Rec.

Ref LON/LVT/1795/04

LEASEHOLD VALUATION TRIBUNAL
FOR
LONDON RENT ASSESSMENT PANEL

DECISION

RE APPLICATION UNDER
SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Property:	**43a Acacia Road, St. John's Wood, London NW8 6AP**
Applicants:	The Trustees of the Eyre Estate (Landlords)
Respondent:	Baron Alliance of Manchester (Tenant)
Application:	20 July 2004
Hearing:	9-10 November 2004
Inspection:	10 November 2004
Appearances:	Mr A Radevsky of Counsel with Mr S Robert of Pemberton Greenish Solicitors also Mr E Robert BSc (Hons) MLE MRICS (for Landlords)
	Mr J Male QC with Ms C Shanley of Winward Fearson Solicitors, also Mr J Churchouse FRICS ACIArb and N I De Keyser of FPD Savills (for Tenant)

Members of the Leasehold Valuation Tribunal:

Professor J T Farrand QC LLD FCIArb Solicitor (Chairman)

Mr W J Reed FRICS

Mr I Mohabir LLB (Hons) Solicitor

Introductory

1) The Tenant's notice to the Landlords of his desire to acquire the freehold of the house and premises at 43a Acacia Road (aka 'Mermaid House') was dated 18 February 2004. The Landlords admitted, in effect, the Tenant's right to enfranchise by a notice in reply dated 25 March 2004.

2) The Landlords' originating application to the Tribunal (dated 20 July 2004) was for a determination of the price payable by the Tenant and of the terms of the conveyance to him. It was stated that the Landlords considered the appropriate price to be £4,250,000.

3) Subsequently the Statement of Case for the Landlords (dated 27 September) stated as Background:

    1. 43a Acacia Road is a period style detached house on basement, ground and first floors on a site of 0.366 Ha (0.9 acre) bordered by the rear gardens of the houses on Acacia Road, Ordnance Hill, Norfolk Road and Woronzow Road. Access is via Acacia Road. It was constructed in the 1980s. It is used as a single dwelling house ("the Property")
    2. The freehold of the Property is owned by the Applicant
    3. The Property is subject to a lease dated 17 June 1960 granted for a term of 99 years from 29 September 1957 (thus expiring 28 September 2056) at a rent of £100 per annum for the duration of the term. The Lease is in full repairing and insuring terms
    4. The Respondent is the registered proprietor of the Lease
    5. The Respondents [*sic*] served on the Applicant a Notice of Tenant's Claim (dated 18 February 2004) given under Section 8 of the 1967 Act and claiming the freehold interest in the Property
    6. The said Notice was admitted by the Applicant on 25 March 2004
    7. On 20 July 2004 the Applicants [*sic*] made application to this Tribunal for it to determine
        a). the terms of the Conveyance of the Property to the Respondent, and
        b). the price to be paid by the Respondent for the Applicants' freehold interest in the Property
    8. For the purpose of ascertaining the price
        a). The basis of valuation is as set out in Section 9(1C) of the 1967 Act, and
        b). The valuation date is 18 February 2004 being the date of service of the Respondent's claim notice.

4) The Landlords' Statement proceeded to indicate a valuation producing a reduced enfranchisement price of £3,518,673 and to state that the terms of the conveyance had been agreed. It concluded by stating, in effect, the primary question of law:

"The extent of the improvements are not agreed. Counsel for the Applicants have advised that the house constructed in the 1980's does not constitute a Tenant's improvement for the purpose of the Act and therefore any increase in value does not fall to be disregarded."

5) A Statement of Case for the Tenant (dated 7 October 2004) stated the Background identically except for an explanatory insertion (after para.3):

"The house that existed at the time of the grant of the lease was a smaller house known as Duff House. This property was demolished and Mermaid House built in its place circa 1984."

This was not disputed.

6) The Tenant's Statement proceeded to indicate a different valuation producing the significantly lower enfranchisement price of £1,305,000 and to confirm agreement of the terms of the conveyance. It then concluded by stating that directly contrary legal advice had been received as to the 1980's house constituting a Tenant's improvement so that any increase in value does fall to be disregarded.

7) The fact that the Tenant had acquired the leasehold interest in Mermaid House in 1998, after somewhat obscure negotiations and litigation, for a price of £10,500,000 was not in dispute. Nor was it disputed that he had subsequently spent substantial sums on improvements increasing the value of Mermaid House by £2,000,000.

Question of Law

8) For the Landlords, Mr Radevsky essentially relied upon a literal interpretation of the relevant statutory provisions in order to contend that an improvement had to be ***to*** and increase the value ***of*** the very house and premises being enfranchised in order for the price to be diminished by that value. In support, he quoted extracts from the 1967 Act – in particular (with emphasising italics added) s.1(1): "confer on a tenant of a leasehold *house*...a right to acquire on fair terms the freehold...of *the house and premises*...", and s.9(1A)(d):

"on the assumption that the price be diminished by the extent to which the value of *the house and premises* has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;"

He submitted that, starting with the house and premises in respect of which a tenant served his notice of desire to acquire the freehold (ie under s.8(1) of the 1967 Act), it followed that the building of the house itself was not an improvement within the terms of this assumption. To this submission he appended the point that, if the notice had been served after the demolition of Duff House and before the building of Mermaid House, there could not at that time have been a "tenant of a leasehold house" (ie within s.1(1) of the 1967 Act) and the claim would have failed.

9) Mr Radevsky then cited, as being consistent with his submission, the Court of Appeal decision in *Rosen v Trustees of Camden Charities* [2002] Ch 69. In short, it was there held that a house built pursuant to an agreement for the grant of a 'building lease' was not a disregardable improvement within s.9(1A)(d) of the 1967 Act. This was partly on the ground that, even if it were an improvement, it had not been carried out at the

expense of the tenant, an aspect not in issue here. Reliance was placed by Mr Radevsky on a passage from the judgment of Evans-Lombe J, with which Otton and Ward LJJ merely agreed. Having observed that the word "improvement" imported relativity so that it must be to something, he said: "The question therefore is what is the object to which the words 'any improvement' in paragraph (d) are directed (at para.13). His answer was as follows (at para.16):

> "Paragraph (d) does not use such words as 'the demised premises' nor are they used in the Act generally. The term used is 'house *and* premises' not 'house *or* premises'. From the definition of 'house and premises' in section 2(3) it is clear that 'premises' cannot exist independently of a house. The building of a new house on a bare site (whether a green field or a site on which a previous building which was not a house had been demolished) is not an improvement of 'the house and premises' but the provision of the house."

His lordship then referred (para.17) to a planning decision that the demolition of two old cottages to replace them with two new houses of different design would not constitute their "enlargement, improvement or other alteration" within the General Development Order 1963: *Sainty v Minister of Housing and Local Government* (1964) 15 P & CR 377 DC. He accepted, as did Mr Radevsky, that this was analogous and supportive.

10) For the Tenant, Mr Male principally contended that disregarding, for valuation purposes, any improvement constituted by the demolition of a house and the (re)building of another house would be wholly in accord with the more recent decision of the House of Lords in *Shalson v John Lyon Free Grammar School* [2003] 3 WLR 1 (unanimously reversing the Court of Appeal which had upheld Tribunal decisions below). In short, it was there held that, where a previous tenant had converted a dwelling-house into flats, a reconversion to a single dwelling, thereby increasing the house's value, was an improvement within para.(d).

11) Although the facts of that case were distinguishable, Mr Male submitted that the principles had been set out succinctly by Lord Millett (at para.31):

> "In order to lead to a diminution the works must (i) consist of an 'improvement' (ii) be carried out by the tenant or a predecessor in title at his expense and (iii) increase the value of the house and premises at the relevant time. Nothing more is required."

To this his lordship added (same para.): "The work was an improvement, that is to say it was not merely a work of repair or renewal", and Mr Male pointed out that this was true in the present case.

12) Mr Male also drew attention to Lord Millet's next paragraph (32) which began by referring to the purpose of the provision: "It is designed to avoid the tenant having to pay a price which reflects a value in a property for which he has already paid. Similarly, Lord Hoffmann had observed (para.21) that: "If the tenant increases the value of the landlord's interest by expenditure on reconversion, it would not seem fair that he should have to pay a second time when the landlord's interest is valued for the purposes of a sale of the freehold."

13) Accordingly, Mr Male submitted:

> "In the words of Lord Hoffmann [at para.18 of *Shalson*] the works were not mere repairs they were works going beyond mere repair. Necessarily therefore they were improvements. The works were works of alteration to the pre-existing house and premises, ...they were carried out by the tenant or his predecessor in title at his own expense and...they have increased the value of the house and premises at the relevant time. The [Tenant] is not, therefore, under the 1967 Act, obliged to pay for the increase in value of the interest brought about by his expenditure or that of his predecessor in title."

14) As to the decision on which Mr Radevsky had relied, ie *Rosen v Trustees of Campden Charities*, Mr Male pointed out that the Court of Appeal had expressly accepted that the construction of a house on land was capable of being an improvement (at para.13 of the Evans-Lombe J's judgment). He submitted that the logical conclusion was that, if there was an existing house against which purported improvements could be considered, such improvement fell to be disregarded. In support, he referred with emphasis to the words in parenthesis in a passage from that judgment which had been cited by Mr Radevsky (see para.9) above): "whether a green field or a site on which a previous building which was not a house had been demolished".

15) Mr Male was also able to quote in support a passage from *Hague on Leasehold Enfranchisement* (4th edition 2003 edited by Mr Radevsky and his instructing Solicitors). After summarising the decision in the *Rosen* case, the continuation was (at para.9.31):

> "That leaves open the question of whether the total demolition of one house and the construction on the site of an entirely new house are works of improvement to the 'house and premises'. It is considered that this will depend on whether the works of demolition and reconstruction constitute a single set of works, which together constitute the 'improvement' or whether the demolition and reconstruction are separate so that the construction of the house alone constitutes the 'improvement'. This will be a question of fact. In the former case, the works would appear to come within section 9(1A)(d) whereas in the latter they would appear to fall within *Rosen* and hence would not."

This analysis was adopted by Mr Male as showing that the present "single project" work of demolition and reconstruction constituted a disregardable improvement and as providing "a fair and just result".

16) In response, Mr Radevsky repeated that, on reflection, he did not now consider the *Hague* analysis to be correct: it should make no difference whether the demolition and reconstruction were separate or not because there would still not be an improvement to the house and premises being enfranchised as required by the statute (ie s.9(1A)(d) of the 1967 Act). He also submitted that the emphasised words in parenthesis in *Rosen* had not been subject to argument and were incompatible with the subsequent acceptance of the *Sainty* decision. He reminded the Tribunal that *Hague* is only a textbook and not binding authority and asserted that fairness did not come into it: the statutory provisions should be applied literally.

17) The Tribunal perceived certain difficulties in Mr Male's reliance on the decision in the *Shalson* case. There it had not been in issue whether the works/improvements had been to the house and premises being acquired, so that point was not being addressed. Further, Mr Male's reliance on the words of Lord Hoffmann (para.13) above) left out the preceding words: "In general ['improvement'] means additions or alterations to the house and premises which are not mere repairs of renewals" (para.18 of his speech, citing *Hague* as authority).

18) Against this, however, the Tribunal notes that para.(d) itself does not actually say that any improvement must be *to* the house and premises. It is appreciated that in *Rosen* this was the view accepted by Evans-Lombe J (see para. 8) above). Nevertheless, his starting point that improvements must be to something seemed to the Tribunal open to answer on the facts without reference to the statutory provisions: the works actually carried out by a tenant have necessarily been done to or on something so that the question, as far as concerns the landlord, could simply be whether or not those works were an improvement or merely a repair of that something (eg converting a barn into a garage). If they were an improvement, then it would be a separate question whether they had increased the value of the house and premises being acquired. In this connection, difficulty was experienced with the judge's apparent pronouncement that any improvement must be to the house *and* premises rather than to the house *or* premises: in practice, improvements will almost always be to one or the other of a house and premises, not to both though the value of both may be increased. Also examples can easily be envisaged of works carried out by a tenant to property included in the lease but not within the statutory definition of house and premises (eg an adjoining paddock) which works would constitute an improvement as between landlord and tenant and which incidentally increase the value of the house and premises (eg construction of an access road which there would be an implied right to use after enfranchisement: see s.10(1) of the 1967 Act). No policy reason can be seen for restricting the application of para.(d) to improvements *to* the house and premises.

19) Further, the *Sainty* decision was thought by the Tribunal to be justifiable in its special planning context and not obviously applicable for valuation purposes in leasehold enfranchisement cases: the material considerations governing the granting of planning permissions involve many other aspects than do the considerations arising when deciding whether particular works are repairs or improvements as between landlord and tenant. In the case, Lord Parker CJ referred (at p.434) to *National Electric Theatres Ltd v Hidgell* [1939] 1 Ch 553, where the words "improvement on the holding" in the Landlord and Tenant Act 1927 s.3(1) had been held to cover a demolition and re-erection of a building. Lord Parker observed: "that seems a very natural interpretation of the words in that context and a wholly inappropriate construction of the words in the present context." The *National Electric* decision was cited in argument in the Rosen case but not referred to in the Judgment of Evans-Lombe J.

20) Be all that as it may, it is certainly not open to the Tribunal to disregard the *Rosen* case as wrongly decided but only to consider the extent to which the decision applies to the different factual situation in the present case. Here the Tribunal noted that the

1960 lease was not a 'building lease': it was understood that Duff House had been built in the 1950s to replace a demolished 19th century house. The lease was expressed to demise "ALL THAT messuage or dwelling-house garage garden and premises hereinafter referred to as the said premises situate being and numbered 43A Acacia Road". It contains a tenant's covenant at the end of the term to "yield up unto the [Landlords] the said premises ... together with all improvements and additions thereto and Landlord's fixtures (but not Tenant's fixtures and fittings) which now are or during the said term shall be fixed or set up in or upon the said premises" (Clause 2(7)). The lease also contains a tenant's covenant against making any structural alterations or cutting any walls of the said premises or putting up "any additional buildings or erections thereon without the previous licence in writing of the [Landlords]" (Clause 2(10)). Mr Male informed the Tribunal, without contradiction, that: "in or about 1984/5 and pursuant to a licence dated 17th December 1984, [Duff House] was demolished and Mermaid House was built by the then tenant at his own expense". The Tribunal was not shown the terms of the licence but has assumed that there was no covenant as to reconstructing Duff House at the end of the term. It has also been assumed that a licence would not have been given by the Landlords to demolish Duff House except on the basis of its replacement by another house. The merits as well as the legal considerations pertaining in this situation appear to the Tribunal to be significantly different from those in the *Rosen* case: in substance, here there has been a long lease of land on which, by intention and agreement of the Landlords and their tenants, there has always been a house, as well as premises, the current version being an improvement on the one before. On top of this, in contrast to the *Rosen* house, Mermaid House was built at the then tenant's expense (this was an agreed fact).

21) It follows, in the Tribunal's view, that it would be unfair for the enfranchising Tenant to have to pay again for the increased value of the house and premises created by a predecessor tenant's works of improvement in demolishing Duff House and replacing it with Mermaid House, which the Tenant had purchased for £10½m. Mr Radevsky has protested that fairness does not come into it but this was not the attitude of the House of Lords in the *Shalson* case (see para.12) above), nor is it consistent with the Tenant's statutory right to acquire the freehold of the house and premises "on fair terms" (see s.1(1) of the 1967 Act).

22) In the light of the above observations, therefore, although recognising the literal logic of Mr Radevsky's construction of the relevant statutory provisions as to improvements and that his submissions were supportable by reliance on the *Rosen* decision, the Tribunal prefers Mr Male's submissions, based as they were on the purposive approach to the provisions adopted by the House of Lords in the more recent *Shalson* case. In other words, assuming that the relevant improvements do have to be to the house and premises being acquired (ie following the *Rosen* decision), the analysis in Hague (see para.15) above) has, despite Mr Radevsky's recantation, been accepted as valid. This means that the Tribunal has decided that Mermaid House, constructed in the 1980s, does constitute a Tenant's improvement for the purposes of the 1967 Act and that, therefore, any increase in value does fall to be disregarded.

Valuations

23) It follows from the decision on the *Question of Law* that the Tribunal considers that its valuation, in effect, should be of Duff House, as if not demolished, and not of Mermaid House. However, at the request of the parties, the Tribunal did not decide the question of law as a preliminary issue and received expert evidence with a view to making alternative valuations. This seemed a sensible precaution to cater for the possibility of the decision on law being held on appeal to be wrong. In the event, each the valuations will be of what Lord Hoffmann called (in *Shalson* at para.20) a "hypothetical house": Duff House no longer exists whilst Mermaid House must be envisaged as having "all the features of the real house, including its history, save for one: that the improvements [made by the Tenant since his acquisition in 1998] had not been made".

24) Hereinafter, for consistency with the valuation evidence referred to, generally Duff House will be called 'the Original House' and Mermaid House will be called 'the Existing House'.

25) At the start of the Hearing, the Tribunal was handed a short schedule indicating the competing valuations. According to this, the Landlords' enfranchisement price as if for the Original House had become £2,601,735 and the Tenant's £1,107,311. It will be appreciated that these prices are on the basis, as to improvements, which the Tribunal has accepted as correct (ie disregarding the value arising from demolition and reconstruction). On the alternative basis, the Landlords' enfranchisement price for the Existing House had become £3,468,673 and the Tenant's £1,937,199.

26) Helpfully, the Tribunal was also supplied with a Statement of Agreed Facts. This included detailed descriptions of the Original (Duff) House and the Existing (Mermaid) House, with plans of both and photographs of the latter, as well as an informative schedule of comparables, with photographs and OS plans. In addition, Proofs of Evidence relating to the valuation, in the alternative, of each of the Houses were provided by Mr Roberts, instructed for the Landlords, and by Mr Churchouse, instructed for the Tenant. Also provided was a Valuation Expert Report by Mr de Keyzer, instructed by the Tenant, as to the unimproved freehold values of each of the Houses. All three of these independent expert witnesses gave oral evidence at the Hearing.

27) It should be added that, following the Hearing, the Tribunal inspected the Existing (Mermaid) House, internally and externally, in the presence of representatives of the Landlords and of the Tenant. The Tribunal also inspected externally the comparables that had been relied upon.

Valuation Issues

28) The issues for determination by the Tribunal were as follows:

(a) The open market value of the freehold interest in the original property.
(b) The open market value of the leasehold interest with 52.61 years unexpired in the original property.
(c) The open market value of the freehold interest in the existing property.

(d) The open market value of the leasehold interest in the existing property, with 52.61 years unexpired.

(e) The value of the tenants' improvements to the existing property, carried out during 1999 / 2000 at a cost of £5,235,900.

(f) The yield rate for capitalisation and deferment.

(g) The enfranchisement price, determined on the basis that the demolition and rebuilding in 1984 of the original building was a tenants' improvement for the purposes of section 9(1A)(d) of the Act.

(h) The enfranchisement price, determined on the basis that the demolition and rebuilding in 1984 of the original building was not a tenants' improvement for the purposes of section 9(1A)(d) of the Act.

29) These issues will be considered separately.

(a) The open market of the freehold interest in the original (1950's) property.

30) Mr Roberts referred to a Schedule of Comparables, which had been included as an Appendix to the Statement of Agreed Facts. He had also calculated and produced a Table showing for each comparable the built area as a percentage of the site area in order to demonstrate the potential of the subject property at 12.8% by comparison with the comparables which varied from 22.9% to 51.4%. He had also commissioned an Architectural Historian's Report, and had researched the original house with Westminster City Council Planning Department.

31) In Mr Roberts' opinion only two of the comparables were helpful. These were -

34 Woronzow Road

Contracts had been exchanged in August 2003 at a contract price of £7,000,000 with completion deferred until October 2004 to allow for planning permission to be obtained. Mr Roberts' adjustment of the contract price was as follows -

34 Woronzow Road	£7,000,000 Aug 2003
Rate per m2 (Site Area 1,584 m2)	£4,419/m2
Adjust for relative size (say - 35%)	-£1,547/m2
Add for exclusivity & cache of subject (say + 30%)	+ £1,326/m2
Net	£4,198/m2
Applied to subject	3,736 m2
Total	£15,683,728
Say	£15,000,000

Mr Roberts said that he had analysed the sale price against the site area because the comparables were transactions which had occurred where the clear intention of the purchaser was to demolish what was on the site and to replace it with a property that maximised the value of the house on the site. He said that the site at Woronzow Road was a little under half an acre whereas the site at 43a Acacia Road was a little under one acre. He had therefore adopted a discount of 35% to

reflect the area of the larger site, based on a comparison of the sale prices of the sites at 15 Acacia Road and 34 Woronzow Road which indicated that as the site area doubled in size the value per square meter fell by approximately 20%

He had then added 30% to reflect the 'exclusivity and cache' of the subject site. He considered that the subject site was significantly better than the comparable insofar as it is discreet, more impressive and would allow the development of an entirely better class of residence. His calculations had produced a figure of £15,683,728 as the unimproved value of the original house, which had been demolished in 1984 and replaced by the existing house.

15 Acacia Road

The leasehold interest in this much smaller property had been sold in October 2002 for £3,250,000, and the freehold interest had been purchased in accordance with the Act in June 2003 for £1,275,000. He had therefore taken a figure of £4,500,000 as representing the value of the freehold interest at the leasehold transaction date, and had calculated the value of the subject property as follows -

15 Acacia Road	£4,500,000 Oct 2002
Rate per m2 (Site Area 817m2)	£5,508/m2
Adjust for relative size (say - 48%)	-£2,644/m2
Add for exclusivity & cache of subject (say + 25%)	+£1,377m2
Net	£4,241m2
Total	£15,844,376
Say	£15,000,000

32) Mr Roberts had made no adjustment for market movement between October 2002 and the valuation date, and the addition for the exclusivity and cache of the subject site was less because he considered that Acacia Road was a rather better address than Woronzow Road. His calculations had produced a valuation of £15,844,376 for the freehold interest at the valuation date, which he had rounded down to £15,000,000.

33) Mr Roberts considered that he could rely on these two transactions because they are both sites with potential to demolish the existing house and create a better single house within the immediate locality and in the planning control of Westminster City Council. He had considered and discounted the comparables at 42 Avenue Road, 46 Avenue Road, Radlett House and 1 Radlett Place.

34) Mr De Keyser said that he knew the existing property well from his involvement in marketing the property between 1994 and 1998. He was of opinion that the value of the original house at the valuation date would be in the region of £8,000,000. He attached a schedule of comparable evidence that he said he had used in arriving at his respective opinions for the original house - which was, in fact, a copy of the schedule which had been included as an Appendix to the Statement of Agreed Facts, with expanded notes, but he was unable to offer any explanation to the Tribunal how he had used the schedule of comparables to arrived at his valuation, or to provide any other supporting evidence.

(b) The open market value of the leasehold interest in the original (1950's) property

35) Mr Roberts relied upon the differential evidence provided by transactions in which his own firm had been involved, as shown on the Eyre Estate and John Lyons Charity Settlements and Tribunal Decisions Scatter-graph, update to 20/10/2004, which at 52.61 years unexpired indicated a differential of 73%. His valuation of the leasehold interest was therefore £10,950,000, being 73% of his valuation of the freehold interest at £15,000,000.

36) Mr Churchouse had had regard to the FPDSavills relativity table which had been compiled in 2002 following extensive research, and attached a copy as an Appendix to his Statement. Using this table, a lease with 52.61 years remaining has an 'enfranchiseable' relativity of 82%, which he believed would be appropriate for a standard, large family house in St John's Wood. But in his opinion a potential purchaser would be prepared to pay a higher price for the subject property because there would not be a choice of properties of this type for sale. He estimated the 'enfranchiseable' relativity to be approximately 85%. He accepted that for the purposes of an enfranchisement valuation the relativity has to reflect the 'No Act World' provided for by the Act, and in his experience a reduction of between 5% and 10% is often used as an appropriate reduction. This would give a relativity range of 76.5% to 80.75%. Mr Churchouse said that he had reservations about Cluttons' relativity graph because it reflects their interpretation of the settlement evidence and did not necessarily reflect an agreement with the tenant. In his opinion the relativity adopted by the applicants was too low. He believed that the best properties will achieve higher relativities, and having regard to the special nature of the subject property he had adopted a relativity of 77%.

(c) The open market value of the freehold interest in the existing property.

37) In the absence of direct comparables Mr Roberts considered that the price which Lord Alliance had paid for the existing property, in its unimproved condition, provided the best evidence of value. The amount paid had been the average of two valuations provided by Allsops at £10,000,000 and Cardales at £11,000,000. He therefore took as his starting point the purchase price of £10,500,000 as at the contract date, February 1998. He then increased that purchase price by 75% to allow for the increase in market values between the contract date and the valuation date, 18 February 4002, to arrive at a figure of £18,375,000 as the value of the leasehold interest with 58.6 years unexpired at the valuation date. This increase had been based on the FPDSavills' PCL North Prime Houses Index, rounded down from 75.38% to 75%.

38) Mr Roberts had also checked the correctness of the Index against the sales of 56 Avenue Road in June 1998 for £3,000,000 and in August 1999 for £4,000,000, and the improved value of 42 Avenue Road at £5,150,000, as determined by a leasehold valuation tribunal (LON/LVT/1504/02), and the sale in May 2004 at £6,600,000. In both cases the actual increase exceeded the increase shown on the Index, and Mr Roberts was satisfied that the FPDSavills Index did not overstate the general increase in values during the relevant period.

39) Mr Roberts then adjusted his market value of the leasehold interest by 10%, based on his experience, to exclude the benefit to the purchaser of the right to enfranchise under the Act, to arrive at the value of the leasehold interest without the benefit of the right of £16,537,500. He then adjusted this figure upwards to reflect a relativity of 77% for a lease with 58.6 years unexpired, to arrive at a figure of £21,477,273 as representing the value of the unimproved freehold interest with vacant possession at the valuation date, which he rounded down to £20,000,000.

40) In arriving at his adjustment for the relativity between the values of the leasehold and freehold interests Mr Roberts had had regard to his firm's St John's Wood Settlement Schedule and to a scatter-graph showing the differentials on the Eyre Estate and John Lyon's Charity Settlements and tribunal decisions, updated to 20/10.2004. The graph quite clearly supported a relativity of between 76% and 78% for an unexpired term of 58.6 years.

41) Mr Roberts also provided a copy of a research paper produced by FPDSavills in 2003 showing pre-Act relativities of 78.8% at 60 years and 69.2% at 50 years, and 2002 relativities of 85.2% and 80.7%. He explained that these relativities were somewhat higher than those shown on Cluttons' schedule and the scatter-graph because the differentials produced by the FPDSavills' paper were 'real world' differentials and there is therefore no need to make a deduction for the benefit of the Act before grossing up to reach the freehold value. He therefore concluded that the FPDSavills' paper supported his relativity of 77% at 58.6 years, and his valuation of the unimproved freehold at £20,000,000.

42) Mr De Keyzer confirmed that he had been involved in the sale of the existing house to Lord Alliance, and had a personal recollection of the existing house at that time. He also provided a schedule, prepared by Lord Alliance, of the repairs improvements which had been carried out by Lord Alliance between September 1998 and January 2000 at a total cost of £5,235,900. He considered that the installation of a lift, the construction of the Orangery, the reorganisation of the layout, and the improvements to the swimming pool and to the master bedroom were works which had improved the house and increased its value.

43) His opinion of the value of the freehold interest in the existing house with the improvements was £16,000,000, and without the improvements £14,000,000. Again, he said that he had relied on his analysis of the comparables included on the Schedule of Comparables. He was aware that his valuations did not show much capital growth from the purchase price paid by Lord Alliance in 1998 for the leasehold interest, but it was his opinion that Lord Alliance had paid a very full price, the highest (by a very long way) for a single family dwelling in the area, and colleagues and other estate agents in the St John's Wood area who know the property had supported his views on value.

(d) <u>The open market value of the leasehold interest in the existing property.</u>

44) Mr Roberts again relied upon the differential evidence provided by transactions in which his own firm had been involved, as shown on the Eyre Estate and John Lyons Charity Settlements and Tribunal Decisions Scatter-graph, which at 52.61 years

indicated a differential of 73%, and calculated the value of the leasehold interest in the existing property at £14,600,000.

45) Mr Churchouse had also adopted the same relativity of 77% for the valuation of the leasehold interest in the existing property as he had for the valuation of the leasehold interest in the original property.

(e) The value of the tenants' improvements to the existing property

46) Mr Roberts had taken the purchase price of £10,500,000 as the starting point for his valuation of the freehold and leasehold interests in the existing property. This was the price which had been paid for the leasehold interest in the property in its unimproved condition, and no adjustment was therefore required to exclude the value of the tenants' improvements.As noted earlier, Mr De Keyzer had reduced his valuation of the existing house by £2,000,000 to exclude the value of the improvements carried out by Lord Alliance since his purchase. The amount of the reduction was not an issue at the hearing.

(f) The yield rate for capitalisation and deferment

47) Mr Roberts considered that the correct yield rate for the subject property must be below 6.0%. He had negotiated the enfranchisement of 30 Avenue Road at a yield of 5.5% (according to his analysis) in November 2003. This yield had reflected the fact that the lessee owned the freehold interest in the adjoining site at 28 Avenue Road, and the combined site would allow a much grander property to be developed. The record of the negotiations in this case did not include confirmation of the yield of the lessee's valuer.

48) Mr Roberts considered that the location and site characteristics alone justified a yield of not more than 5.5%. He said that the general run of prime properties on Avenue Road had been settled or determined at 6%, and that a reduction of 0.5% should be made to reflect the size, potential and location of the subject property. In his opinion, it was clear that against the background of settlements in Avenue Road, 5.5% would be the historically appropriate yield. He also said that it seemed clear to him that there had been a general reduction in prevailing interest rates and referred the Tribunal to the decision of the Lands Tribunal in respect of 57 Shawfield Street (LRA/27/2003) where the yield for a house in London SW3 had been determined at 5.25% against a background of yields agreed or determined in the area of 6%. Base lending rates had been the same, 4%, at the subject valuation date and at the Shawfield Street valuation date, and general feelings towards house price inflation had been the same at both dates. He had therefore used a rate of 5%, which acknowledged the longer unexpired term at the subject property.

49) Mr Roberts also referred to a leasehold valuation tribunal decision in respect of 64 Hamilton Terrace at 5.5% in slightly different circumstances, to other negotiated settlements which acknowledged that a reduction in the prevailing rate is appropriate (but with no evidence to confirm this from the lessees' surveyors), and to settlements at 6.0% in respect of 37A Carlton Hill and 3A Loudoun Road, where the prevailing rate would have been 6.5%.

50) Mr Churchouse had used 6% for the term and for the reversion, but referred in his evidence only to the discount rate for the reversion with particular reference to there being no income for a period of 52.6 years, to the prospects of capital growth and to other safer investments. In his experience of enfranchisement cases, 6% has become the usual rate to be adopted for Prime Central London property, and he believed 6% to be appropriate in this case. He had never agreed a lower discount rate.

51) He referred to three settlements –

69 Avenue Road, NW8 - a large detached house in half an acre, where an enfranchisement price of £1,887,500 had been agreed as at a valuation date of 5 September 2003, based on a discount rate of 6%. The unimproved freehold value had been agreed at £6,000,000, equivalent to £800/sq ft.

38 Acacia Road, NW8 - where a discount rate of 6% was agreed as at 11 September 2003. The unimproved freehold was agreed at £4,500,000, equivalent to £1,164/sq ft.

1A Norfolk Road, NW8 - where a discount rate of 5.5% had been agreed as at 20 November 2003 for a shorter period of 28.85 years. The freehold value equated to £912/sq ft

Mr Churchouse said that since the decision of the Lands Tribunal in respect of 57 Shawfield Street many landlords have tried to adopt a discount rate of 5.25% (and lower rates) for the calculation of the price for enfranchisement. He also noted that although the base rate in February 2004 was 4%, the rate had been on the rise since the end of 2003 and that there had been an increase on 5 February - 13 days before the valuation date.

52) Mr Churchouse also referred to the following leasehold valuation tribunal decisions where discount rates of 6% have been determined -

55/57 Cadogan Square, SW1 - where the valuation date was June 2004. The freeholder's valuer referred to the Freehold Income Trust leaflet but that was not considered to be helpful or reliable. The unexpired term was 72 years.

44/46 Lower Sloane Street, SW1 - where the valuation date was 29 April 2003, and the unexpired term was 42.42 years.

2 Astell Street, SW3 - where the valuation date was 22 January 2004 and the unexpired term was 30.92 years.

25-31 Hyde Park Gardens and 22-35 Stanhope Terrace, W2 - where the unexpired term was 45.5 years.

Valuation Decisions

53) The valuation issues will be dealt with separately –

(a) <u>The open market value of the freehold interest in the original property</u>

54) Mr Roberts had relied upon the sales of 34 Woronzow Road and 15 Acacia Road as providing the best evidence of site values, and having adjusted the sale prices he had valued the freehold interest in the original property at £15,000,000.

55) Mr De Keyzer was of the opinion that the value of the original house at the valuation date was £8,000,000, but he was unable to offer any explanation how he had used the schedule of comparables to arrive at his valuation, or to provide any other supporting evidence.

56) The Tribunal, following its inspection, considered that Mr Roberts had understated the adjustment for size and overstated the adjustment for exclusivity and cache. 34 Woronzow Road, with a site area of 1584m2, had sold for £7,000,000 whereas the subject has a site area of 3736m2. Despite its much larger size and other attributes, it seemed to the Tribunal unlikely that, if sold as the site for one dwelling-house, it would realise more than double the price paid for the smaller plot - which at 1584 m2 (or 0.39 of an acre) was itself large enough to accommodate most large single family dwellings.

57) The Tribunal also noted from the schedule of comparables that 1 Radlett Place, with a site area of 2310 m2, had sold in March 2004 for £7,690,000 with planning permission for six houses, equivalent to £3446/m2 - well below the prices paid for 34 Woronzow Road and for 15 Acacia Road.

58) In the Tribunal's opinion the adjustment for size to the Woronzow Road sale price should have been in the region of 40%. That would produce a site value of about £10,000,000 at that stage. As to the addition for exclusivity and cache, the Tribunal noted from its inspection that the subject property is overlooked to a degree by the adjoining properties, and that, apart from its size, its advantages were minimal. It therefore considers that not more than 10%, or £1,000,000, should be added to produce a figure of £11,000,000 as the value of the original property at the valuation date.

(b) <u>The open market value of the leasehold interest in the original property with 52.61 years unexpired.</u>

59) Mr Roberts had used a relativity of 73% and Mr Churchouse had used a relativity of 77%. Both had relied upon their own firms' tables and graphs. FPDSavills' Table of Leasehold Values as a Proportion of Freehold is, of course, subject to adjustment for rights under the Act, for which Mr Roberts had made a reduction of 10% at 52.61 years. At 52 years the FPDSavills Table indicates a relativity of 81.7%, and a 10% reduction would have reduced this figure to 71.7% - slightly below Mr Roberts' relativity. Whilst both valuation expert witnesses had reservations about the use of relativity tables and graphs, it seems to the Tribunal that there is, in fact, very little between the parties and on balance it preferred the 73% adopted by Mr Roberts as this figure was in line with the relativity points on the scatter-graph.

60) The Tribunal therefore determines the value of the leasehold interest in the original house at £8,030,000

(c) <u>The open market value of the freehold interest in the existing property</u>

61) Mr Roberts had taken the purchase price as his starting point and had valued the freehold interest in the existing property at £20,000,000. Mr De Keyzer was of the opinion that the value was £14,000,000 after allowing £2,000,000 as the value of the

tenants' improvements, but was unable to provide any details of his valuation or of his analysis of the comparables or any other supporting evidence.

62) The Tribunal considered carefully Mr Roberts' method of valuation, which he had rounded in favour of the lessee at all stages, and in the absence of any better evidence it accepts Mr Roberts' valuation of £20,000,000. It also considered that this value also reflected the correct relativity to its determination of the value of the original house at a site value of £11,000,000 on a 'standing house' value basis of between 45% and 50%.

63) The Tribunal therefore determines the value of the freehold interest in the existing property at £20,000,000.

(d) The open market value of the leasehold interest in the existing property with 52.61 years unexpired

64) Both experts had used the same relativity in their valuations of the leasehold interest in the existing property with 52.61 years unexpired as they had in their valuations of the leasehold interest in the original property.

65) The Tribunal accepts that the relativity is the same for both valuations. It therefore determines the relativity at 73%, and the value of the leasehold interest in the existing property at £14,600,000.

(e) The value of the tenants' improvements to the existing property.

66) Mr Roberts had taken the purchase price of the unimproved property as his starting point, and the value of the improvements did not arise. Mr De Keyzer had made an allowance of £2,000,000, but was unable to provide any evidence in support of his opinions of value. The value of the tenants' improvements was not a disputed issue at the Hearing.

(f) The yield rate for capitalisation and deferment.

67) Mr Roberts had used a capitalisation and deferment yield rate of 5%, and Mr Churchouse had used 6%.

68) Mr Roberts had relied on the Lands Tribunal decision in respect of 57 Shawfield Street and on other settlements achieved following that decision, but he did not provide any evidence of sales of residential investments in the open market or full details of settlements with supporting documentation to support a rate of less than 6%.

69) Mr Churchouse also relied on settlements and leasehold valuation tribunals' decisions in support of 6%, but provided no evidence of market transactions.

70) The Tribunal is very much aware that 'yield' is a contentious issue, and that each decision must be made on the merits of the evidence. In this case there was no compelling evidence to support a yield of less than 6% and the Tribunal determines accordingly.

(g) and (h) The enfranchisement prices, determined on the bases that the demolition and rebuilding in 1984 of the original building was a tenants

improvement, and on the basis that it was not a tenants' improvement, for the purposes of section 9(1A)(d) of the Act.

71) Having determined the values of the relevant freehold and leasehold interests, and the yield rate, the Tribunal has calculated an enfranchisement price on two alternative bases as follows-

On the basis that the demolition and rebuilding in 1984/85 of the original building was a Tenant's improvement, at £1,742,250;

On the basis that the demolition and rebuilding in 1984/85 of the original building was not a Tenant's improvement, at £3,167,100.

Copies of the Tribunal's valuations are attached as Appendices A and B.

72) However, because the Tribunal has decided, as a matter of law, that the former basis is the proper one, the determination of the Tribunal is that the price to be paid by the Tenant to the Landlords for the acquisition of the freehold of the house and premises called Mermaid House (aka 43a Acacia Road, St John's Wood, London NW8 6AP) is the sum of **£1,742,250**.

CHAIRMAN

DATE 29th November 2004

Appendix A

43a Acacia Road, London NW8

Valuation of original house unimproved

Valuation in accordance with sections 9(1A) and 9(1C) of the Leasehold Reform Act 1967, as amended, as at 18 February 2004 - the date of the Notice of Claim.

A. Value of freehold interest

Ground rent 18/2/2004 to 28/9/2056	£100 pa	
YP 52.61 yrs @ 6%	15.8895	£1,589
Reversion to unimproved freehold interest with vacant possession	£11,000,000	
PV £1 52.61 yrs @ 6%	0.0466292	£512,921
		£514,510

B. Marriage value

Value of unimproved freehold interest with vacant possession		£11,000,000
Less		
Value of freehold interest before enfranchisement	£514,510	
Value of leasehold interest before enfranchisement	£8,030,000	
		£8,544,510
Marriage value		£2,455,490
50% of marriage value		**£1,227,745**

C. Premium

Value of freehold interest	£514,510	
50% of marriage value	£1,227,745	
	£1,742,255	
Say	**£1,742, 250**	

Appendix B

43a Acacia Road, London NW8

Valuation of existing house unimproved

Valuation in accordance with sections 9(1A) and 9(1C) of the Leasehold Reform Act 1967, as amended, as at 18 February 2004 - the date of the Notice of Claim.

A. Value of freehold interest

Ground rent 18/2/2004 to 28/9 2056	£100 pa	
YP 52.61 yrs @ 6%	15.8895	£1,589
Reversion to unimproved freehold interest with vacant possession	£20,000,000	
PV £1 52.61 yrs @ 6%	0.0466292	£932,584
		£934,173

B. Marriage value

Value of unimproved freehold interest with vacant possession		£20,000,000
Less		
Value of freehold interest before enfranchisement	£934,173	
Value of leasehold interest before enfranchisement	£14,600,000	£15,534,173
Marriage value		£4,465,827
50% of marriage value		**£2,232,913**

C. Premium

Value of freehold interest	£934,173
50% of marriage value	£2,232,913
	£3,167,086
Say	**£3,167,100**