

THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL.

LON/LVT/2068/06

Commonhold and Leasehold Reform Act 2002

DECISION ON AN APPLICATION FOR LEAVE TO APPEAL
RE: 36 Walton Street, London, SW3 1RD

Applicants: The Wellcome Truist

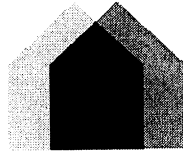
Respondents: Cecil Properties Ltd

1. The Tribunal has considered the Applicant's request for Leave to Appeal dated **19th December 2006** and determines that Leave be granted to Appeal to the Lands Tribunal.

Tribunal: Mrs. J. Goulden JP
Mrs. L. Walter MA(Hons)
Miss. M. Krisko BSc(EstMan) BA FRICS

Signed: 

Dated: 25 January 2007



Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE
LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967**

Ref: LON/LVT/2068/06

Property: 36 Walton Street, London, SW3 1RD

Applicant: The Welcome Trust Limited

Respondent: Cecil Properties Limited

Date of Tenant's Notice: 30 March 2006

Date of Counter Notice: 17 May 2006

Application Date: 22 May 2006

Hearing dates: 10 and 11 October 2006

Appearances:

Mr K S Munro of Counsel
Ms G Dhir – Solicitor, CMS Cameron McKenna
Mr R Cullum FRICS FIRPM - Cluttons
for the Applicant

Mr S Jourdan of Counsel
Ms S Erkman – Agent, Cecil Properties Limited
Mr K G Buchanan BSc (EstMan) FRICS – Knight Frank
for the Respondent

Members of the Leasehold Valuation Tribunal:

Mrs J S L Goulden JP
Miss M Krisko BSc (EstMan) BA FRICS
Mrs L Walter MA (Hons)

LON/LVT/2068/06

PROPERTY: 36 WALTON STREET, LONDON, SW3 1RD

BACKGROUND

1. The Tribunal was dealing with an application by the Applicant landlord, the Welcome Trust Ltd, to determine the price payable by the Respondent tenant, Cecil Properties Ltd, for the freehold of 36 Walton Street, London, SW3 1RD (hereinafter referred to as "the subject property") under Section 9(1C) of the Leasehold Reform Act 1967 (hereinafter referred to as "the Act").
2. The subject property is held under a lease dated 10 April 1990 and made between the Official Custodian for Charities (1) the Trustees of Henry Smith's Charity (2) and P H George (3) for a term of 60 years from 25 December 1989 at a starting rent of £1,010 per annum subject to reviews as therein stated.
3. The following matters were agreed either before or during the Hearing:-
 - (a) The valuation date was 31 March 2006;
 - (b) The unexpired term of the lease was 43.75 years;
 - (c) The Gross Internal Area of the subject property was 2,955 sq ft;
 - (d) The deferment rate was 4.75%;
 - (e) The adjustment for time was by the use of Savills PCLSW house index.
4. The issues which required the determination of the Tribunal were as follows:-
 - (a) The value of the freehold with vacant possession;
 - (b) The value of the landlord's interest;
 - (c) Hope value;
 - (d) The value of the existing lease/relativity;
 - (e) The effect on value of tenants' improvements;
 - (f) Capitalisation rate;
 - (g) Treatment of the ground rent;
 - (h) Terms of transfer.
5. The Applicant's expert contended for a (revised) enfranchisement price of £868,000. The Respondent's expert contended for a (revised) enfranchisement price of £534,000. Their respective valuations are attached to this Decision as Appendices B and C.

HEARING

6. The Hearing took place on 10 and 11 October 2006.
7. The Applicant, the Wellcome Trust Ltd, was represented by Mr K S Munro of Counsel, Ms G Duir, Solicitor, of CMS Cameron McKenna and Mr R Cullum FRICS FRIPM of Cluttons.
8. The Respondent, Cecil Properties Ltd, was represented by Mr S Jourdan of Counsel and Mr K G Buchanan BSc (EstMan) MRICS, Knight Frank. Ms S Erkman, Agent for the Respondent company attended.
9. The salient points of the evidence are set out under the appropriate heads below.

(a) The value of the freehold with vacant possession

10. The Applicant contends for £2,642,595 and the Respondent contends for £2,251,000. The terms of transfer are dealt with after the valuation issues.
11. Mr Cullum for the Applicant relied on the sales of three freehold comparables and the recent sale of the subject property, details of which are as follows:-

Property	Tenure	Date	GIA	Price	£/sq ft	Updated £/sq ft
22	Freehold	1/2004	2,582	£2m	£775	£930
20	Freehold	10/2005	2,997	£3.4m	£1,134	£1,217
36	Leasehold	2/2006	2,960	£1.85m	£625	£625
8	Freehold	7/2006	2,592	£3.8m	£1,466	£1,466

12. Mr Buchanan for the Respondent had also relied on the sales of Nos 8, 20 and 22 Walton Street (details of which are as above), but also referred to 28 Walton Street (3,044 sq ft) which had been sold on 29 September 2006 for £4,250,000. He said Nos 8, 20 and 28 Walton Street had been improved to a high standard. On the second day of the hearing, Mr Buchanan supplied details in relation to 40 Ovington Square, an unimproved property where contracts had been exchanged late on 10 October 2006 at a sale price of £2,940,000 (2,789 sq ft).
13. Both valuers accepted that No 22 Walton Street was the closest comparable and both valuers had devalued the subject property to £930 per square foot. Mr Buchanan had however made further adjustments in that in his view the subject property was in an inferior position in Walton Street and with a poorer layout. He also deducted for tenants' space and other improvements.

(b) The value of the landlord's interest

14. The Applicant contends for £641,794 and the Respondent contends for £407,782. Both valuers used the same deferment rate of 4.75%, but used different capitalisation rates for the ground rents, Mr Cullum adopting 5% and Mr Buchanan adopting 7%.

15. In addition, the difference between the parties was as a result of Mr Cullum's further deductions for an unpalatable ground rent of 0.1% based on the freehold value with vacant possession. Mr Cullum also deducted an additional 20% in respect of hope value. Mr Buchanan argued that neither deduction was appropriate as he did not consider that the ground rent was "unpalatable". He also argued that if Mr Cullum was correct in respect of an additional deduction of 20% in respect of hope value, this would in effect increase the landlord's share of marriage value to over 50% which was contrary to the legislation.

(c) Hope value

16. The Applicant contends for £113,062 and the Respondent contends that there was no hope value.
17. Mr Cullum said that following the Lands Tribunal decision in *Cadogan v Sportelli and Others* on 15 September 2006, it was determined that the deferment rate for houses is 4.75% and that hope value was to be added to the mathematical sum of the freeholder's interest in the term and reversion. He adopted 20% of the marriage value as the correct percentage based on evidence provided at the Lands Tribunal hearing and provided correspondence with agents post *Sportelli* in support, which indicated that 20% hope value had been agreed in other cases.
18. Mr Buchanan said that until the *Sportelli* case, the issue of an additional amount for hope value in relation to house claims had not arisen. He said that the Tribunal's findings suggested that a purchaser of the freehold reversion in a no Act world would pay a price made up of the sum of the reversionary value together with an amount which represented the value of that option to deal. Mr Buchanan could not accept this, as a purchaser of the reversion in a no Act world would be able to negotiate a higher share of marriage value which would reflect the likelihood of the tenant wishing to purchase. Under the provisions of the Act a landlord could not recover more than 50% of the marriage value. Any additional hope value would, in his view, amount to double counting. In addition, where the reversion was 44 years away, any hope value was probably too speculative to have more than a negligible value.

(d) The value of the existing lease/relativity

19. The Applicant contends for £1,548,552 and the Respondent contends for £1,591,000 (a relativity of 70.71%). Initially the Applicant contended for £1,691,260 (a relativity of 64%) from which the latent value of £142,708 was deducted to reach the figure of £1,548,552, which was equivalent to a relativity of 58.6% (see paragraph 47 below).
20. Mr Cullum said that it was generally conventional to value leases in the No Act world by either taking a percentage of the freehold value or making a deduction from the market value of the lease to reflect that element of market value which is the effect of the Act. He said "*neither route provides provable answers since there are probably no sales of houses with 45 odd years*

unexpired without rights under the Act and that has been the case for many years. There is therefore no direct market evidence conformable with the provisions of the Act. The valuation is therefore hypotheticala"

21. Mr Cullum had, in particular, relied on Savills 1992 and 2003 graphs, both of which were market based. He said that the 1992 graph had been produced before the legislation which enabled flat leases to be statutorily extended or blocks of flats to be collectively enfranchised. That curve showed a relativity at 43.75 years of 64%. The 2003 enfranchiseable graph represented what agents would expect a lease in the market with the rights attached to achieve in relation to the freehold value and showed 78%. Mr Cullum said *"it is clear therefore that the relativity must be less than 78% and is probably not less than 64%."* In his view there were no circumstances which had occurred since 1992, other than the Act, which would lead to a change in relativity, and therefore the relativity as shown by the 1992 curve was correct. By way of a cross check he referred to the Gerald Eve 1996 graph which indicated a relativity of about 69%. Mr Cullum said *"in the light of Arbib and the continually falling risk free rate since that decision I consider that the Gerald Eve curve is now overstated and I use a relativity of 64%"*.
22. However, in Mr Cullum's view, since there was an *"unpalatable high rent"*, the leasehold value must be reduced to reflect that, as well as rights under the Act. He also considered that prohibitions in the lease would affect the value of the existing lease.
23. Mr Buchanan considered that the best evidence of leasehold value was the sale of the subject property for £1.85 million. He also considered the sale of No 24 Walton Street with a 28 year lease, which achieved slightly in excess of £2.0 million in August 2006 (adjusted for time and with a high ground rent this achieved £771 per square foot) and No 78 Walton Street, a refurbished property with a 41 year lease which sold in August 2005 for the equivalent of £657 per square foot. He then adjusted the sale price of the subject property by 5% for rights under the Act (£92,500 which represents 73.5% of the tenants 50% share of marriage value) and by £166,500 for tenants' improvements (being 9% of the leasehold value). No further adjustment was made in respect of the ground rent.
24. Mr Buchanan said his relativity was the percentage of value to the freehold value and the leasehold value and that given the market evidence available in this case, he did not consider it necessary to consider other forms of evidence such as graphs and settlements. In his view, graphs were helpful but as a cross reference only.

(e) The effect on value of the tenants' improvements

25. The Applicant contends in the revised valuation for £105,555. The Respondent contends for £125,634 for space improvements and £100,000 for other improvements (being 9% of the freehold value).
26. Mr Buchanan set out a list of improvements which included general improvements as well as space improvements (which related to the

construction of the fourth floor and the formation of a new conservatory at the first floor rear) as follows:-

- (1) Formation of external staircase at garden level
 - (2) Formation of new bathroom/WC in vault area at front
 - (3) New bathroom/WC at second floor rear
 - (4) New additional shower
 - (5) Construction of fourth floor (additional bedroom and bathroom) (rear roof extension) and stairs from third to fourth floor
 - (6) Alterations/improvements to internal layout including removal of dumbwaiter from basement and ground floor
 - (7) Fitted kitchen designed by specialist consultant
 - (8) Erection of new balcony to the ground floor rear
 - (9) Construction of a new conservatory at first floor rear (in place of terrace)
 - (10) Formation of new bathroom/WC on third floor level
 - (11) Creation of kitchenette on second floor
 - (12) Removing internal partitioning on ground floor to create one large reception room
 - (13) Re-planning and refitting existing bathrooms to create en suite units
 - (14) Re-plumbing, rewiring and other M & E works
 - (15) Laying limestone floors throughout the ground floor hallway and reception, parquet flooring on the first floor
 - (16) Installing wood panelling
 - (17) Paving of the rear garden/yard
27. With regard to the value of the space improvements, Mr Buchanan had calculated the value of the additional space on a pro rata basis and then deducted 50% of that figure to reflect the potential to develop. On questioning, Mr Buchanan confirmed that, in respect of the conservatory, he had relied on the wording in plans to the lease which had the wording 'covered terraced' and which he had taken to mean a terrace open to the elements with a roof over.
28. Mr Cullum considered that the only alteration which would have an impact on value was the creation of the fourth floor accommodation, namely a bedroom and bathroom and the new staircase from third to fourth floor. The additional

floor area created by the extension was 227 square foot. He said that to the best of his knowledge the conservatory had been in existence for many years and did not amount to a tenants' improvements.

29. Mr Cullum said that two licences for alterations had been granted, on 7 June 1994 and 13 November 2002. The first licence involved minor internal alterations, the installation of the new staircase and the formation of the new fourth floor accommodation out of the previous attic. He said that the second licence was mainly concerned with internal rearrangement to suit the particular preference of the tenant at that time. A new balcony had been added at ground floor level. Mr Cullum said *"it is my view that the internal alterations are neutral in value terms. They reflect the transient requirements of particular lessees and when dealing with houses of such high intrinsic values the works have no more relevance to value than upgraded wallpaper and decorations"*. Mr Cullum said that it was established in the Lands Tribunal case of Fattal that the potential to create extra space is not to be ignored and he took the additional floor space at 50% of its potential value.

(f) Capitalisation rate

30. The Applicant contends for 5% and the Respondent contends for 7%.
31. In his supplemental report, Mr Cullum had relied on the rack rent market (based on Savills Prime Central London Residential Gross and Net Yields Table which showed that in March 2006 the net yield for houses was 2.4%) and annuities market (the longest period for which it is possible to get an annuity is based on a 50 year old female non-smoker who had a life expectancy of around 37 years where the best income available was 5.14%). On the basis of rack rental fields and the evidence of annuities, he said that it was hard to imagine that a capitalisation rate of more than 5% could be right.
32. Mr Buchanan said that there was open market evidence of capitalisation rates. He had relied on the sale by auction of the Cadogan Estate where yields of between 6.75% and 12% had been achieved. In one of the blocks sold, he understood that there was the potential to build at fifth floor level and this would have been reflected in the prices. In Mr Buchanan's view, the best evidence was the sale of Nos 48-49 Cadogan Place which contained four flats with 114 years unexpired and a total ground rent of £7,750 doubling every 21 years. The freehold reversion had sold for £92,500 achieving a yield of 12%. He was aware that the reversion had been bought by the leaseholders and had had taken this into account when adopting a capitalisation rate of 7%.
33. Mr Buchanan said that the tenants of the flats in four of the buildings had exercised their statutory rights under the Landlord and Tenant Act 1877 *"which could have put some prospective purchasers of bidding"*. In the case of No 51 Cadogan Place, the tenants had not taken up their rights but he understood that one of the tenants did bid against the ultimately successful purchaser *"and this is probably the reason why the price was increased (and the capitalisation rate reduced)"*.

(g) Treatment of the ground rent

34. The basis of the valuation was treated in the same way by both valuers in respect of the current ground rent.
35. However, in respect of the ground rent to be reviewed on 25 December 2010, Mr Cullum considered that a deduction of £142,708 from the leasehold value should be made since he was of the view that because in this case there was a highly geared rent (a more than tenfold increase), the determination in a previous Leasehold Valuation Tribunal decision of 12 December 2004 relating to 17 Clabon Mews, SW1 was applicable. In that case it was determined that any rent increase over 0.1% of the freehold vacant possession value was an excess rent which was capitalised for the balance of the term and served to reduce the "normal" leasehold value. In the present case the current rent is less than 0.1% and so the capitalisation would start at the next review.
36. Mr Buchanan made no deduction in respect of an onerous ground rent after review, since in his view this would have already been taken into account in the sale price.

INSPECTION

37. The Tribunal made its inspection of the subject property, externally and internally, on 13 October 2006 following the end of the Hearing.
38. The subject property was a mid terrace six storey (including lower ground floor) white stucco fronted house constructed mid 19th century in a high quality residential area situated on a noisy junction with Beauchamp Place, with a small walled and paved garden to the rear. There was a glass roofed extension at the rear at first floor level. The accommodation and layout was as set out in the Applicant's expert report.
39. The Tribunal inspected, externally only, comparable properties at 8, 20, 22, 24, 32 and 34 Walton Street and 40 Ovington Square.

THE TRIBUNAL'S DETERMINATION

40. The Tribunal accepts that both valuers having carefully considered the comparables, reached the identical figure of £930 per square foot for the subject property as a starting point. The Tribunal sees no reason to depart from that figure.
41. The comparable at No 22 Walton Street was in a noticeably quieter position than the subject property, away from a busy crossroad and a commercial bar/club to the rear. 22 Walton Street was in the opinion of the Tribunal a more attractive building with a more open outlook. The Tribunal considered that Mr Buchanan's 10% deduction for location and layout was too high. The Tribunal makes a deduction of 5%.
42. With regard to improvements, the Tribunal accepts Mr Cullum's opinion that the only improvement which would impact substantially on value is the creation of the fourth floor accommodation. The Tribunal deducts £100,334.

This figure was reached using the agreed £930 per square foot less 5% (£884 per square foot) which was multiplied over the agreed fourth floor area (227 square foot). The respective valuers had agreed that the top floor extension was to be valued at 50% of the freehold value. Therefore, at 50%, the Tribunal arrived at £100,334. It would appear from inspection of the conservatory that it had been in situ for some time and the Tribunal was not persuaded by the evidence of Mr Buchanan in this respect, although the Tribunal does accept that the provision of services for and creation of the bathrooms has some impact on value. A deduction of £20,000 is made in this respect.

43. With regard to yield, the deferment rate was agreed by both valuers at 4.75%.
44. As to the capitalisation rate, the Tribunal considers that the existing rent of over £1,000 per annum and a substantial increase in 4.75 years represents an attractive investment and therefore accepts the Applicant's 5% as the appropriate percentage.
45. However, having taken into account the capital value of the subject property, the anticipated future rent review is not, in the view of this Tribunal of such a level as to be considered unpalatable for a purchase of a property in this location and of this value.
46. The 2004 Leasehold Valuation Tribunal case to which Mr Cullum referred clearly stated, at paragraph 27, that although on the specific facts of that case, the palatable ground rent should be no more than 0.1%, it was stressed *"that this percentage is not intended to be taken as a guide in future cases"*.
47. With regard to relativity, Mr Cullum's adjustments to reach his final existing lease value of £1,548,552 alters his relativity and results in a reduced relativity of 58.6%.
48. In view of the fact that the Tribunal has determined that there is no unpalatable rent in this particular case, it follows that Mr Cullum's evidence is that a relativity of 64% is appropriate.
49. The Tribunal accepts that, if available, market evidence is preferable to evidence of graphs and/or settlement. The Tribunal has noted the adjustments made by Mr Buchanan but considers that his relativity of 70.71% is too high. The Tribunal has taken the sale price of the subject property at £1,850,000 and has increased this figure by 1% for the passage of time between the sale and valuation date to arrive at a figure of £1,868,500. The Tribunal accepts the evidence that prices in Walton Street were increasing. The Tribunal then deducted its estimate of improvements at £120,334 and also deducted a further 5% for rights under the Act. This produces a relativity of 66.7%. By way of cross reference, the Tribunal considered the graphs and the relativity adopted by the Tribunal falls within the appropriate range.
50. The Tribunal recognises that the latent value/hope value issue is the most contentious issue in this case. The Tribunal has therefore considered the legislation and the basic principles underpinning the legislation.

51. Section 9(1A) of the 1967 Act provides that the price to be paid for a house and premises *"shall be the amount which, at the relevant time the house and premises, if sold in the open market by a willing seller might be expected to realise on the following assumptions –*
- (a) *on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold [or an extended lease and, where the tenancy has been extended under this Part of this Act, that the tenancy will terminate on the original term date]; (b) to (f) contain other valuation assumptions relating to security of tenure, repairing liability, the treatment of improvements etc."*
52. Section 9(1C) provides that the price to be paid for a house and premises *"shall be determined in accordance with subsection (1A) above, but in any case*
- (a) *if in determining the price so payable there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and the leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall not exceed one-half of it, and*
 - (b) *section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section".*
53. Sub-sections 9(1D) and 9(1E), which were inserted by sections 145 and 146 of the Commonhold and Leasehold Reform Act 2002, provide that the tenant should received one-half of the marriage value, and that no marriage value is payable where the unexpired term of the lease at the relevant date exceeds eighty years.
54. The Tribunal has considered in depth, the Lands Tribunal's decision in *Earl Cadogan and Cadogan Estates v Sportelli & Sportelli* (2006) LRA/50/2005 (Sportelli).
55. Of the five appeals which were the subject of the hearing, only two were contested appeals and both of these were cases of collective enfranchisement. The Sportelli appeal was uncontested and concerned the extension of a lease under the 1993 Act.
56. In the two contested appeals the Lands Tribunal had ordered that a second preliminary issue *"the proper valuation of any "hope value""* should be determined. It defined *"hope value"* as arising from *"the option that the freeholder has in the real market to sell the freehold or a lease extension to the tenant and thus realise the whole or part of the freeholder's share of such marriage value as exists at the date of the sale."*
57. In the earlier *Arbib* case, the Lands Tribunal had allowed for hope value by taking account of it in the deferment rate. In the Sportelli appeals it was a matter of dispute whether hope value is excluded by the statue in valuing the

reversion in a collective enfranchisement, and if it was not excluded how it should be valued.

58. The definition of hope value in the Sportelli case was stated to be –

“the option that the freeholder has to sell the freehold or a lease extension and thus realise the whole or part of the freeholder’s share of the marriage value as exists at the date of sale. The issue between the landlords and the nominee purchasers is whether, as the nominee purchasers contend, hope value is excluded under the terms of Schedule 6 of the 1993 Act.”

59. After consideration of the relevant statutory provisions the Lands Tribunal concluded – *“that, in the valuation of the landlord’s interest under Schedule 6 as well as under Schedule 13 of the Act of 1993, no account is to be taken of any hope value or, save as specifically provided, of marriage value”*. It was also stated *“that in all the appeals before us, with the exception of 13 South Terrace, where the price is to be determination under Section 9(1A) of the 1967 Act, hope value is to be excluded from the valuation.”*
60. The Lands Tribunal determined that the treatment of hope value in the valuation under Section 9(1A) of the 1967 Act should be dealt with as a lump sum, because the value of the “option to deal” depended upon the amount of marriage value that would be released, which would vary with the unexpired term of the lease. It concluded that it was appropriate to apply a lump sum to the value of the reversion prior to the statutory marriage value apportionment after the freehold and the existing leasehold values were known.
61. As the result of its consideration of the statutory provisions and of the decisions of the Lands Tribunal, it would appear to the Tribunal that the current difficulties have arisen from the deemed inclusion of hope value in the deferment rate in Arbib and the specific exclusion of hope value in Sportelli, except where the enfranchisement price is to be assessed in accordance with Section 9(1A), the assumption made that having found that hope value was not payable in the case of valuations under Schedule 6 it must necessarily follow that it is payable under Section 9(1A) because the exclusion of the tenant from the market is not included in the latter provisions.
62. This Tribunal has given careful consideration as to whether it is constrained by the Lands Tribunal decision in the Sportelli case. Mr Munro said that he had referred to hope value in that case, but since the Sportelli case was uncontested, hope value does not appear to have been argued before the Lands Tribunal. In addition, the Sportelli decision did not specifically refer to houses (as in the present case before the Tribunal) and the contested appeals were both collective enfranchisements. Further, the Tribunal has considered the wording of Section 145 of the Commonhold and Leasehold Reform Act 2002 which relates to the position where the unexpired term of the tenant’s tenancy is less than 80 years (as in the present case before the Tribunal). This states:-

“where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one half of it”

63. Under the provisions of the Act therefore, the landlord could not recover more than 50% which would not be the case if an additional lump sum were payable for hope value. In this case, in any event, it is considered that hope value is too speculative where the reversion is 44 years away.
64. Although Mr Cullum provided evidence in support of his contention as to hope value from other agents agreeing to pay an additional sum therefor in the view of this Tribunal agents are merely negotiating the best deal for their respective Clients. There is insufficient information available on the respective strengths and weaknesses or circumstances of the parties involved in these negotiations. These transactions are limited and not tested in the open market. No great weight is therefore attached thereto.
65. The Tribunal determines the enfranchisement price at £664,461 and its valuation is attached as Appendix A.

(h) Terms of Transfer

66. The disputed terms of transfer are (a) whether the Respondent takes the transfer with full or limited title guarantee and (b) whether the Respondent's proposed amendments as shown on the draft Transfer are to be included. A copy of the draft Transfer is attached as Appendix D. Written representations were received from Mr Munro on behalf of the Applicant. No representations were received on behalf of the Respondent.

Limited Title Guarantee

67. The Tribunal determines that the Transferee is entitled to limited title guarantee only. At the hearing, Counsel for the Respondent accepted that this was the case, and the only apparent reason why this matter has been brought to the Tribunal for a determination is that confirmation has not been received from the Respondent's solicitors.

Clause 11.1

68. The wording inserted in the draft Transfer was “the covenant implied by Section 2(1) of the Act is amended by deleting from that section the words “his own cost” and substituting the words “the cost of the person to whom he disposes of the property”). The Respondent requires the suggested wording to be deleted.

69. Clause 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 states –

“that that person will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give.”

70. It is considered that this implied covenant, which does of course affect future successors in title, should remain, notwithstanding the fact that under paragraph 3 of the skeleton argument prepared by Counsel for the Respondent it appears that the Respondent is prepared to indemnify the Applicant in respect of the costs thereof. Any particular agreement in this respect is a matter for the parties.

71. The Tribunal determines that the proposed Clause 11.1 is deleted.

Clause 11.2

72. The wording inserted in the draft Transfer was *“Section 6(2)(a) of the Act is to be construed as if all entries made in any public register are within the actual knowledge of the Transferee”*. The Respondent requires the suggested wording to be deleted.

73. Sections 6(1) and (2) of the Law of Property (Miscellaneous Provisions) Act 1994 state:-

“(1) The person making the disposition is not liable under the covenants implied by virtue of –

- (a) section 2(1)(a) (right to dispose),**
- (b) section 3 (charges, incumbrances and third party rights), or**
- (c) section 4 (validity of lease),**

in respect of any particular matter to which the disposition is expressly made subject.

(2) Furthermore that person is not liable under any of those covenants for anything (not falling within subsection (1)) –

- (a) which at the time of the disposition is within the actual knowledge, or**
- (b) which is a necessary consequence of facts that are then within the actual knowledge,**

of the person to whom the disposition is made.”

74. For the same reasons as set out above, the Tribunal determines that the proposed Clause 11.2 is deleted.

CHAIRMAN 

DATE 30/11/06

JG

LVT VALUATION – 36 WALTON STREET, LONDON SW3 1RDMatters Agreed

Valuation date	31 st March 2006.
Unexpired term	43.75 years
Yield on reversion	4.75%
GIA	2955 sq.ft (of which tenant's top floor addition 227 sq.ft)
Value of freehold comparable, No.22	£930 p.sq.ft

Matters Determined

Discount for location	5%
Freehold unimproved value	£2,490,408
Leasehold unimproved value	£1,660,757
Value of improvements	
(i) top floor	£100,334
(ii) other	£20,000
Relativity	approx. 66.7%
Ground rent on review	£12,452 p.a.
Yield on term	5%

Freehold Value 2955 sq.ft. GIA @ 930 p.sq.ft	£2,748,150
(i) less 5% for location	– 137,408
(ii) less tenant's improvements	
(a) 4 th floor 227sq.ft @ £442 p.sq.ft	– 100,334
(£930 psq.ft less 5% = £884 p.sq.ft	
50% = £442 p.sq.ft)	
(b) Other improvements	– 20,000
Freehold value	<u>£2,490,408</u>

Term

Ground rent £1010 p.a.

YP 4.75 years @ 5% 4.137

4,178

Review to ground rent 0.5% of Freehold = 12,452 p.a.

YP 39 years @ 5%

PV 4.75 years @ 5% 13.5

168,102

Reversion to £2,490,408

PV 43.75 years @ 4.75% 0.1313

326,991

499,271

Marriage Value

Freehold value

2,490,408

less landlord's interest

499,271

less tenant's interest

1,660,757

330,380

50%

165,190

Premium payable

£664,461

APPENDIX B

Revised Valuation

36 Walton Street

Freehold with vacant possession 2,728 @ £930	£2,537,040
227 @ £465	<u>£ 105,555</u>
	£2,642,595

Rent	£1,010	
YP for 4.75 years @ 5%	<u>4.137</u>	£4,178

Review to	£13,213	
YP for 39 years @ 5%		
PV in 4.75 years @ 5%	<u>13.5</u>	£178,375

Reversion to	£2,642,595	
PV in 43.75 years @ 4.75%	<u>0.131</u>	£346,179
		£528,732

Lease @ 64%	£1,691,260	
Less Review rent	£13,213	
Less palatable @ 0.1%	<u>£ 2,642</u>	
Excess	£10,571	
YP for 39 def 4.75 @ 5%	<u>13.5</u>	£ 142,708
		£1,548,552
		<u>£2,077,284</u>

Latent value	£ 565,311
Hope value @ 20%	£ 113,062
Plus term and reversion	<u>£ 528,732</u>
	£ 641,794

Marriage value

Freehold with vacant possession		£2,642,595
Market value of freehold reversion	£ 641,794	
Leasehold	<u>£1,548,552</u>	£2,190,346
Marriage value		£ 452,249
@ 50%		£ 226,124
Market value of reversion		<u>£ 641,794</u>
		£ 867,918

say £868,000

**Roland Cullum
10th October 2006**

APPENDIX C

Revised Calculation
adopting g/a of 2955 sq ft and
227 sq ft for 4th Floor

Valuation under Leasehold Reform Act 1967

36, Walton street, SW3

1. Landlord's existing interest

Current ground rent

Ground rent			£1,010	
Years purchase	4.75 years at	7.00%	<u>3.9264</u>	£3,966

Reviewed ground rent

Ground rent			£11,255	
Years purchase	39.00 years at	7.00%	13.2649	
Deferred for	4.75 years at	7.00%	<u>0.7251</u>	£108,262

Total value of ground rent income £112,228

Reversion to:

Unencumbered unimproved freehold value		£2,251,000	
Deferred for	43.75 years at	4.75%	<u>0.1313</u>
			<u>£295,554</u>

Total value of landlord's existing interest £407,782

2. Marriage value calculation

Unencumbered unimproved freehold value		£2,251,000	
less			
Landlord's existing interest	£407,782		
Tenant's existing interest	<u>£1,591,000</u>		
		<u>£1,998,782</u>	
		£252,218	
Landlord's share of marriage value,		<u>50%</u>	£126,109

3 Premium payable

Loss to the landlord upon enfranchisement	£407,782
Plus half marriage value	<u>£126,109</u>
Premium payable	£533,891

But say, £534,000

To: ...sters

From:

Fax: CMS CAMERON MCKENNA LTOPCALL at: 14-SEP-2006-10: 46 Doc: 457 Page: 005

Transfer of part of registered title(s)

Land Registry

TP1

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- ☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- ☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- ☐ It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred *Leave blank if not yet registered.* BGL16993

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

4. Property transferred *Insert address, including postcode, or other description of the property transferred. Any physical exclusions, e.g. mines and minerals, should be defined. Any attached plan must be signed by the transferor.*

The land with the building or buildings thereon and known as 36 Walton Street London SW3

The Property is defined: Place "X" in the appropriate box.

- ☒ on the attached plan and shown coloured pink *State reference e.g. "edged red".*
- ☐ on the Transferor's title plan and shown *State reference e.g. "edged and numbered 1 in blue".*

5. Date

6. Transferor *Give full name(s) and company's registered number, if any.*

The Wellcome Trust Limited (registered number 2711000) (as trustee of the Wellcome Trust)

7. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

Cecil Properties Limited

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

8. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

14 Milner Street London SW3 2PU

9. The Transferor transfers the Property to the Transferee

10. Consideration Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, in appropriate memorandum in the additional provisions panel.

- ☒ The Transferor has received from the Transferee for the Property the sum of In words and figures.
[] Pounds (£[])
- ☐ Insert other receipt as appropriate.
- ☐ The transfer is not for money or anything which has a monetary value

11. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

- ☒ full title guarantee ☒ limited title guarantee

but for the purposes of the Law of Property (Miscellaneous Provisions) Act 1994 (the "Act") subject to the following provisions:

- 11.1 the covenant implied by Section 2 (1) (b) of the Act is amended by deleting from that section the words "his own cost" and substituting the words "the cost of the person to whom he disposes of the Property"
- 11.2 Section 6(2) (a) of the Act is to be construed as if all entries made in any public register are within the actual knowledge of the Transferee

12. Declaration of trust Where there is more than one Transferee, place "X" in the appropriate box.

- ☐ The Transferees are to hold the Property on trust for themselves as joint tenants
- ☐ The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- ☐ The Transferees are to hold the Property Complete as necessary.

13. Additional provisions

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

13.1 Definitions of terms not defined above

The "Lease": means a lease of the Property dated 10 April 1990 made between The Official Custodian for Charities (1) The Trustees of Henry Smith's Charity (2) and Peter Hayes George (3)

The "Scheme": means the Scheme of Management set out in the Schedule to an Order of the High Court of Justice dated 20 July 1983 which came into force on 2 November 1983 which is made pursuant to the said Order affecting properties in the area in which the Property is situate being an area in respect of which the Secretary of State for the Environment issued a Certificate under Section 19(1) of the Leasehold Reform Act 1967 on 4 April 1977

13.2 Declarations

- 13.2.1 The Transferor is the trustee of the trusts created under the Will of Sir Henry Wellcome and now collectively known as the Wellcome Trust (a registered charity number 210183) and is entering into this Transfer subject to Paragraph 13.2.5 of this Panel 13 below

- 13.2.2 The Property is held in trust for the Wellcome Trust, a non-exempt charity, and this Transfer is not one falling within Paragraph (a), (b) or (c) of Section 36(9) of the Charities Act 1993, so the restrictions on disposition imposed by Section 36 of that Act apply to the Property
- 13.2.3 This Transfer is executed for the purposes of and to give effect to Section 8 of the Leasehold Reform Act 1967 as amended.
- 13.2.4 The Transferee declares that the Transferee is the registered proprietor of title number NGL653699 which comprises the Lease free from encumbrances and that it is intended that the Lease shall merge with the freehold
- 13.2.5 The Transferor enters into this Transfer in its capacity as the trustee for the time being of the Wellcome Trust and not otherwise and it is hereby agreed and declared that notwithstanding anything to the contrary contained or implied in this Transfer:
- (a) the obligations incurred by the Transferor under or in consequence of this Transfer shall be enforceable against it or the other trustees of the Wellcome Trust from time to time; and
 - (b) the liabilities of the Transferor (or such other trustees as are referred to in sub-paragraph (a)) in respect of such obligations shall be limited to such liabilities as can and may lawfully and properly be met out of the net assets of the Wellcome Trust for the time being in the hands or under the control of the Transferor or such other trustees
- 13.2.6 The Property is wholly situated within the area of the Scheme and the provisions of the Scheme shall apply to this Transfer and the Property is sold subject to and with the benefit of (as appropriate) the Scheme

13.3 Application to merge leasehold title

The Transferee applies to the Chief Land Registrar to close the said leasehold title number NGL653699 and cancel the entry relating to the Lease in the Charges Register of title number BGL16993

13.4 Certificate of Transferor

The Transferor certifies that the Transferor has power under the trusts of the Wellcome Trust to effect the disposition resulting from this Transfer and that the Transferor has complied with the provisions of Section 36 of the Charities Act 1993 as applicable to it

14. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

Signed as a deed by THE WELLCOME TRUST LIMITED (as trustee) acting by its attorney

under a Power of Attorney dated 1 June 2006 in the presence of:

THE WELLCOME TRUST LIMITED
acting by its attorney

Signature of witness _____

Name (in BLOCK CAPITALS) _____

Address _____

Occupation _____

To: Forsters

From:

Fax: CHS CAMERON MCKENNA LTOPCALL at: 14-SEP-2006-10:46 Doc: 457 Page: 008

Signed as a deed on behalf of Cecil Properties
Limited, a company incorporated in the British
Virgin Islands by
and
being persons who, in accordance with the laws
of that territory, are acting under the authority of
the company

Signatures

Authorised Signatories