mr Wyatt then identified 6 Chester Square as a property sold in mid-March 2008 at £12,500,000. He had "been informed that the house had

not been touched for 20 years by the Greek owner (albeit there was air conditioning) and the incoming American owner was going to undertake a complete refurbishment." The price equated to £2,483 per square foot, or £2,282 per square foot, if the vaults were included.

37. Mr Wyatt then considered that an adjustment needed to be made to bring 6 Chester Square up to "immaculate" condition. He allowed £436 per square foot for this, so as to give an adjusted figure of £2,919 per square foot (£2,483 plus £436) or £2,718 per square foot (£2,282 plus £436). The figures of £2,919 or £2,718 had then to be contrasted with the figure of £2,116 per square foot for 9 Chester Square. £2,919 is an increase of 37.9 per cent over £2,116, whilst £2,718 is an increase of 28.4 per cent over a period of 4 months (November 2007 to March 2008).
38. We do not consider this an appropriate basis to calculate any increase over that period. Mr Wyatt had not seen either 6 or 9 Chester Square. He could only make the roughest guesses as to what works were required. Further, as we noted above in considering the Millbridge report, the likelihood is that, even if 6 Chester Square had been in "immaculate" condition, the American purchaser would still have carried out extensive works to personalise the house for himself.
39. We agree with Mr Pope's view that an increase of 28.4 or 37.9 per cent over four months is just incredible. It equates to annualised rates of 111 per cent or 162 per cent respectively. Save in conditions of inflation the likes of which have never been seen in the United Kingdom, such sudden changes in an illiquid market like property are virtually inconceivable.
40. It is significant in our judgment that the *unadjusted* figures show a much more modest price increase. The experts' view was that, if a property includes vaults under the road in front (particularly when there is direct access from the house), then the modern tendency was to include the area as part of the gross internal area. The unadjusted figure of £2,282 per square foot for 6 Chester Square is an increase of 7.8 per cent over the £2,116 for 9 Chester Square.
41. Secondly Mr Wyatt relied on evidence that the market was extremely active in the first half of 2008. He himself was not involved in the estate agency side of John D Wood and explained that he spoke to members of those teams at the firm on a regular basis. John D Wood, however, dealt more with ordinary prime properties rather than super-prime.

42. His chief evidence of market conditions came from Mr Charles Willis of Strutt & Parker which was imparted at the lunches to which we have referred. In our judgment this evidence is admissible, but can be given only very limited weight. The evidence is effectively anecdotal. Moreover, whatever "buzz" there might be in a market, it is transactional evidence which shows the true price level.
43. Thirdly Mr Wyatt relied on the fact that 14 Wilton Crescent had been marketed at £13½ millions, but eventually sold at £15½ millions. The Tribunal accepts that this is consistent with a rising market, however it is equally consistent with other explanations. It is common for estate agents to put a property on the market at somewhat less than the figure at which they expect the property will ultimately sell. Such a strategy excites interest in the market and allows competitive bids to build up. Putting a property on the market at close to what the agent thinks is likely to be the final selling price runs the risk that interest among purchasers is less than expected, resulting in the price having to be cut.
44. Fourthly Mr Wyatt said that Wilton Crescent was particularly attractive to investors from the Middle East, whereas Chester Square was more attractive to the Anglo-Saxon market. In the first half of 2008, the price of oil was shooting up, hitting just short of US\$150 a barrel, with Goldman Sachs forecasting oil rising to \$200 a barrel. With so many petro-dollars washing around the Middle East, Mr Wyatt argued, prices in Wilton Crescent were going to go up dramatically.
45. The Tribunal simply cannot accept this logic. No doubt the price of oil has a substantial impact on the world economy, but to argue that a sudden up-tick in the price of oil has an immediate knock-on effect on the price of property in one square in London is unjustifiable.
46. Fifthly Mr Wyatt only arrives at his figure of 20 per cent for January to July 2008 by making adjustments based on indices. As we have noted none of the indices give a good picture of the market for überprime. It is therefore not rational to use them to adjust, e.g., the November 2007 to March 2008 figures.
47. For these reasons, the Tribunal rejects the evidence of Mr Wyatt on the valuation of the freehold with vacant possession and accepts Mr Pope's evidence that the value of the freehold interest in No 12 should be calculated by reference to the sale price of No 14 adjusted downwards by 5% to reflect market movement over the passage of time.

The vaults

48. 14 Wilton Crescent had use of the vaults under the footpath of the Crescent at the front of the house with direct access from the house. As we have noted, the modern tendency is to count the area of such vaults as part of the gross internal area, because the space can be used for domestic purposes like the installation of a sauna. The vaults were counted as part of the internal area at 14 Wilton Crescent. Conventionally the same rate per square foot is used as for the rest of the house in valuing the vaults.
49. The 1960 lease of 12 Wilton Crescent does not in either the parcels clause nor in the plan show the vaults being included in the demise. We assume that vaults existed, because other houses in the Crescent have vaults. On our inspection, there was no access to the vaults from inside the house, because the electric meters and master switches were where access to the vaults would have been. We were unable to gain access to the below pavement basement level entry area at the front of the house, but we could not see any obvious entry to the vaults.
50. It is most unlikely in our judgment that in 1960, when the lease was granted, the vaults would have been in use for coal storage. The Clean Air Act had taken effect and a prestigious house in Wilton Crescent is unlikely to have carried on using smokeless fuel. The 1960 lease replaced a lease granted in 1924. The parcels clause on this lease was in identical terms to that of the 1960 lease. The copy of the 1924 lease in the Tribunal's bundle did not include a plan, but we assume the plan would have been the same as that in the 1960 lease since the parcels clause was the same.
51. It is more plausible that the vaults were in use as coal bunkers in 1924, but we have no direct evidence to that effect and it is by no means impossible that the house would have been equipped with central heating by 1924.
52. The significance of this discussion is that, if the vaults had been in use for coal storage, then there might have been a reputed easement (or possibly some other property interest) which passed with the lease under section 62 of the Law of Property Act 1925. Since there is no evidence in our judgment that there was any use of the vaults, no question of a reputed easement or other right can arise. We therefore conclude that the vaults (or any easement in respect thereof) are not part of the demise to the tenant and do not pass on enfranchisement.

53. Mr Pope assumed that the vaults would pass with 12 Wilton Crescent as they do with No 14. Hence he devalued the adjusted sale price of No 14 on the basis of its area excluding vaults and applied the resulting £2,550 psf to the without vaults area of the subject property assuming it to have vaults of similar size. With no vaults at No 12 it is the adjusted sale price of No 14 divided by its area including vaults which is to be applied, ie £2,465.

Conclusion on the freehold with vacant possession

54. Accordingly the Tribunal calculates the value of the freehold as at 7th January 2008 with vacant possession as £14,661,820 say £14,660,000 (5,948 square feet x £2,465 per square foot).

The deferment rate

55. The lease at the relevant date still had 7.46 year to run. The value of the landlord's freehold with vacant possession therefore has to be reduced to reflect that factor. Mr Dharmasena's view was that a deferment rate of 4.75 per cent per annum was appropriate. Mr Wyatt's view was that 7½ per cent per annum was right.
56. Mr Dharmasena cited extensively from the Lands Tribunal decision in *Sportelli*. He pointed out that none of the cases considered by the Lands Tribunal in *Sportelli* concerned leases of less than 20 years and that the Lands Tribunal expressly said that in cases of under 20 years regard could be had to the state of the property cycle. In *Sportelli* the Lands Tribunal considered that taking the "risk free" rate available, eg on index-linked gilts, and then adding a "risk premium" would give, over the property cycle an expected deferment rate of 4.75 per cent per annum. It added that under some conditions an investor in leases under 20 years would expect a different deferment rate, because the property market was in a downturn.
57. Mr Dharmasena accepted the logic of the Lands Tribunal's approach. He argued that in January 2008 the market for überprime was continuing to go up. There had been a reversal in the market for ordinary prime, but that it was unclear at that time whether that was a blip, or a sign of a serious decline in the property market. Since überprime was going up, however, there was no *a priori* reason to suppose that the property cycle was changing for überprime.

58. Mr Wyatt agreed with Mr Dharmasena's analysis of *Sportelli*. His case was that in January 2008 the market was on the turn, so that at that time an investor would look for a higher return, because of the higher risk that the market would go lower. We disagree with Mr Wyatt's assertion that the market was on the turn in January 2008. It was common ground between Mr Pope and Mr Wyatt that the market for super-prime was still hard. Indeed Mr Wyatt thought the market was increasing at a very fast rate indeed. It is irrational in our judgment to say that an investor would demand a substantially higher risk premium at a time when prices are rising.
59. Mr Wyatt cited deals which were available at the time, eg a five year fixed deal with Barclays Bank at 6.22 per cent or a twelve month deal with the Anglo-Irish Bank at 6.85 per cent. He pointed out that Warren Buffet had obtained a 10 per cent yield on preference shares granted him in Goldman Sachs, with Mitsubishi obtaining a similar return in Morgan Stanley. He pointed out that HM Government was seeking a 12 per cent return on shares in the UK banks which it rescued.
60. In our view Mr Wyatt was trespassing on the boundary of his expertise here. The examples which he cites are outside the area of real estate investments and the conclusions which can be drawn from these few cases are strictly limited. Again, however, he failed to recognise the limits of his expertise.
61. We accept Mr Wyatt's evidence that he himself was advising clients from the second half of 2007 not to buy property. That shows commendable foresight. However, it is to the market that valuation evidence has to address itself, not to prophets, however well justified those forecasters of doom might be in hindsight.
62. Mr Wyatt said (para 15.9) that 7½ per cent per annum was in his view an appropriate deferment rate. However, this is simply a figure asserted by him. He gave no explanation why 7½ per cent should be right, rather than, say, 6 per cent or 10 per cent. The figure appeared to be plucked from the air.
63. Accordingly we accept Mr Dharmasena's evidence that the deferment rate should be 4.75 per cent per annum in the absence of any compelling evidence to the contrary.

The value of the existing lease

64. The existing lease was purchased a day after the valuation date at a price of £5,175,000. However, for the purposes of enfranchisement the value of the lease needs to be calculated without regard to the possibility of the tenant enfranchising.
65. The experts considered two methods of valuing the 7.46 year lease in a "no Act" world: firstly consideration of the relativity between the lease and the freehold; and secondly by capitalizing the anticipated rental income after allowing for the cost of repairs required to put the property in a condition to command that rental level. As a matter of theory the two methods should produce the same result, but in practice the results are quite different.
66. In our judgment the second method on the facts of this case has too many imponderables to be reliable. Mr Dharmasena takes the cost of refurbishment as £2,664,000 from the Millbridge report. He considers that it would take a year to put the property into good condition, after which it might achieve a net rental of £562,500 per annum. Taking the 6.46 years remaining and capitalizing at 4½ %, gives a current value for the capitalised rent of £2,960,633. Once the cost of repair is taken off, this leaves a net value of the lease of £296,533.
67. Mr Wyatt puts the rental figure at £14,000 per week (£728,00 per annum) and the cost of works at £533,000, so as to give a capital value of £3,338,000 after allowing 0.46 years to do the works and capitalizing at 6%.
68. Neither of these gentlemen's approaches is realistic in our judgment. No sensible holder of a short lease would spend over £2½ million on repairs, as Mr Dharmasena supposes. Equally £14,000 per week is the absolute top-dollar rent for a top-dollar house. Spending £533,000 will produce a perfectly comfortable property, but not the lavish premises which command a rental of £14,000 per week.
69. It is obvious in our judgment that there would be some trade-off between the sums expended to put the property into condition and the rent which might be commanded. None of the valuers, however, had any relevant personal experience of the estate agency side of the letting market. None were able to give any realistic appraisal of what an investor seeking to make money by letting the property out or an owner-occupier seeking a

secure home for a number of years would do. Nor did either give evidence to support the capitalization rate they adopted.

70. In these circumstances the Tribunal considered it was unable to apply the capitalisation method to estimate the value of the existing leasehold interest. We accordingly turn to relativity.
71. All the experts took us to the Beckett & Kay Graph of Graphs to show relativity. Unfortunately at 7.46 years, the Graph of Graphs shows a very wide spread of results with the Gerald Eve graph at just under 20 per cent relativity and the Savills 2003 graph of enfranchiseable property at a little over 30 per cent.
72. Mr Munro reminded us of the guidance given by the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39, which suggested that very limited assistance could be drawn from previous decisions of the Leasehold Valuation Tribunal. Evidence of settlements, the Lands Tribunal pointed out, necessarily involved the surveyors taking a view on what the Leasehold Valuation Tribunal would (if the matter went to a hearing) take of the evidence of relativity, so that settlement evidence was similarly limited as evidence of a “no Act” world.
73. This view of the Lands Tribunal may need to be re-examined in the light of the Court of Appeal’s view in *Sportelli* [2008] 1 WLR 2142 paras 91ff that decisions of, at least, the Lands Tribunal on issues of fact can be precedents. Logically it would seem to follow that decisions of the Leasehold Valuation Tribunal could also be precedents of fact. It would defy common sense on the one hand to give precedential weight to one single Lands Tribunal decision which heard one set of evidence but not to the cumulative wisdom of many thousands of Leasehold Valuation Tribunals who had heard very much more valuation evidence. Mr Dutton did not, however, present this argument.
74. The Lands Tribunal’s suggestion that Royal Institution of Chartered Surveyors might produce a definitive graph has not borne fruit and there appears to be no prospect of the RICS committee given the task agreeing such a graph. This in our judgment reflects badly on the committee. Even if a consensus could not be reached, it should have been possible to produce a majority and minority report, so that the issues in dispute on relativity could have been narrowed.

75. Mr Wyatt makes criticisms of the Gerald Eve graph and says that it is “freeholder biased and largely opinion-driven, lacking the impartiality of tribunal evidence.” However, he does not suggest an alternative graph. Both Mr Wyatt and Mr Pope refer to a Leasehold Valuation Tribunal decision where 21 per cent relativity was determined for a lease with 6.89 years to run at 50 Wilton Crescent, however, the Tribunal agrees that the weight which can be attached to a single decision is limited. Instead Mr Wyatt relies on the capitalisation method of valuation, which we have rejected above.
76. In the absence of any alternative proposed, the Tribunal accepts the evidence of Mr Pope and Mr Dharmasena that the Gerald Eve graph should be used to determine relativity. The relativity in this graph for a 7.46 year lease is 19.92 per cent.
77. Mr Pope comments on the poor condition of 12 Wilton Crescent and considers that a further 30 per cent deduction from the 19.92 per cent should be made, so as to give a relativity of 13.94 per cent. The freehold value with vacant possession we have assessed at £14,660,000. Mr Pope’s reduction brings the value of the unexpired lease down from £2,920,272 to £2,043,604, a deduction of £876,668.
78. The Tribunal agrees that some deduction is required, but a deduction of this amount is much more than the Millbridge figures for bringing the property into reasonable repair. In our judgment a figure of £350,000 should be deducted (the delapidations figure of £293,525 plus VAT), so as to give a value of the unexpired lease of £2,570,272 – say £2,570,000.

Other loss

79. Mr Pope and Mr Wyatt agreed that the value of 12 Wilton Crescent and 22 Kinnerton Street separately was less than the value of the two properties together. The reason, they were agreed, was that the ownership of a house and mews was particularly attractive to a buyer of a “trophy” house who was interested in security, since it was possible to park a car and access the house without walking along the street. Further the mews house gave separate staff accommodation if the buyer wanted that.
80. Mr Wyatt considered that only 20 per cent of the premium should be considered as “other loss” for the purposes of section 9A, but Mr Dutton in closing accepted that he could not support Mr Wyatt’s reasoning for making this 80 per cent deduction in this respect.

81. Mr Pope considered that the value of the premium was £1,000,000. Mr Dharmasena discounted this for 7.46 years until the leases fell in to give a figure of £707,350. Mr Wyatt's figure (grossing up from £93,000) would have been £465,000, but for the reasons given we prefer Mr Pope's and Mr Dharmasena's evidence. If the "other loss" were recoverable, then we should have given it a value of £707,350.
82. In judgment, however, the loss is not recoverable as a matter of law. It was common ground between the experts that the tenants of 22 Kinnerton Street were very likely indeed to enfranchise and that the chances of them not doing so were entirely speculative. If the "other loss" had to be assessed in an Act world, then there was no loss, because the house and mews would realistically never come into the freeholder's hands with vacant possession: the mews would already have been enfranchised.
83. Mr Munro was accordingly constrained to argue that the "other loss" had to be calculated by reference to a "no Act" world. Section 9A, however, does not itself refer to such an assumption having to be made. In order to overcome this difficulty, Mr Munro prayed section 9(1A)(a) in aid. This makes the presumption in assessing the price that "the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold." In our judgment the "freehold" which is referred to in section 9(1A)(a) is that which is being enfranchised. It is not the freehold of 12 Wilton Crescent and 22 Kinnerton Street together: it is only the freehold of 12 Wilton Crescent. There is accordingly no presumption that the tenants of 22 Kinnerton Street have no right to enfranchise.
84. We are reinforced in this conclusion by the terms of section 9A(5), which provides for "price" to be construed as including "other loss", but only in relation to sections 8, 9(3) and 9(5), in other words not in relation to section 9(1A).

Conclusion

85. Accordingly our conclusions on the following matters which were not agreed are as follows:
- (a) The freehold vacant possession value of the property: £14,657,400.
 - (b) The deferment rate to apply in valuing the freeholder's reversion: 4.75 per cent per annum.

- (c) The value of the existing lease for 7.46 years with vacant possession subject to the requirement to put it into repair and covert to a single private dwelling house: £2,570,000.
- (d) The extent to which there is a claim for "other loss" for severance of the mews house, 22 Kinnerton Street: nil.
- (e) The enfranchisement price of the property: **£11,230,000**.

DECISION

The price payable by the tenant on enfranchisement is £11,230,000.

Adrian Jack

Chairman: Adrian Jack

7th January 2009

Leasehold Valuation Tribunal
12 Wilton Crescent, London SW1
LEASEHOLD REFORM ACT 1967 as amended
Calculation of Enfranchisement Price
Under
Schedule 1 Paragraph 7(1)(b)

Valuation Date 07/01/2008

A Valuation of Freeholder's Interest

Capital value of annual rental income agreed at On reversion to		£588	
Estimate value of freehold in possession	£14,660,000		
Deferred 7.46 years @ 4.75%	<u>0.70738</u>	<u>10,370,190</u>	
Value of landlord's interest excluding marriage value			£10,370,778

B Add Lessors' share of marriage value

Estimated value of freehold in possession		£14,660,000	
<u>Less</u>			
Valuation of Freehold Reversion	£10,370,778		
Estimated value of Underlease	<u>£2,570,000</u>		
		<u>£12,940,778</u>	
		£1,719,222	
	50.00%		<u>£859,611</u>
			£11,230,389

C Other loss for severance from 22 Kinnerton Street Nil

D Enfranchisement Price Say £11,230,000