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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**Leasehold Reform Housing and Urban Development Act 1993 (as amended)  
S24**

**Case No. LON/ENF/1063/04**

**In the matter of 11-20, Cleveland Mansions, Widley Road, London W9.**

**Parties**

**SCMLLA Limited**

**Applicants**

**Gesso Properties (BVI) Limited**

**Respondents**

**Appearances:**

**For the Applicant**

**Mr T Harry - Counsel**

**Miss J Ellis – FRICS**

**Miss K Glanville of Messrs Pemberton Greenish**

**For the Respondent**

**Miss L Sinclair**

**Counsel**

**Mr I Asbury**

**BSc(Hons)MRICS**

**Mr Wilkins**

**Stallard Solicitors**

**Committee :**

**Mr A A Dutton**

**Chair**

**Mr P Casey**

**MRICS**

**Mrs G V Barrett**

**JP**

**Hearing date: 7/8 October 2004**

**Decision date: 23<sup>rd</sup> November 2004**

## **DECISION**

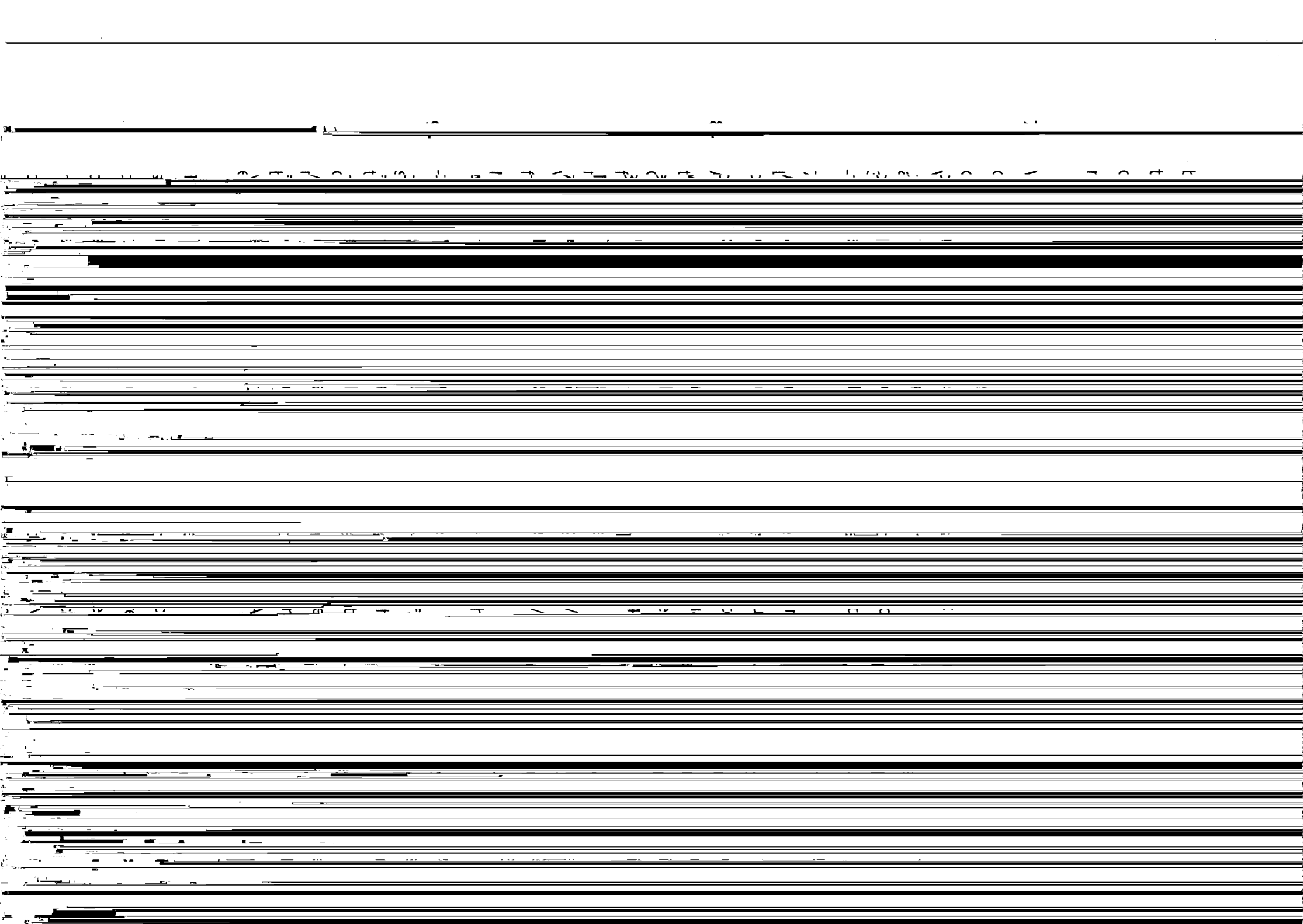
### **A. BACKGROUND**

1. This was an application under s24 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) ("the Act") by SCMLLA Limited ("the Applicants") for a determination by the Tribunal of the terms of acquisition of the block of flats at 11-20 Cleveland Mansions, Widley Road, Maida Vale, London W9 ("the Property"). SCMLLA Limited is a Company incorporated on the 22 October 2003 for the specific purpose of acquiring the freehold interest in fourteen blocks of flats known as Southwold and Cleveland Mansions, Widley Road, London W9. The Company's share capital is £140.00 divided into 140 shares each which is apparently the number of flats in the blocks mentioned above.
2. Gesso Properties (BVI) Limited is the freeholder of the majority of the blocks and in particular this block of 11-20 Cleveland Mansions.
3. The procedure to acquire the freehold started with a Notice under s13 of the Act dated 13 November 2003 which proposed a purchase price of £43,000.00 for the freehold of the property and £100.00 for amenity land which comprised the garden to the rear. The Respondents lodged their Counter Notice, dated 16 January 2004 accepting the proposals contained in the initial Notice save only the purchase price for the premises and the amenity land. The counter proposal appeared to be a price of £155,570.00 which on the face of the Notice appeared to include the amenity land value.
4. Five of the ten lessees in the block were participating in the claim and the flats involved were 11,14,16,18, & 20 Cleveland Mansions. The leases of the participating parties expire on the 25 March 2079, flats 12 & 15, which are non-participating, have a longer term expiring on the 25 March 2979 and the remaining leases expire in March 2079. There are a number of matters of agreement which are as follows:

- The ground rents payable by the participating and non participating tenants
  - The date of the valuation as the 16 January 2004.
  - The floor area of the participating flats.
  - The price payable for the amenity land at £100.00.
5. In the papers we had before us was a schedule of facts which appears to have been completed in August of this year. It transpired that some items apparently agreed then were no longer agreed. We deal with those in more detail but in essence they are as follows:
- The differential between the ground and first floor flats and those on other floors.
  - The value of the extended Leases for the participating tenants properties.
- In addition, the following items had always been in dispute and they are as follows:
- The relativity applicable to the difference between the extended Lease and freehold value.
  - The yield applicable to the subject premises.
  - Whether or not hope value was to be taken in to account and if so, how.

## **B. HEARING**

6. Before we deal with the evidence it is right to record an application made by the Respondent's Counsel, Miss Sinclair at the start of the hearing. Miss Ellis sought to introduce an addendum to her Report which had been provided to the Respondents' representatives the day before. Fortuitously, they were then in conference and accordingly Mr Asbury had the chance to deal with the fresh evidence. However Miss Sinclair still felt that the addendum should not be allowed because it had been introduced very late in the day and dealt with matters that were within Miss Ellis's personal knowledge sometime before its production. Mr Harry for the Applicant, indicated that the results of an auction which formed the basis of the addendum had only come to light, in detail, after Miss Ellis's initial Report which was dated 20 July 2004. Miss Ellis herself explained that with summer holidays intervening she had not had the chance to properly assimilate the information she had gained from this particular auction and that she had done the



prepared to accept the previous Leasehold Valuation Tribunal's determination of 91% although she felt that was perhaps on the low side. She made no allowance for hope value. This evidence was consistent with the evidence she had given to the Leasehold Valuation Tribunal and the Lands Tribunal referred to above. Where however she differed from her Report was the addendum which was produced.

10. This related to ground rent sales at auction on 15 July 2004. Cadogan Estates offered for sale seven freehold interests in blocks in Cadogan Place. Miss Ellis was instructed to advise five of the seven groups of Lessees. Apparently none of the Leases had less than 81 years expired, most having 114 years and some, longer. Most flats were held on a peppercorn rent but there were ground rents, no lot yielding less than £600.00 per annum and some £1000.00 or more. Indeed we were told that the income from a single block varied from £600.00 to £7,750.00. This auction evidence, she stated, was a "strong body of real market evidence and cannot be ignored". Indeed she went so far as to say that the market could be based on this auction and was the evidence upon which she based her yield figure which now stood at 11%. A revised valuation was produced giving an enfranchisement price of £64,896.00. She was subjected to some robust questioning from Miss Sinclair but did not demure from her evidence. On the question of hope value, in answer to questions from the Tribunal, she was of the view that hope value should apply to all the flats and not just the participating ones and that it should be included at the outset, being incorporated, she felt, within an all risks yield. In any event, she was of the view that the lease lengths were too long for any prospect, from the Landlords point of view, of hope value.
11. Mr Asbury, on behalf of the Respondents, gave evidence and we had before us a Report dated 10 August 2004. The Report was critical of the Decision made by the Leasehold Valuation Tribunal and in particular the Lands Tribunal. The Report had been read by us. His evidence in respect of relativity was that a percentage of 89.5% was reasonable for Leases of 75.25 years remaining. As to yield, he took a figure of 6% which compared, initially, with a figure that Miss Ellis had applied of

8.5% but of course had now been uplifted considerably by her as a result of the auction referred to above. He was of the view that hope value should be included in respect of the non-participating properties.

12. Relying upon sales of properties in Southwold and Cleveland Mansions since the year 2000 and taking into account any improvements, Mr Asbury valued the subject flats on the basis they were held on 999 year leases with a share of the freehold at prices between £275,000.00 for the third-floor flats to £285,000.00 for the ground and first floor flats. These figures had been based, to an extent, on the figures that had been agreed in the previous hearing but uplifted for the passage of time. It is right to say however, that it appears no inspection had been made of any of the flats in the subject block. There was a good deal of argument on the question of yield but he had relied upon the auction evidence which was included in his bundle (which also included the Cadogan Place auction results) and which, when averaged out, gave initial yields of 4.3%. He concluded that the yield rates to be applied in this case would be 6%, possibly 6.9% at best.
13. On the question of hope value, he felt it was unreasonable for the freeholder to be debarred from receiving further monies in relation to the non-participating tenants seeking lease extensions in the future. This was the more so of course in respect of the shorter leases where some 75.25 years were remaining and he had built into the total figure payable a hope value representing 50% of the half share attributable to the Landlord of the marriage value. He relied also on evidence of lease extensions being requested by non-participating tenants, most recently one in respect of a property at 45 Cleveland Mansions, where a price of £11,500.00 had been paid to extend the Lease to a term of 999 years reserving however the ground rent. His conclusion was that the price payable for the freehold should be £127,375.00.
14. We received submissions from Counsel for the Respondent. Miss Sinclair attacked the evidence of Miss Ellis and the reliance on the one auction to create a new

market. There was also criticism of her refusal to take in to account actual sales evidence but instead to prefer graphs which the Respondent indicated did not appear to relate to the Maida Vale area. As to yield rates, support was drawn from the Lands Tribunal Case in respect of Shawfield Street and her view was that there was hope value which should be applicable to all flats. She relied on a decision of the Lands Tribunal in Blendcrown Limited and the Church Commissioners for England which was issued on the 8/9 September 2003. For the Applicants, Mr Harry pointed out that near freehold values had been agreed in May/August 2002 and although the valuation date in these proceedings was January 2004, there was no good reason to abandon those values. Nor was there any good evidence to increase same. Miss Ellis, he told us, was relying on the indices showing less than 1% change which did not require to be factored into the calculations. He could also see no good reason why the percentage differences between floor levels could not be maintained. On the question of relativity, the Applicants view was that purchasers were not so sophisticated as to be able to differ between the length of the Lease as it would have been in 2002 and in January 2004 and that the graphs of relativity show a range of opinions and such was that range that there appeared to be again no reason to make any changes to the figures that had been applied by the Leasehold Valuation Tribunal and Lands Tribunal as referred to above.

15. There were significant changes on the question of yield and we were asked to adopt the views of Miss Ellis. Insofar as hope value was concerned we were referred to "Hague" and also the decision of the member in the Lands Tribunal where he found that hope value was not applicable.
16. In addition to the matters arising under the application for enfranchisement a discreet point had arisen at the last hearing on the question of costs. A witness statement had been prepared by Mr James McDonald of Peacock and Co., explaining why an adjournment was needed at the previous hearing in July 2004. The statement appeared to indicate that Mr Asbury had been instructed but had not been able to prepare his report because of the failures of the Applicant.

Evidence at the hearing indicated that in fact Mr Asbury had not been formerly instructed before the hearing and indeed was only fully instructed once the adjournment had been granted. The Applicant was therefore of the view that the failure by the Respondents to instruct Mr Asbury until after 26 July 2004 was an abuse and that we should therefore award costs pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. This provides that a Leasehold Valuation Tribunal may determine that a party to proceedings should pay costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2) of paragraph 10. The appropriate sub-paragraph is paragraph (b) which states:

*"He has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings".* The sum which we can order shall not exceed £500.00 at present. Miss Sinclair invited us to read the Witness Statement and to draw a conclusion that both sides were as bad as each other. She had no particular note of the Decision made by the Tribunal following the hearing and was of the view that we could not make a decision without a transcript. We were referred to letters written by Miss Ellis on the 30 July to the Chairman of the Tribunal who heard the application to adjourn. We did have a copy of the Decision of that Tribunal and we will deal with this discreet point later in the Decision.

### **C. INSPECTION**

17. We inspected the subject premises at the conclusion of the hearing on the 8 October. With the assistance of Mr Cormack, the Lessee of number 20 Cleveland Mansions, we were able to inspect his flat and his neighbours. The block is situated in a road of similar properties in Maida Vale. It is a pleasant residential area. Flat 20 was on the top floor and the climb was noticeable. The block itself was in need of attention. The external decoration was poor and at the time of our inspection the common parts were undergoing refurbishment works. We also inspected the exteriors of 11-20 Southwold Mansions referred to in the hearing and which,



certainly from external inspection, appeared to be in better condition. We understood those were owned by Landlords other than the present Respondents.

#### **D. DECISION**

18. We will deal firstly with the discreet points concerning costs arising from the previous adjourned hearing. The Decision of the Tribunal at that stage was reached having heard lengthy arguments. The Tribunal records as follows:

*"The Tribunal considers that the present position of no valuation evidence being available on the day had been arrived at by the entrenched positions adopted by both parties".* They went on to reluctantly accede to the request for an adjournment because without valuation evidence the parties would be unfairly prejudiced. At that time the Tribunal had before them the witness statement of Mr McDonald. On the face of that witness statement one can well understand why the original Tribunal reached the view that both sides were as bad as each other. However, in the course of our hearing it became clear that Mr Asbury had not in fact even been instructed. Paragraph 7 of Mr McDonald's witness statement he states: *"The direction to exchange expert reports is of particular importance to the matter given the significance placed by both parties on the issue of valuation. The Applicants have not offered to exchange expert valuation reports and with Pemberton Greenish letter to Peacock and Co., of the 19 July 2004, was forwarded Jennifer Ellis's (proposed expert for the Applicants) draft schedule of agreed facts and issues. This letter also asserted that a copy had been provided to the Respondents proposed expert Ian Asbury. However Mr Ian Asbury has subsequently confirmed that he has neither received a draft statement of agreed facts and issues nor is he aware of any attempts to communicate with him in that respect. There has therefore been no opportunity to consider let alone agree the said statement.*

Paragraph 8. *"As a direct result of this inactivity from the Applicant Ian Asbury is not in a position properly to prepare for a hearing at this time."*

19. In fact it appears clear that Mr Asbury had not even been instructed to prepare for a hearing by the Respondents. The witness statement therefore is, and we give Mr McDonald the benefit of the doubt, unintentionally misleading. There is no doubt that expert evidence would be needed from both parties to deal with this case on a proper basis. It appears however, that the Applicants had for sometime nailed their colours firmly to the mast. They were intending to rely upon the matters that had gone before the Leasehold Valuation Tribunal and the Lands Tribunal and saw little, if any, reason to depart from those and hoped therefore that there would have been the possibility of an agreement. It would therefore, it seems to us, to have been perfectly possible to have instructed Mr Asbury to proceed on that basis and to see whether there was at least some common ground between the parties. He was not instructed at all. In those circumstances we find that the Respondents were at fault and had they taken a more pro-active approach to the matter the first hearing would not necessarily have been adjourned. That is not to say however that there is not some evidence that the Applicants had, in the words of the Tribunal dealing with the adjournment, adopted "an entrenched attitude". We would therefore allow a sum of £250.00 as a contribution towards the costs of the Applicants incurred as a result of the adjourned hearing.
20. We turn now to the valuation evidence. The issues to be decided to enable us to reach a decision in this case, are fairly succinct. They are as follows:
- a. Has relativity changed since 2002?
  - b. Should the prices agreed in 2002 be changed to allow for the passage of time?
  - c. Should the agreement reached in 2002 on the ratio of floor level to price, be altered?
  - d. Did the new evidence introduced by Miss Ellis change the yield rates put forward by the parties in 2002 or determined by the Leasehold Valuation Tribunal and Lands Tribunal at that time?
  - e. Should hope value be included in the calculation and if so, by what amount?

21. We will deal firstly with the long leasehold values of the properties, relativity and the difference that floor levels might make to the value. Miss Ellis saw no reason to depart from the figures that been agreed in the previous case. Mr Asbury sought to vary, although not significantly the ratios between the floor levels. Miss Ellis suggested that there had been no uplift since the previous decision in 2002 to the valuation date in January 2004. The indices relied upon by her showed less than a one percent uplift. Mr Asbury considered comparable evidence of flat sales in the road justified an uplift. This comparable evidence related primarily to three flats in the opposite block which were on the face of it developer sales of refurbished and modernised flats. The totality of the evidence presented to us did not suggest any significant uplift but we do find that there has been some. On the question of differences in value for floor level we find that there is little difference between the values at ground, first, second and basement levels, although some small allowance should be made. We do find that at the third floor level a larger allowance should be factored into the equation.
22. Taking the evidence before us, our inspection and our own knowledge and experience we have concluded that the value of the existing leaseholds is as follows:
- |                              |          |
|------------------------------|----------|
| (a) Flats 12A, 14, 15 and 16 | £275,000 |
| (b) Flats 11, 12, 17 and 18  | £270,000 |
| (c) Flats 19 and 20          | £260,000 |
23. In so far as relativity is concerned Miss Ellis relied on the previous decisions of the Leasehold Valuation Tribunal and the Lands Tribunal at 91%, indicating that in her view the market was not sophisticated enough to differentiate between the lease lengths in 2002 and 2004. She also suggested that the relativity level of 91% was on the low side when considering the graphs. Mr Asbury adopted a figure of 89.5% relying on the graphs and taking in to account comparable evidence of sales of shorter and extended lease flats in adjacent blocks. We find that there is a slight change in relativity based on the graph evidence and we also find that in this

market the participants are not so unsophisticated as to ignore differences in lease lengths, even if quite small. We find that a figure of 90% is appropriate giving the following values for the flats, bearing in mind that flats 12 and 15 are already subject to extended terms.

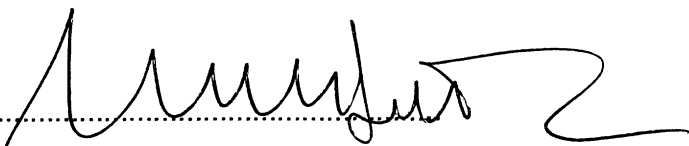
- |     |                      |           |
|-----|----------------------|-----------|
| (a) | Flats 12A, 14 and 16 | £247,500  |
| (b) | Flats 11, 17 and 18  | £243,000  |
| (c) | Flats 19 and 20      | £234,000. |

24. We turn now to the question of yield. Miss Ellis relied on the evidence of one summer night in July 2004. Mr Asbury had also relied on auction particulars on the same evening but with widely differing results. In essence Miss Ellis was asking us to disregard all that we have heard before in numerous cases showing yield rates and patterns relating thereto. We are not prepared so to do. The transactions she relied upon were part only of that July night. Even in Cadogan Place there were differing figures and we were told that at the auction tenants with "rights" to acquire the freehold not unnaturally declined to participate in the bidding process. In those circumstances it is difficult to escape the conclusion that the bidders at the auction knew that waiting in the wings were potential "right" holders and that the lots were effectively "dead".
25. Mr Asbury's evidence on yields was also subject to question. He did not have detailed knowledge of the sales circumstances. His initial yield analysis threw up widely differing figures. In his report he had referred to an initial yield of 3.59% whereas on closer examination it was 4.3%. He had carried out an analysis of the capitalisation of the ground rent at 6% to reach the initial yield figure of 3.59% which proved to be incorrect. This cast into doubt the basis of his assumption of 6% as the relevant yield applicable to this property.
26. We therefore found that there was little assistance to be found from either expert on this topic. Miss Ellis appeared to be ploughing a lone furrow and Mr Asbury's own calculations did not appear to support the figure he argued for. In those

circumstances, and given that in the hearing before the Lands Tribunal in January 2004 the Applicant in this case accepted the yield rate of 8.5%, we see no reason to depart from that figure. The oft touted case relating to the property at 57 Shawfield Street was decided on the facts and evidence before that Tribunal.

27. We turn now to the question of Hope Value. Notwithstanding the findings of the previous Leasehold Valuation Tribunal and Lands Tribunal Mr Asbury argued that there must be some hope value for the non participating leases. To be fair the Lands Tribunal had not ruled out the possibility of hope value. Mr Asbury drew to our attention that there had recently been a lease extension (6<sup>th</sup> October 2004) at 45 Cleveland Mansions where a sum of £11,500 had been paid. He also relied on the evidence of a number of lease extensions both in the blocks and at addresses in Cheltenham and at Queens Club Gardens London W14. Miss Ellis utilised the same argument that had been put to the Lands Tribunal and in particular that hope value should be reflected in the yield.
28. Our view is that there must be some hope value in the non participants eventually seeking to lengthen the lease. The present levels of lease length in the Property are such that the ability to raise a mortgage against the flat will become an issue in the not too distant future. In the absence of the Act the Landlord is not limited to the share of the marriage value he can seek and there was clear evidence before us of deals being struck where premiums of between £10,000 and £15,000 were being obtained. We find that such deals are likely to occur and in the foreseeable future. However, we do not attribute the value to such "chance" at the same level sought by Mr Asbury. Taking a likely premium, as evidenced by the examples of extensions outside the Act of £15,000 we find that a percentage to reflect the hope value is not more than 15% in this case. That gives a figure of £2250 for the short lease of the non participating parties.

29. We conclude, taking all the evidence into account that the correct figure for the purchase of the freehold of 11/20 Cleveland Mansions is £87450 as set out on the attached schedule.



Chairman



Date

## **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

Section 13 Leasehold reform Housing and Urban Development Act 1993  
Collective Enfranchisement of 11/20 Cleveland Mansions, Widley Street, London  
W9

#### **VALUATION**

Valuation Date - 16<sup>th</sup> January 2004  
Participating Tenants Flats 11, 14, 16, 18 and 20

##### **Value of Freeholders Interest – Participating Flats**

	£	£	£
Ground Rents received	365		
YP 8.5% for 9.2 yrs	6.233	2275	
Fixed increase from 3/13 to	730		
YP 8.5% for 33 yrs def 9.2 yrs	5.157	3765	
Fixed increase from 3/46 to	1460		
YP 8.5% for 33 yrs def 42.2 yrs	0.349	510	
Reversion to 999 year/freehold values	1,350,000.		
deferred 75.2 yrs @8.5%	0.0022	<u>2970</u>	<u>9520</u>

##### **Value of Freeholders interest – Non participating flats 12A, 17 and 19**

Ground Rents received	180		
YP 8.5% for 9.2 yrs	6.233	1122	
Fixed increase from 3/13 to	360		
YP 8.5% for 33 yrs def 9.2 yrs	5.157	1857	
Fixed increase from 3/46 to	720		
YP 8.5% for 33 yrs def 42.2 yrs	0.349	251	
Reversion to 99 year/freehold values	805,000.		
Deferred 75,2 yrs @ 8.5%	0.0022	<u>1771</u>	<u>5001</u>

Value of Freeholders interest – Non participating Flats 12 and 15

	£	£	£
Ground Rent received	185		
YP 8.5% for 9.2 yrs	6.233	1153	
Fixed increase from 3/13 to	370		
YP 8.5% for 33 yrs def 9.2 yrs	5.157	1908	
Fixed increase from 3/46 to	740		
YP 8.5% in perpetuity def 42.2 yrs	0.375	<u>278</u>	<u>3339</u>

Marriage Value - Participating flats

999 year/freehold values		1,350,000.	
Existing lease values	1,215,000.		
Value of Freeholders interest	9,520	<u>1,224,520</u>	
Total Marriage value		<u>125,480</u>	
50% to Freeholder			<u>62740</u>

Hope value for non participating flats

3 x £2250		<u>6750</u>
Amenity land agreed		<u>100</u>

**Total price payable £87,450**