

Ref: LON/NL/1879/03

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 48 OF THE LEASEHOLD REFORM HOUSING AND URBAN
DEVELOPMENT ACT 1993

Applicant: The Trustees of The Ilchester Estate (landlord)

Respondent: Mrs G Jacobson (tenant)

RE: 86a Addison Road, London W14

Application to Tribunal by Pemberton Greenish dated 4 March 2003

Heard: Tuesday 10 June 2003 and Wednesday 11 June 2003

Appearances: Mr Jacobson
Mr M Prior, Counsel
Mr P Beckett FRICS, Beckett & Kay
Ms N Rees, Forsters

for the tenant

Mr G Dobson (Trustee)
Mr S Burrell, Counsel
Mr I Macpherson MA FRICS, Gerald Eve
Mr M Duncan, W A Ellis
Mr P Scoble, Pemberton Greenish

for the landlord

Members of the Leasehold Valuation Tribunal:

Mr G F Bowden TD MA FRICS (Chairman)
Mr D Levene OBE MRICS
Mrs S F Redmond BSc (Econ) MRICS

Tenant's section 42 notice dated: 28 October 2002

Landlord's section 45 counter-notice dated: 23 December 2002

Valuation date: 28 October 2002

Leasehold Valuation Tribunal's determination: £292,900

Date of Tribunal's decision: 29 SEP 2003

1. INTRODUCTION

- 1.1 This was an application under Section 48 of the Leasehold Reform Housing and Urban Development Act 1993, (the Act), where the terms of a new lease are in dispute.
- 1.2 The Applicant-landlords were the Trustees of The Ilchester Estate, who initially proposed, for a 90 year extension of the Respondent's existing lease, a premium of £380,600.
- 1.3 The Respondent-lessee, Mrs Gloria Jacobson, held a lease of the subject flat for 53 years, commencing in July 1987 with a termination date in June 2040. The unexpired term at the valuation date was 37.65 years. The Respondent initially proposed for a 90 year extension of the existing lease resulting in a new lease of 127 years, at a peppercorn rent, a premium of £150,000.
- 1.4 With regard to tenure; The subject flat is held under a lease dated 9 July 1987, for a term expiring on 20 June 2040, at a ground rent of £250 per annum, subject to review at 25 March 2006 and 2027, to 0.5% of the value of a 65 year lease in the property. Under the terms of the lease, the lessee covenanted to carry out the following works:-
 - i. to install a modern good-quality kitchen and satisfactory fittings to form a first-class kitchen, and also a bathroom and cloakroom,
 - ii. to completely rewire the electrical installation to modern standards,
 - iii. to renew plumbing
 - iv. to install an independent system to provide central heating and hot water.
- 1.5 At the hearing the Applicants were represented by Mr Simon Burrell of counsel, instructed by Messrs Pemberton Greenish, solicitors. Their valuers were Mr Ian Macpherson MA FRICS of Messrs Gerald Eve, and Mr Michael Duncan, of Messrs W A Ellis, who were both called as expert witnesses.

- 1.6 The Respondents were represented by Mr Michael Prior of counsel, instructed by Messrs Forsters, solicitors. The Respondent's valuation was prepared by Mr Peter Beckett FRICS, of Beckett & Kay who gave expert evidence.

2. INSPECTION

- 2.1 The Tribunal inspected the subject property, and certain of the comparables, cited at the Hearing, were inspected externally, on 23 June 2003. They found Addison Road to be a wide residential thoroughfare with a steady flow of traffic running from Holland Park Avenue to Kensington High Street. It was parallel to the main north-south traffic thoroughfare, Holland Road. It was conveniently situated for a range of public transport facilities and the civic, social and leisure amenities of central London. High-street shopping was close at hand in Kensington High Street, and the nearby Shepherds Bush town centre area.
- 2.2 The subject property was the lower-ground floor, or garden flat, of a substantial double-fronted, four-storey detached house, built in the latter half of the 19th Century. It was set back from the road with an in-out driveway at the front and space for off-street parking. Some years ago the house had been converted into a number of flats. There were steps up to the main front door, at the centre of the house, giving access to the flats on the upper floors. The entrance to the subject flat, 86A, was at the side of the building.
- 2.3 At the front of the building were mature trees and shrubs, serving as a screen, and baffle to traffic noise. To the rear was a large garden, well-maintained with a grassed area at the centre, surrounded by trees and mature planting, providing privacy from neighbouring properties. Beyond, at the rear, was a school playground with the periodic noise of children at play. The main grassed area was shared, as a communal garden, by the occupants of the other flats in the house who had access by way of a secure side entrance.

The subject flat, while having access to the main garden, also had, immediately to the rear of the building, its own exclusive garden area, with patio and flower-beds. Although this was a private garden, as clearly defined by its layout, it had no real sense of privacy when the main garden was occupied by others, as there was no physical division.

2.4 The subject flat occupied the whole of the lower-ground floor of the building. Its main entrance opened immediately on to a spacious reception area. The layout of the flat was open-plan, split-level, with a dining area, leading through to a sitting room which opened on to the garden beyond. There was an internal gallery-corridor where paintings were displayed and an office-study overlooking the garden. There were two bedrooms. The master bedroom, spacious with en-suite bathroom, and walk-in wardrobe-dressing room, and a second smaller bedroom with wash-hand basin. There was a second bathroom. The kitchen and utility rooms were to the front of the building. It was noted that these rooms at the front had poor natural light, and like the middle area of the flat artificial illumination was necessary even on a bright summer's day. However the areas of the flat at the rear facing westward were bright, enjoying good natural light.

2.5 All-in-all the Tribunal recognised this to be a well-appointed flat, designed with imagination, fitted-out to a high specification and decorated with a sense of style, set in a prime residential location.

3. HEARING

3.1 The Applicant's Case

3.1.1 Mr M J W Duncan gave evidence on behalf of the Applicant in accordance with his Proof of Evidence which was before the Tribunal. He explained he was a senior partner in Messrs W A Ellis, a firm that had extensive experience in Leasehold Reform Act matters, acting for a number of large central London estates. He said that his primary role in this case was to

advise Mr Macpherson of Messrs Gerald Eve on the vacant possession value of the subject flat, relevant to the valuation, and also on some peripheral matters.

3.1.2 He described the subject property stressing what he regarded as its important characteristics, viz:-

- (a) Addison Road was one of the best-regarded locations in the Holland Park area.
- (b) The subject building was set back from the road, had its own carriage sweep and a large and beautiful rear garden.
- (c) The flat was properly described as a "garden flat" being at the level of its own terrace garden at the rear.
- (d) The flat had its own hard standing for at least one car.
- (e) The flat was to be valued in its unimproved state but with modern kitchen, bathroom and services and the potential for expansion and adaptation to form the flat as it now exists.

3.1.3 Mr Duncan adopted a value for the extended lease of the flat in its unimproved state, on the basis of £6450 m², giving a value of £1,264,000 which he rounded up to £1,285,000 to reflect the parking space. To arrive at this figure, he had regard to the Schedule of Comparable Evidence included in the Statement of Agreed Facts. In using this evidence he had regard not only to the actual transactions or asking prices, but also to the evidence of values included in settlements of leasehold reform cases in respect of certain of the properties. He applied adjustments to this evidence to reflect all long lease transactions, and as to time by reference to the Savill's PCL West Flat Index.

3.1.4 Mr Duncan described the relative merits of the comparable properties in relation to the subject flat and concluded, that in his opinion, the following were the most significant comparables:-

Address	adjusted £m ²	Comments
1/8 Melbury Road:	£6366	Derived from a LRA settlement as at Oct 1999, and said to have been valued in an unimproved condition; a deep basement flat; own garden.
4/85 Holland Park:	£6538	Derived from Sep 2002 sale. Ground and basement unit. Duncan opinion was that the location was inferior and the flat had very narrow kitchen and bathroom; no private garden.
29 Upper Addison Gardens:	£6993	Derived from May 2002 sale. Ground and basement unit. Duncan opinion inferior location; of modest scale; part of standard terrace house.
1/6 Holland Park Road:	£7584	Withdrawn from market. Derived from LRA settlement as at Jan 2000, said to be unimproved value. Ground and basement. Duncan opinion part of terrace house of modest scale and inferior to subject.

1/16 Melbury Road: £8074

Withdrawn from market.

Derived from LRA settlement at July 2002 said to be unimproved value. Ground and basement unit. Duncan opinion – impressive ground floor rooms; own terrace garden.

3.1.5 Mr Duncan's view was that the price he had adopted reflected that the subject flat was better than 1/8 Melbury Road and reflected the relative merits in the other comparable evidence. In answer to questions he said the market at the valuation date was quiet, but there was good demand for property in the area in the £1-3m range from both British and overseas buyers. He thought the subject flat with its character and garden would particularly appeal to the British market. He was questioned as to the relative merits of the subject property, and in particular whether a ground and basement unit would command a higher price than a flat which was wholly at basement level. He accepted that ground-floor rooms would have better proportions, but drew attention to the poorer scale of conversions in terrace houses compared to the subject flat. It was put to him that as part of the improvements some of the floors at the subject flat had been lowered to obtain a better ceiling height. He said he had no knowledge of this. He was asked whether he had considered the value of the flat as it now stood as a starting point. He said that was not his approach. He arrived at the unimproved value directly reflecting its potential. The cost of the improvement was not relevant as cost did not equal value. He did not agree with Mr Becket's description that the unimproved flat could be described as "a warren of rooms" or that it was not capable of occupation in the unimproved state to be envisaged.

3.1.6 To arrive at the value of the existing term, Mr Duncan had regard to the relativity index maintained by his firm and the John D Wood/G Eve 1996 Graph. The W A Ellis index had been revised in 2001 and there was evidence of values on unenfranchisable leases, which had been granted for less than 21 years, which had been taken into account in the review. The index indicated a relativity of 62%. The Graph showed 63.65%. He had adopted a relativity of 63%. It had been agreed that the long lease value would have a relativity to freehold of 99%. On this basis he arrived at a value for the existing term of £817,727 before adjustment for the onerous rent review.

3.1.7 In cross examination, a Graph of Graphs prepared by Mr Becket was put to him, which showed much higher relativities, and the index produced in College of Estate Management research which also indicated this higher level. It was suggested that these could be accepted as accurate indications. Mr Duncan did not accept their accuracy as there was no information as to how they were produced. He regarded the current John D Wood graphs with suspicion and thought they were contrived for a purpose. An exercise carried out by Mr Becket based on actual market evidence which could be compared was put to him for comment. He agreed that it was a worth while exercise, but only if it had been done properly. As it was, he totally rejected it. He considered that the analysis had not been carried out correctly and there were errors of fact. He was referred to the settlement in respect of flat 3 in the subject building where a relativity of 67% had been agreed for a similar existing term, which he appeared to be asking the Tribunal to ignore. He referred to the explanation given in his proof of the special circumstances in that case which led to a settlement and regarded this as "one swallow which did not make a summer". It was out of line.

3.1.8 To reflect the onerous rent review, Mr Duncan referred to the Lands Tribunal decision in *Carl & Anor v Grosvenor Estate* where the normal level had been determined on the basis of 0.05% of the freehold value. This he adopted,

giving at a ground rent of £650 per annum and an excess of £4,800. To arrive at the capitalisation he used two approaches. Firstly a broadbrush 10YP which a purchaser of the interest might use, and then a more scientific approach capitalising over the term of the lease, deferred to the date of review. He took the average of these figures at £52,320 which he deducted from the existing lease value before adjustment giving a resultant value of £765,000 for the existing lease. It was put to him that Mr Becket had adopted £1,500 as the ground rent which a purchaser in this market would regard as not excessive. He did not agree. He thought £1,500 "was a lot of money". He accepted that, in agreeing terms to buy out the review, a lessee would be more focussed than a purchaser in the market who would be influenced by many factors, but in this market most purchasers would be professionally advised on value.

3.2 Evidence of Mr Ian Macpherson MA FRICS.

3.2.1 Mr Ian Macpherson gave evidence on behalf of the Applicant in accordance with his Proof of Evidence which was before the Tribunal. He explained he was a partner in Messrs Gerald Eve who had extensive experience in LRA matters, acting for, and advising a number of major central London Estates and elsewhere. He presented his valuation relying on Mr Duncan's evidence outlined above for the present and extended lease values.

3.2.2 Dealing with the yield rate to be applied to arrive at the value of the landlord's interest, he had adopted a yield of 5% for the current rent passing, and 6% for the reversions. He outlined a number of Lands Tribunal decisions on this factor and presented a schedule of decisions and settlements. He concluded that this evidence showed a preponderance of yields at 6.5% over the last five to six years, but there had been some downward trends in more recent years. He supported a yield rate of 6% on the following facts:-

- (a) Ground floor 65 Addison Road – the LVT had determined the yield at 7% at a date when it was agreed that the growth in values for houses was more than flats. The yield for houses at the time was 6.5%. The

Lands Tribunal, on appeal, accepted this conclusion and in reference to the evidence which he had submitted to support 6.5%, said that it was not based on settlements agreed in detail and that his analysis could be interpreted in different ways. He thought that this decision was wrong. It was not his practice to produce a fresh analysis after the event. He maintained a "working valuation" which he adjusted when the settlement was reached for those elements which were not agreed. He said that his interest, acting for a large landlord, was to have consistency. Those acting for tenants had the opposite interest and there were cases where agreed elements had been changed by them to arrive at a more favourable analysis. In cross examination, he disagreed that this decision was good evidence or that it should be given any weight. He said that the subject property had substantial potential for growth and a yield of 7% was far too high and only supported by this single decision.

- (b) The flats at Kingfisher House had been determined by the LVT after 65 Addison Road and were at 6.5%, but it was accepted that the Lands Tribunal were aware of the decision at Kingfisher House when they confirmed 7% at 65 Addison Road.
- (c) In this case there was an intervening lease which reduced any management liability so that the freehold interest was akin to that of a house in single occupation.
- (d) By reference to the Savill's PCL West House and Flat index, the growth in flat values was now more than houses, which reversed the position found in the 65 Addison Road case. It was put to Mr Macpherson that this might be a temporary feature in the market. He considered this was to take a too short-term view of the matter. The important factor was the investor-confidence in the two markets.
- (e) Interest rates and yield it was stated had been falling, and by reference to the Savill Central London Residential Yield Schedule net yields were

now down to 2.5%. Mr Macpherson accepted that this would be largely based on the AST letting market, but considered that it did have bearing on the yield to be found in this case.

- (f) The settlement reached in respect of flat 3 at the subject building was just prior to LVT proceedings, when agreement had been reached on the value of the existing and proposed leases. Mr Macpherson's adjusted valuation showed a yield of 5.235% on the rent passing and 6.235% on the reversions. Langley Taylor had produced an analysis showing first an equated yield of 6.2% which they then altered to show 6.5%.

3.2.3 On the question of the use of a single equated yield or dual rates, it was put to Mr Macpherson that the Tribunal had rejected his approach in the past. He said that his method gave a more accurate result. Decisions had been given both ways. It was a matter of analysis. Using different rates was a more "thought-through" method.

3.2.4 Mr Macpherson was asked his opinion of the relative values over the Estate from the Kensington High Street end to the Holland Road/Shepherds Bush end. He considered that yields on the estate would be the same. Vacant possession values would be higher in Addison Road than those roads close to Kensington High Street.

3.2.5 Mr Macpherson gave evidence as to the marriage value to be determined. He said that there was a great danger of the landlord's share of the marriage value being under assessed by what he termed "creep" in the valuation of the lessee's existing interest. This was to be valued without the benefit of the rights under the Act but, since the 1993 Act, there was little or no evidence of transactions in the market in respect of leases without the right to enfranchise or extend. If the evidence derived from transactions in leases with rights is not adjusted downwards sufficiently to reflect those rights, the marriage value is reduced, and the benefit of the rights is further increased, but possibly not fully reflected. He said that following the 1967 Act, when the right to

enfranchise, in particular in Central London, was not so great as at present, there was evidence of leasehold transactions in property without rights. It was this evidence and the settlements which flowed from it which formed the basis of the John D Wood/Gerald Eve 1996 Graph, referred to in Mr Duncan's evidence above. He saw no reason to think the conclusions reached in 1996 would have changed since then. He considered any attempt to introduce more recent settlement evidence into the data would not produce an accurate result as this evidence was tainted by the "creep" he had identified by being influenced by transactions in leases with rights, without adequate adjustment.

3.2.6 Mr Macpherson was asked to comment on Mr Beckett's exercise to establish relativity from market evidence in short/long leases in comparable properties, and whether it was a valid exercise. He said that, in his view, the best way to arrive at relativity was to go back to the time when the Act did not apply. That evidence was no longer to be found in the current market. This was the fundamental point. All the current evidence was from leases which had rights. He pointed out some errors in the schedule where he had some direct knowledge. He said the exercise, in applying a fixed 25% of the marriage value, as being the benefit of the Act, included in the price was effectively putting the answer sought into the equation. He said that the results of the exercise showed the benefits under the Act were generally in the range 1-3% of the leasehold value. In one case it was 7%. Leases between 30 and 60 years fell into the same small range. There was a huge benefit which the results of the exercise failed to identify. It was put to him that the exercise did not depend on inputting the relativity but finding the one relativity which would fit. He accepted that there was only 50% of the marriage value at issue, but said that a purchaser might pay close to the 50%, and it depended on the strength of the market. He said that the marriage value derives from the value of the existing lease without the benefit of the rights under the Act, but Mr Beckett's exercise has the built-in assumption that the value of the benefit was 25% of the marriage value which he did not accept was a valid approach.

3.2.7 In cross examination, it was put to Mr Macpherson that his reliance on the 1996 Graph differed from the findings of W A Ellis, who had revised their

Index in 2001. He said that the differences were quite small. He had no better information now than he had in 1996 to justify any change. It was further suggested that the College of Estate Management research also indicated that LVT's had not accepted the accuracy of the Graph. He considered that agreements were more important than LVT decisions, which may have been influenced by other evidence. He did not know what went into the graphs produced by others, but knew the basis of the 1996 Graph. In relation to the withdrawal of support by John D Wood and the graphs now used by that firm, he said that this had occurred after The Grosvenor Estate withdrew their instructions and they no longer acted for any large estates. Mr Hollamby of that firm who had been responsible for their graphs had never appeared before the LVT or Lands Tribunal to explain the data on which they were based.

3.2.8 In relation to the allowance to be made for the onerous rent review, he put in evidence transactions where lessees had paid a capital sum to buy-out or buy-down a high ground rent, thus supporting the basis which had been adopted by Mr Duncan.

3.2.9 Mr Macpherson's valuation appears as Appendix B.

The Respondents Case

3.3.1 Mr Peter Beckett FRICS gave evidence on behalf of the Respondent in accordance with his Proof of Evidence which was before the Tribunal. He explained he was a partner in Messrs Beckett and Kay, a firm specialising in Landlord and Tenant matters. He was appearing on this occasion in his capacity as a consultant to Messrs Langley-Taylor

3.3.2 Dealing with the yield rate, Mr Beckett stated that, in the absence of satisfactory primary evidence of real market transactions, he preferred to look at secondary evidence. He considered that it is now accepted that the use of settlement and decision evidence is the standard method of choosing yield and referred, in particular, to the 65 Addison Road case, decided in February

2000. Here an equivalent yield of 7% was adopted by the LVT and confirmed by the Lands Tribunal for a similar flat in the same road with similar lease-length, and where the arguments regarding all relevant factors were fully rehearsed by experienced expert valuers on both sides.

- 3.3.3 Mr Beckett rejected the third possible investment approach, because, without primary evidence, this could only be “intellectual musings” leading to a ‘belief’ in the correct rate. His opinion was that in the current market at a theoretical level, yield would be rising at the valuation date and he considered the yield table provided by Mr Macpherson essentially related to a very different market of ‘buy-to-let’, influenced by a large number of amateur players, and with currently an oversupply of property.
- 3.3.4 Mr Beckett accepted that yield could vary over time on the same estate and said the range on the Ilchester Estate from 1998 was 6%-7%. He was not swayed by subsequent settlement evidence on the estate: Kingfisher House had been taken into consideration in the 65 Addison Road case and 10, 11 Addison Road related to houses not flats. He had agreed 6.5% with Mr Macpherson in the case of Monckton Court, but this followed the rate set in the Kingfisher House case, then overtaken by the 65 Addison Road decision.
- 3.3.5 In response to questions, Mr Beckett agreed that in the absence of the 65 Addison Road decision, he would be speaking closer to a yield of 6.5%.
- 3.3.6 With regard to the freehold value the property, it must be considered as a shell excepting for the agreed-works required under the lease. The layout prior to the improvement works, which were to be ignored, meant that the flat was not of equivalent standard to that of the typical Addison Road flat. Whilst it was in villa with a carriage-sweep in one of the best locations on the estate, and with benefit of a parking space, the flat itself was formed from the original servants’ accommodation on the lower-ground floor with a “warren of rooms”, low ceilings (one of the improvements was the increased ceiling height in rear

rooms). Mr Beckett agreed that the present kitchen is of good quality and would only be replaced to meet a change in quality-design or style.

3.3.7 Mr Beckett relied on three of the agreed comparables and rejected the others, mainly on the grounds of the need to make large adjustments for passage of time, standard of refurbishment and layout with particular emphasis on the difference in value of accommodation on the ground and lower-ground floor. He did not consider that the Savill's index was safe because of the effect of the timing of the downturn in prices. He did not find Mr Duncan's analysis of vacant possession values, agreed in lease-extension agreements, useful because of need to adjust secondary evidence.

3.3.8 Mr Beckett's first approach was impressionistic, since none of the comparables were directly like the subject flat. As a secondary approach, he provided a table giving his analysis and accepted that his deductions were crude, but were applied in both directions. He felt that, in essence, Mr Duncan's was an equivalent approach.

3.3.9 Mr Beckett had spoken to the agents, but had not seen the interior of 4/85 Holland Park. He disagreed with Mr Duncan's assessment as to its location, which he regarded as on a par with the subject flat. He agreed that ancillary accommodation was weak but it was wrong to focus on this aspect. Heavy downward adjustments were needed because although described as 'tired' the accommodation was dramatically better with only one third at basement level. It also had a better outlook over the tennis club. There was no scope at the subject flat to provide rooms as good as 4/85 Holland Park. He arrived at an adjusted rate of £4,288 per m², before allowing for the parking space.

3.3.10 Mr Beckett had viewed 24 Holland Park Gardens and did not put much weight on the disadvantage of heavier traffic. He considered that this was a superior, fully and well-refurbished flat, with somewhat better accommodation. Although lower-ground floor rooms are inferior, and ground-floor is superior with tall ceilings, this more than offsets the disadvantages of location; type of building; and lack of private garden. He based his assessment of £4,997 per

m² on the quoting price at the valuation date, and said this provided a good upper limit.

3.3.11 Mr Beckett had spoken to the agents, but had not inspected the interior of 29 Upper Addison Gardens. He made a downward adjustment for time, as he considered the market had fallen overall between May and October. He accepted that the location and outlook here were inferior, but the ground floor element was again superior. His adjusted rate was £6,786.

3.3.12 With this background of evidence and analysis, Mr Beckett arrived at an extended lease value of £1,061,775, and the freehold value £1,072,500.

3.3.13 With regard to relativity, Mr Beckett stated there was the requirement to ignore the effect of the Act, and considered this could be eliminated. He had carried out an exercise to analyse pairs of transactions in order to look at more recent primary market evidence. He explained that, by including a mathematical formula for assessing market value, to allow for the benefit of the Act, and inputting the other elements of valuation as given amounts, there was only one output that could be derived to satisfy the resulting relativity from the market evidence. He accepted that there was some inaccurate data and that this was "work-in-progress". The results put relativity above the upper line on the Graph-of-Graphs, and he now selected a relativity higher than the mid-point of the Graph, which he had previously adopted.

3.3.14 With regard to Mr Macpherson's evidence, he was sceptical that such a rigorous exercise as he presented was carried out in the years before the market was "contaminated" by the effect of the Act. The problem was lack of evidence of sales of long-leases at that time. The recent FPD Savill report did not appear to remotely bring observation of actual market into the exercise.

3.3.15 With regard to the onerous ground rent, Mr Beckett considered that in terms of the properties purchased at £1m and above it is only when ground rent is

over £1,500 that a purchaser will start to assess the affect of the onerous ground rent. Mr Beckett did not consider the evidence of 'buy-downs', as the adjustment to the bid to purchase a property is made in different circumstances.

3.3.16 The valuation prepared by Mr Beckett for Messrs Langley-Taylor on behalf of the Respondent appears as Appendix C.

4. DECISION

4.1 Freehold – Extended Lease Value of the Flat

4.1.1 The Tribunal carefully considered the comparable evidence put forward by the parties, but could not recognise one property which was a direct or close comparable to the subject flat. There was a range of different features to be considered in comparing them with the subject property; the location; the relative merits of a ground and lower-ground floor unit, as against the lower ground floor flat, with its own garden and extensive tenant's improvements. The initial approach of the valuers of both parties was to deduce the value from the broad background of evidence without putting forward specific adjustments to reflect these different characteristics. Mr Beckett, for the tenant, did during the course of the Hearing, submit a schedule of what he regarded as the most useful comparables showing adjustments in comparing it to the subject flat

4.1.2 The Tribunal accepted that there was a place for the "broadbrush" approach, but considered, that with the large number of variables involved, a check on the basis of detailed adjustments was a very useful exercise, if carried out correctly.

4.1.3 The Tribunal did not consider the evidence of asking prices where properties had been withdrawn from the market was reliable or useful. Nor did they

consider the evidence of values included in leasehold reform settlements was reliable. These were subject to substantial adjustments for the passing of time and there was no indication that they had been agreed in detail. This left, as the starting point, the evidence of two open-market transactions as follows:-

29 Upper Addison Gardens	May 2002	£6535m ²
4/85 Holland Park	September 2002	£6538m ²

- 4.1.4 In relation to the transaction on 29 Upper Addison Gardens, it was contended for the Landlord that there should be an upwards adjustment for time to the valuation date. For the tenant it was argued there should be some reduction. The F P D Savills PCL West Flats Index showed:

June 2002	400.3
September 2002	425.4
December 2002	394.2

Mr Duncan said in evidence that his opinion was that the market peaked at June 2002, while Mr Beckett thought it was a little earlier than this. The Tribunal concluded that the Index could not be accepted as accurate. They considered that there was no evidence to show either a rise or fall in values over the period and decided that the evidence could be accepted without adjustment.

- 4.1.5 The Tribunal inspected externally these two properties, Holland Park was a wide road with broad carriageway and footpath, and houses set well back. The comparable unit was in a well maintained double-fronted period property, approached by a glass covered entrance-way. Upper Addison Road was in a less attractive location, subject to a one-way traffic system. The comparable unit was in a terrace house, situated close to traffic lights.

- 4.1.6 Mr Beckett's Schedule showed detailed adjustments for these properties, which sold for virtually the same price when compared on the basis of price

per square metre. When adjusted in his Schedule to the subject property it gave figures of £6786m² and 4288m². The Tribunal considered that this very large disparity in the end result, indicated that the accuracy of Mr Beckett's adjustments was doubtful. Neither the valuers nor the Tribunal were able to inspect these comparables but they did have the benefit of agents' particulars and plans. It was noted that 4/85 Holland Park had effectively one bedroom at lower-ground level with a shower-room only at this level. The two reception rooms at ground-floor level were noted on the plan as possible second bedrooms and the bathroom was at this level. The kitchen was narrow. Against this 29 Upper Addison Gardens had three bedrooms and two bathrooms at lower ground level and, in the Tribunal's view, had a much better lay-out, but in a poorer location. They could not agree the conclusions reached by Mr Beckett in this Schedule.

4.1.7 In closing submissions for the Landlord in relation to 4/85 Holland Park it was stated "there is little difference in value between that comparable and the Flat," and for 29 Upper Addison Gardens "it is difficult to suggest that the subject flat is significantly less valuable (per sq m)". The Tribunal agreed, weighing up all the plus and minus factors, which strike a balance with the value of the subject flat, before allowance for tenant's improvements may fairly be taken at the same figure, rounded to £6,500m².

4.1.8 With regard to the tenant's improvements, over and above those carried out in compliance with covenant, for the Landlord no further adjustment is made. Mr Duncan said that his value reflected the potential of the flat for adaptation to its present condition. He referred in his evidence to Leasehold Reform Act settlements, where the value had been settled on an "unimproved" basis but no details were given as to the extent of works needed and whether they approximated to what had been carried out at the subject property. Mr Beckett for the Tenant in his schedule makes allowances of £1000–1500m² to reflect "condition" against the comparable properties. Evidence was produced showing the cost of works (including those under covenant) at December 1990 was £164,371.33.

4.1.9 Mr Beckett in his evidence referred to the flat prior to works as a “warren of rooms” and “a shell” Mr Duncan considered that with a first-class kitchen and bathroom the flat had been capable of occupation without further works. The Tribunal scrutinised a plan showing the layout of the space before improvement. There were seven small rooms with two bathrooms and a shower room. There was a wide central corridor and a second separate passageway. It appeared to have been occupied as at least two separate units.

4.1.10 The Tribunal considered that the scale of the works carried out by the Tenant went far beyond the normal “improvement” of a flat. The works were structural and extensive. They agreed with Mr Beckett that the flat would not have been conveniently occupied as quality-accommodation with its former layout. They considered that a purchaser of the flat in its former condition would regard it as an area requiring complete re-planning and renovation. He would recognise the potential, but equally would take account of the expenditure needed, and the time and trouble involved, in undertaking a development of this nature. The Tribunal accepted that cost need not equal value but in this case considered that it was a good guide. Mr Beckett’s square metre adjustment equates to £196,000 compared to the actual cost of £164,371 in December 1990 (including covenant works). The Tribunal concluded that this was a reasonable adjustment to reflect the tenant’s improvements.

4.1.11 Applying this to the starting point figure of £6,500m² gives £5,500m² and an extended lease value of £1,078,000 and the freehold value at the agreed relativity of 99% £1,088,888 say £1,090,000.

4.2 The Correct Yield

4.2.1 The Tribunal adopted a yield rate of 6.5% for the rent passing and reversion. While it recognised that decisions have varied between dual-rate and equated yield, they considered in this case, where the reversion was fairly imminent (being less than 4 years hence) an equated yield was appropriate.

4.2.2 They considered the evidence submitted for the parties on a wide range of comparables. They had particular regard to the decision of the Leasehold Valuation Tribunal and the Lands Tribunal on 65 Addison Road at 7%. They noted the admission by Mr Macpherson that the evidence showed a preponderance at 6.5% and of Mr Beckett that he would have been at 6.5% in the absence of the decision on 65 Addison Road.

4.2.3 They considered that the decision at 65 Addison Road was out of line with the generality of the evidence and noted that it had not been followed by the Leasehold Valuation Tribunal in the Kingfisher House case. They did not consider that a case for a lower yield had been made. Mr Macpherson's view had formerly been that there should be no variation between houses and flats. Rates of growth between the two had varied over the years without an effect on yields. They did not accept that yields on assured shorthold lettings were relevant nor did they consider that the presence of a headlease would reduce the yield, in particular where the reversion was close, and subject to an "onerous" high ground rent. This introduced a speculative element dependant on whether central London property would hold its value in an uncertain period.

4.3 Relativity

4.3.1 On the basis of the evidence before them the Tribunal concluded that the relativity for the 37.64 years existing term to the freehold value should be 63%. In coming to this decision they had regard to the Gerald Eve/John D Wood 1996 Graph(IM 12) and the W A Ellis Index (Mr Duncan's Proof of Evidence) which pointed to this figure. They also had regard to the Beckett and Kay Graph of Graphs, showing between 62-74% (Beckett Appendix Tab 4); College of Estate Management Research; the John D Wood current relativity graph; and the exercise carried out by Mr Beckett to compare prices realised for different length of lease on comparable properties.

4.3.2 The Tribunal; preferred the Gerald Eve Graph and the W A Ellis Index to which Mr Macpherson and Mr Duncan could speak from first-hand knowledge as to how they were compiled. No information was provided as to what data went into the other graphs referred to above.

4.3.3 So far as Mr Beckett's exercise was concerned, he admitted that this was "work in progress" and apart from some errors of fact which were raised at the Hearing, the Tribunal were concerned that it started from the premise that in any sale, 25% of the marriage value was attributable to the benefits of the Act, which was to be excluded from the value of the existing lease. The Tribunal agreed with Mr Macpherson's criticism in this respect and they considered that it undermined the validity of the exercise. They decided they could derive no assistance from this particular exercise.

4.3.4 A relativity of 63% applied to the freehold value of £1,090,000, found above, produces a value for the existing lease of £686,700 before adjustment for onerous ground rent.

4.4 Allowance for Onerous Ground Rent

4.4.1 Under the terms of the lease the ground rent is subject to review to 0.5% of the value of a 65 year lease in the property. The parties agreed (Statement of Agreed Facts paragraph 7.6.3) that a 65 year lease would have a relativity of 84% to the freehold value. On the basis of our findings above:-

Value of 65 year lease	£915,600
Review rent at 0.5%	£4578 say £4,580 p.a.

4.4.2 For the Tenant it was suggested that a purchaser in the market for the leasehold interest would have little regard to the rent review provisions. He would regard a rent of up to £1,500 as not onerous and any allowance should be based on the excess over this figure. Mr Beckett capitalised this on a dual-rate basis, without deferment, and reflected the sum in a reduction to his relativity figure. In contrast, for the Landlord, reference was made to a Lands

Tribunal decision and a number of transactions where the normal ground rent had been determined on the basis of 0.05%. The excess was capitalised firstly at a rough 10YP and then over the term, deferred to the review date and the average taken.

4.4.3 The Tribunal preferred the Landlord's approach. With a review less than 4 years away, they considered that a purchaser would have a concern as to the amount he would have to pay. At this level of the market, it is to be expected that a purchaser would have professional advice and the basis on which the major estates agree to "buydowns" would be known. The Tribunal followed the Landlord's approach to capitalisation, arriving at an allowance of £42,000 and an adjusted Leasehold value of £644,700.

4.5 Conclusion

4.5.1 The Tribunal's valuation is set out at Appendix A.

4.5.2 The Tribunal determine the premium payable on extension of the lease in accordance with the Act is the sum of £292,900, plus the proper costs in accordance with the Act to be agreed or determined.

CHAIRMAN *Ceraw Bowden*

DATE *29 September 2003.*

THE TRIBUNALS VALUATION**VALUATION OF PREMIUM FOR NEW LEASE as at 28/10/02**

Leasehold Reform, Housing and Urban Development Act 1993 Schedule 13
86A ADDISON ROAD, LONDON W14

		£	£
Diminution in value of Freeholder's interest			
Head lease rent apportioned to 86A:			
Annual rent payable	250		
YP 3.4 years @ 6.5%	<u>2.9594</u>	740	
Annual rent payable from 25/3/06			
65 year lease @ 84% of freehold value	915,600		
Rent payable @ 0.5% of 65 year lease value	4,578		
say	4580		
YP 34.25 years @ 6.5%	13.6042		
deferred 3.4 years @ 6.5%	0.8073	10.9827	50,301
Reversion to freehold in possession	1,090,000		
deferred 37.65 years @ 6.5%	<u>0.0934</u>	101,806	
		<u>152,847</u>	
Less value of reversion when new lease is granted	1,090,000		
deferred 127.65 years @ 6.5%	<u>0.0003228</u>	352	
Freeholders' interest			152,495
Calculation of Marriage Value			
Value of proposed interests:			
Freeholder's	352		
Tenant's lease for 127.65 years	<u>1,078,000</u>	1,078,352	
Less value of existing interests:			
Freeholder's	152,847		
Tenant's @ 63% of freehold,	686,700		
adjusted by £42,000 for onerous GR	<u>644,700</u>	797,547	
Marriage Value		<u>280,805</u>	
50% marriage value attributed to landlord		say	<u>140,402</u>
			<u>292,897</u>
TOTAL PREMIUM PAYABLE			<u>£292,900</u>

APPENDIX A CONTD

Calculation of adjustment for Onerous Ground Rent:

Tenant's current interest			686,700
Annual rent payable from 25/3/06			
65 year lease @ 84% of freehold value	915,600		
Rent payable @ 0.5% of 65 year lease value	4,578		
say		4580	
Less normal GR @ 0.05% of freehold value		<u>545</u>	
Excess GR		4,035	
say		4,000	
1. Capitalised on basis of 'normal' ground rent:			
YP 34.25 years , deferred 3.4 years @ 6.5%	10.9827		
		43,931	
2. Capitalised on generalised basis:			
	10	40,000	
Average capitalised ground rent	say		<u>42,000</u>
Tenant's interest adjusted for onerous ground rent			644,700

Ilchester Estate

IM1

Leasehold Reform, Housing and Urban Development Act 1993 Schedule 13

Calculation of Premium for New Lease

86A Addison Road, London W14

As at 28 October 2002

by

Ian Macpherson MA FRICS

£ £ £ £

Value of Freeholder's Existing Interest

Head lease rent apportioned to No 86 A

Annual rent payable				250	
Years Purchase	3.4 years @	5.0%		<u>3.057</u>	764

Annual rent payable for review wef 25 March 2006
to 0.50% of Value of 65 year lease

Value of proposed new lease for 127.65 years				1,285,000	
Adjust to freehold @	99.00%			1,297,980	
Value of 65 year lease @	84.00%			1,090,303	
Rent payable @	0.50%			5,452	
		Say			5450
Years Purchase	34.25 years @	6.0%		14.401	
Deferred	3.4 years @	6.0%		<u>0.820</u>	<u>11.809</u>
(Yields reflect reviews every 21 years)					64,377

Reversion to value of freehold in possession				1,297,980	
Deferred	37.65 years @	6.0%		<u>0.111</u>	
					<u>144,076</u>
					209,217

Value of Freeholder's Proposed Interest

Reversion to value of freehold in possession				1,297,980	
Deferred	127.65 years @	6.0%		<u>0.00059</u>	
					<u>766</u>
					208,451

Calculation of Marriage Value

Value of Proposed Interests					
Freeholder's (from above)				766	
Tenant's (from above)				<u>1,285,000</u>	
					1,285,766

Value of Existing Interests					
Freeholder's (from above)				209,217	
Tenant's				<u>765,000</u>	
					<u>974,217</u>

Gain on marriage 311,549

Attributed to Freeholder @ 50% 155,774

Premium payable 364,226

2-Jun-03 Say £364,200

Gerald Eve
Chartered Surveyors

Langley-Taylor
Commonhold and Leasehold Reform Act 2002
Appendix 10
86a Addison Road, London W14

2. Valuation**a) Diminution in the value of the landlord's interest**

i) Ground rent now				250	
YP	3.41	years @ 7.00%		<u>2.9434</u>	736
ii) Ground rent at first review				4,505	
YP	34.24	years @ 7.00%	12.8771		
Deferred	3.41	years @ 7.00%	<u>0.7940</u>	<u>10.2244</u>	46,061
iii) Reversion to freehold value				1,072,500	
Deferred	37.65	years @ 7.00%		<u>0.0783</u>	83,977
Landlord's interest before lease extension					<u>130,774</u>
iv) Reversion to freehold value				1,072,500	
Deferred	127.64	years @ 7.00%		<u>0.0002</u>	
Landlord's interest after lease extension					<u>215</u>
Diminution in the value of the landlord's interest					130,559

b) Landlord's share of marriage value*Interests after marriage*

Value on extended lease	1,061,775	
Landlord's interest after lease extension	<u>215</u>	
Value of combined interests after lease extension		1,061,990

Interests before marriage

Value of lessee's current interest	772,200	
Landlord's interest before lease extension	<u>130,774</u>	
Value of combined interests before lease extension		<u>902,974</u>
Marriage value, therefore		159,016
Landlord's percentage share		<u>50%</u>

Landlord's share of marriage value 79,508

Price payable under the Act 210,067

But say £210,000