

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON  
RENT ASSESSMENT PANEL

THE LEASEHOLD REFORM ACT 1967

Ref: LON/LVT/1849/05

Re: 56 Avenue Road, London NW8 6HT

Applicants: Charles George Samuel Eyre, James Henry  
Robert Eyre, Peter Lomas and Hugh John Lomas  
(In their capacity as Trustees of the Eyre Estate)

Respondents: Stephen Leslie Plant and Linda Barbara Plant

Appearances: Mr K Munro, of Counsel, instructed by Messrs.  
Pemberton Greenish, Solicitors

For the Applicants

Mr J Male Q.C., instructed by Messrs. Magrath &  
Co., Solicitors

For the Respondents

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb  
Mr C White FRICS  
Mr D L Edge FRICS

Date of decision: 27<sup>th</sup> March 2006

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

**The Leasehold Reform Act 1967**

**Ref: LON/LVT/1849/05**

**Re: 56 Avenue Road, London NW8 6HT**

**Between:**

**Charles George Samuel Eyre, James Henry Robert Eyre, Peter Lomas and  
Hugh John Lomas  
(In their capacity as Trustees of the Eyre Estate)**

**Applicants**

**and**

**Stephen Leslie Plant and Linda Barbara Plant**

**Respondents**

**THE TRIBUNAL'S DECISION**

1. 56 Avenue Road, St John's Wood, London NW8 6HT ("the Property") is subject to a Lease dated 30<sup>th</sup> April 1931 ("the lease") between Henry Samuel Walpole Eyre and Robert Kingsmil Eyre (the then Trustees of the Eyre Estate) as lessors, and Francis Henry Myers as lessee, for a term of 99 years from 24<sup>th</sup> June 1930 at an annual rent of £300.
2. On 7<sup>th</sup> November 2001 the Respondents, Mr S L Plant and Mrs L B Plant, became the registered proprietors of the leasehold title, which is registered at Her Majesty's Land Registry under title number 405700.
3. By a licence dated 12<sup>th</sup> May 2004, the Applicants granted the Respondents licence to carry out alterations to the Property. Works were carried out at the Property, but these are not accurately represented on the licensed drawings.
4. On 21<sup>st</sup> September 2004, the Respondents served on the Applicants a Notice of Claim dated 20<sup>th</sup> September 2004 under section 8 of the Leasehold Reform Act 1967 ("the Act").
5. By a Notice in Reply dated 17<sup>th</sup> December 2004, the Applicants admitted the claim for the freehold of the Property.

6. On 10<sup>th</sup> January 2005, the Applicants made an application to the Tribunal to determine:
  - (1) The terms of the Transfer.
  - (2) The price to be paid for the freehold of the Property.The Applicants and the Respondents have since agreed the terms of the Transfer.
7. For the purpose of ascertaining the price to be paid, the parties agreed that:
  - (1) The valuation is pursuant to Section 9(1c) of the Act as amended.
  - (2) The value of improvements made to the Property by the works subject to the licence dated 12<sup>th</sup> May 2004 is to be disregarded.
  - (3) The valuation date is 20<sup>th</sup> September 2004.
  - (4) At the valuation date the lease had 24.7 years unexpired.
  - (5) Marriage value should be divided equally between the parties.
8. The parties have not agreed the following:
  - (1) The value of the freehold.
  - (2) The gross internal area ("GIA") before improvement.
  - (3) The effect on value of improvements which is to be disregarded.
  - (4) The value of the existing lease.
  - (5) The relativity between the existing lease and the freehold.
  - (6) The capitalisation rate.
  - (7) The deferment rate.

The main issue is the enfranchisement price for the Property.
9. At the hearing of the Application, the Applicants, The Trustees of the Eyre Estate, were represented by Mr K Munro of Counsel, instructed by Messrs. Pemberton Greenish, Solicitors. The Applicants were represented by Mr J Male Q.C., instructed by Messrs. Magrath & Co. Mr Julian E C Briant BA MRICS of Messrs. Cluttons on behalf of the Applicants, submitted a report dated 12<sup>th</sup> August 2005. Mr Briant assessed the enfranchisement price for the freehold at the valuation date calculated in accordance with Section 9(1c) of the Act at £3,520,000. Mr Kenneth Gavin Buchanan BSc (Est Man) MRICS of Messrs. AtisReal on behalf of the Respondents, submitted a report dated 31<sup>st</sup> August 2005. Mr Buchanan assessed the enfranchisement price at £2,575,000. Mr Briant and Mr Buchanan attended the hearing and gave additional oral evidence.
10. The Tribunal inspected 25 St John's Wood Park NW8, which was used as a comparable, on the afternoon of 6<sup>th</sup> September 2005. The subject property, but not the mews house, was inspected on 14<sup>th</sup> October, and the Mews house was inspected on 17<sup>th</sup> November. All these properties were inspected internally and externally and in addition the other comparables

used by the valuers for both parties were inspected externally. The inspection of 25 St John's Wood Park confirmed the description of the property in Mr Briant's report. The inspection of the subject property showed a high standard of internal décor and fittings, but in several aspects did not comply with the approved plans. This also applied to the mews house. The Tribunal was supplied with a hearing bundle with plans as existing and at our inspection did our best to check these. The original accommodation and the accommodation as seen is as follows:

<u>Main House</u> (Detached house)	<u>Original</u>	<u>As seen</u>
<u>Basement</u>	3 rooms and storage	Garage for 4 cars. Staff flat comprising living room bedroom, kitchen, bath/wc, utility, games room with separate wc, Cloakroom
<u>Ground Floor</u>	Entrance hall, 5 rooms Cloakroom, 2 staircases	Hall, kitchen/diner, 5 rooms, cloakroom, 2 staircases Includes extensions over garage
<u>First Floor</u>	5 rooms, bathroom/wc	Master bedroom with 2 dressing rooms and 2 en suite bathroom/wc Bedroom with en suite bathroom/wc Void in entrance hall filled to provide extra space. 2 additional balconies to rear.
<u>Second floor</u>	4 rooms, 2 bathroom/wc	4 bedrooms each with en suite bathroom/wc
<u>Mews House</u> (3 storied semi-detached house)		
<u>Ground floor</u>	Garage, entrance stairs	Living room with kitchen Cloakroom Stairs Driveway parking
<u>First floor</u>	2 rooms, bathroom/wc	2 bedrooms each with en suite Bathroom/wc or shower/wc

Second floor Attic room

Bedroom with cupboard

11. In their reports the differences between the two valuers were as follows:

	<u>Mr Briant</u>	<u>Mr Buchanan</u>
Unimproved freehold Vacant possession	£9,000,000	£7,500,000
Unimproved leasehold	£4,500,000	£4,125,000
Yield	5.25%	6%
Enfranchisement price	£3,520,000	£2,575,000

Both valuers adopted the conventional valuation approach and capitalised the rent for the unexpired term with reversion to the freehold value with vacant possession deferred for that term and then added 50% of the marriage value.

**Unimproved freehold vacant possession value of the Property**

12. Mr Briant contends for £9,000,000. He does so following an analysis of 42 Avenue Road and 25 St John's Wood Park. Mr Buchanan relied on evidence of four freehold comparables. These were from the sales of 42 and 46 Avenue Road, 34 Woronzow Road and 15 Acacia Road.

13. **42 Avenue Road**

- 1] Both valuers start from the sale of the freehold of 42 Avenue Road in December 2004. The difference between them is their adjustments for condition, location, house size and site size.

42 Avenue Road is located to the south of the Property and comprises a four-storey detached house that had been partly improved. The freehold interest was sold for £6,550,000 with completion in December 2004.

- 2] Mr Briant's adjustments were as follows:

42 Avenue Road	£6,550,000	December 2004
Deduction for location	-£250,000	£6,300,000
Add for size	+£2,165,000	£8,465,000

Add for site size	+£565,000	£9,030,000
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Unimproved FHVP value by reference to No. 42 Avenue Road		£9,030,000
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- 3] Mr Buchanan altered his written statement at the hearing to correct the sale price from £6.6 million to £6.55 million and this changed his adjusted price to £7,050,000.

Mr Buchanan's adjustments were as follows:

42 Avenue Road	£6,550,000	Completion December 2004
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Deduct for condition	-£ 500,000
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Location/position	-£ 500,000
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Add for site size	+£ 700,000
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Add for house size	+£ 800,000
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Adjusted price	£7,050,000
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- 4] In respect of location, Mr Briant said that No. 42 is in a better location than the Property and was located further to the south in that part of Avenue Road that had higher values. The Property was on a busy corner in comparison with No. 42. He deducted £250,000 to reflect location.

Mr Briant said the site size of the Property is significantly larger than that of No. 42. (17,420 sq.ft. v. 12,600 sq.ft.). Mr Briant had followed the approach adopted in a previous LVT decision in No. 64 Avenue Road (LON/LVT/1443/01) where he said that 22 ½% "pro rata approach" was used where there was a significant difference in relative sizes. Mr Briant said that in the present case, the Property is about 38% larger than No. 42 and he made an upward adjustment of £565,000.

In respect of house size, Mr Briant said that the Property in its unimproved state was larger than No.42 (gia: 10,500 sq.ft. v. 5,750 sq.ft.). Based the decision in 64 Avenue Road, he had adopted a 40% pro rata approach to house size adjustments leading to an addition of £2,165,000.

Mr Briant considered that there would have been no increase in value between the valuation date of September 2004 and the sale date of 42 Avenue Road in December 2004 and made no adjustment for time.

- 5] Mr Buchanan's first adjustment was to make an allowance of £500,000 for condition. Mr Buchanan considered No. 42 to be in very poor condition. He considered that No. 42 was in better condition than the Property. To

reflect the difference in condition between No.42 and the Property he deducted a sum of £500,000 which was equal to that which had been agreed between him and Mr Briant for tenant's improvements for No.42 (LON/LVT/1504/02).

Mr Buchanan deducted £500,000 for location/position. He considered No. 42 to be in a superior location in Avenue Road. Mr Buchanan referred to the decision on No. 64 Avenue Road where the Tribunal decided on £500,000 difference between No. 56 and No. 64.

Mr Briant said that No. 64 is two or three properties north of the subject property and nearer to a school. He considered that No. 42 and No. 46 are in very similar locations. He pointed out that at the time of the hearing on No.64 the emphasis was on different factors, for instance, the possibility of redeveloping the adjacent school and sites towards Swiss Cottage.

Mr Buchanan made an adjustment of £700,000 for site size. He also made an adjustment for house size. He assessed the area of the house at 9,600 sq ft, whereas Mr Briant assessed it at 10,500 sq ft. No. 42 is a smaller house (Mr Buchanan: 5,961 sq ft including garage block, Mr Briant: 5,750 sq ft). Mr Buchanan made an adjustment of £800,000 as compared with Mr Briant's adjustment of £2,165,000.

- 6] Mr Male submitted that in 64 Avenue Road, the difference in value between the locations of No.64 and No.56 Avenue Road was considered to be £500,000. The difference between No. 64 and No. 46 was considered to be £1,000,000. Mr Male submitted that there should be a deduction of at least £500,000 for location and that the deduction made by Mr Buchanan might be on the low side as the valuation date for No. 64 was 28<sup>th</sup> March 2001 and there had been an increase in values in this area of just under 20% between March 2001 and the valuation date in the present case in September 2004.

Mr Male submitted that Mr Briant had applied a rigid rules without any consideration of the particular circumstances of the case. Mr Briant referred in his report to "the 22 ½% pro rata approach" said to be found in the LVT decision on 64 Avenue Road. However, the Tribunal in that decision was not applying some standard pro rata approach, but was considering the facts of the particular case before it. The sheer size of Mr Briant's proposed adjustment called into question both his approach and the amount of the adjustment which he described as "humungous".

Mr Male submitted that Mr Buchanan had looked at the circumstances of the particular case rather than applying a rigid rule. However, Mr Briant had looked at the Tribunal's decision on 64 Avenue Road and concluded that it laid down principles of valuation rather than a consideration of the

particular effect on value in that particular case. This is clear from paragraph 9.13 of Mr Briant's report where he refers to "the 40% pro rata approach". He had been unable to identify the "previous cases" referred to in that paragraph apart from the case of 64 Avenue Road. Mr Briant had agreed in cross-examination that the law of diminishing returns must step in at some stage when dealing with larger houses. For example, if 5,000 sq ft is added to a house of 5,000 sq ft then that may have a particular effect of the value. However if 5,000 sq ft is added to a 10,000 sq ft house, then the effect of value may be less. Mr Male submitted that this applies in the present case. As Mr Briant was suggesting such a large adjustment, he should have carried out an analysis of the difference in space between No. 42 and the Property to justify his adjustment, but failed to do so.

Generally Mr Male submitted that it is important for the Tribunal to step back and see which of the values fits more closely into the pattern of values for this part of St. John's Wood. Mr Buchanan had stepped back and first checked his valuation against 46 Avenue Road, 34 Woronzow Road and 15 Acacia Road.

Mr Buchanan's analysis of those transactions supported his freehold valuation, although as part of his step back he added £300,000 to reflect the additional benefit of the mews house unimproved.

Mr Buchanan thought that the value of the mews house improved and sold separately was £750,000 to £1,000,000. Mr Buchanan had carried out a further reality check by reference to the sale of 37 Elsworth Road in October 2004 for £11,200,000.

Mr Briant had agreed that it was important for a valuer to step back and carry out a reality check. The "check" that Mr Briant had carried out in his report was to look at 25 St. John's Wood Park. Mr Male submitted that the Tribunal should disregard or place little weight on this transaction and accordingly it was unhelpful use this as a "check".

Mr Briant said that when valuing the unimproved and un-extended property potential can be included if it existed in the market. The purchaser could be a developer or an owner-occupier. He thought that when people buy they look for potential. They would need planning permission and consent from the Eyre Estate which takes time. They would also need to spend substantial sums on the property of about £300 to £500 psf, and incur other costs such as stamp duty.

Mr Male suggested that a reality check could be carried out by taking Mr Briant's valuation of an unimproved house and adding to it the cost of improvement which could be between £3,000,000 and £4,000,000. Adding on the further costs of delay, interest, financing, professional fees, legal fees and agent's fees, results in a figure of at least £13,000,000. If the purchaser of the unimproved house is a developer, there is a further



addition for a developer's profit in the region of 20%. This means that the Property would have to sell for a price upwards of £15,000,000 on the basis of Mr Briant's valuation. Mr Male submitted that this was out of kilter with the evidence of values in St John's Wood, particularly the sale of 37 Elsworthy Road, which was the highest value achieved for a house in the St. John's Wood area.

## 7] **The Tribunal's findings and adjustments – 42 Avenue Road**

The Tribunal agrees with both valuers that 42 Avenue Road is a useful comparable.

Mr Briant did not make any adjustment for the condition and in taking that view he was following the decision on No. 64 Avenue Road which also took the view that whilst the house was 'tired' that had no relevance in St. John's Wood where purchasers inevitably refurbished the house they bought whatever the condition. This Tribunal agrees with that approach. The Tribunal did not consider that it was appropriate to make any adjustment for condition.

The Tribunal, having looked at the exterior of No. 42 and considered it in relation to slightly inferior position of No. 56, agrees with Mr Briant that £250,000 is a sufficient allowance.

Mr Buchanan made adjustments of £1,500,000 for house size and site size (£800,000 and £700,000 respectively). Mr Briant's additions were £2,165,000 for size and £565,000 for site size. The reasons for these adjustments are shown in the respective valuers' evidence and are not repeated here. The Tribunal considered Mr Buchanan's adjustment to be excessive but Mr Briant had not allowed fully for the potential of the mews house (this potential has now been realised in the renovation that has been carried out in providing a three bed-roomed house but the improvements carried out have been discounted by the Tribunal). Accordingly, the Tribunal considered that £1,200,000 should be added for house size and £650,000 for site size.

The Tribunal's adjustments are:

<b><u>42 Avenue Road</u></b>	<b>£6,550,000</b>	<b>December 2004</b>
Deduct for location/position	- £250,000	
Add for site size	+ £650,000	
Add for house size /mews potential	+£1,200,000	

Adjusted price £8,150,000

14. **25 St John's Wood Park**

- 1] Mr Briant relied on this transaction. He stated that contracts were exchanged on 25 St John's Wood Park, which was the former Eyre Estate office, in July 2005 at £6,125,755. The sale was due to complete on 12<sup>th</sup> September 2005. This property is a detached double-fronted Victorian property that included lower ground, ground, first, second and third floors.

Mr Briant's adjustments were as follows:

25 St John's Wood Park		£6,125,755
Add for freehold	+£5,000	<u>£6,130,755</u>
	say	£6,130,000
Add for size	+£1,750,000	£7,880,000
Add for site size	+£185,000	£8,065,000
Add for condition	+£500,000	£8,565,000
Add for location	+£500,000	£9,065,000

- 2] Mr Briant considered that there is no need for an adjustment for market movement as there was very little market change between September 2004 and July 2005 and that this is reflected in FPD Savills' PCL North Houses Index. 25 St John's Wood Park was being sold on a 125 year lease and included an option to purchase the freehold for £5,000 upon completion of a specified set of works.
- 3] Mr Briant explained the terms of the transaction, which he considered did not have an effect on value. The purchasers had now put forward a proposed demolition of the existing house and replacement with a single family house. He anticipated detailed proposals in due course. The proposals would require approval of plans by the Respondents and planning permission. The Eyre Estate had obtained a certificate of lawful use for office use and a caretaker's flat. However, Westminster policy favoured residential use and the Council was keen to see this property go back into residential use. In respect of location, Mr Briant said that St. John's Wood Park was prime St John's Wood but had flats in it.

- 4] Mr Munro submitted that there was not possible basis to suggest that the sale price achieved was in anyway unreliable because of the nature of the contract. The structure of the transaction was to provide encouragement to the purchaser to carry out the works proposed. There was no reason to suggest that it had an impact on the price achieved.
- 5] Mr Munro submitted in respect of the value of the unimproved freehold generally, that the evidence made clear that the price paid for some of the comparables was in effect a price for the site.
- 6] Mr Buchanan did not rely on this transaction. Mr Male submitted that the Tribunal should place little or no weight upon this transaction which was a very different transaction with legal complexities. It appeared that what had happened was that 25 St. John's Wood Park was sold on a long lease with a chance to buy the freehold if certain works were carried out. Mr Male submitted that this was not the sort of sale which is contemplated under the statutory hypothesis in the Act. The transaction also required a large number of substantial adjustments each of which could be open to question.

7] **The Tribunal's findings – 25 St John's Wood Park**

The Tribunal considered that the evidence in respect of 25 St John's Wood Park was of little, if any, assistance. There were many differences between 25 St John's Wood Park and the Property. So many adjustments had to be made that this was not really a comparable exercise. 25 St John's Wood Park was going to be pulled down and redeveloped, whereas it was not suggested that the Property was going to be pulled down. Further, the Tribunal considered that the St John's Wood Park location was close to being part of Swiss Cottage and is on the fringe of the part of St John's Wood in which the Property is located.

15. **46 Avenue Road**

- 1] Mr Buchanan relied upon this comparable. No.46 was sold for £7,000,000 in November 2001. This was a smaller house that was in need of modernisation at the date of sale. It had subsequently been completely refurbished, improved and extended.

Mr Buchanan's adjustments were as follows:

46 Avenue Road	£7,000,000	November 2001
Deduct for style	-£800,000	
location	-£500,000	

Adjusted price £7,725,000

- 6] The Tribunal's findings and adjustments – 46 Avenue Road**

The Tribunal also have some reservations about the number of adjustments necessary, particularly in view of the three years since the sale.

The Tribunal's adjustments are:

46 Avenue Road	£7,000,000	November 2001
Deduct for location	-£500,000	

Add for site size	+£750,000
Add for house size	+£750,000
Add for market movement	+£525,000
Adjusted price	£8,750,000

16. **34 Woronzow Road**

- 1] Mr Buchanan relied on this comparable. He described this as a smaller detached house that occupies a large site broadly similar in size to the subject property (1,584 sq.m. v. 1,672 sq. m.). This property sold for £7,000,000 in August 2003, with completion deferred until October 2004 to allow for planning permission to be obtained for the demolition of the existing house and reconstruction of a much larger property.

Mr Buchanan's adjustments were as follows:

34 Woronzow Road	£7,000,000	August 2003
Deduct for location	-£500,000	
Add for potential larger house	+£250,000	
Add for site size	+£250,000	
Adjusted price	£7,000,000	

Mr Buchanan said that both 34 Woronzow Road and the Property are within the prime part of St John's Wood. Although Woronzow Road is not as well known as Avenue Road it occupies a quieter, quite secluded and more private position than the Property. Therefore he made the same deduction for location as he had for the other Avenue Road houses. Although Mr Buchanan had known that there was planning permission for a larger house on the site, he had not known how much larger until he heard the evidence given by Mr Briant.

2] **The Tribunal's findings and adjustments – 34 Woronzow Road**

The Tribunal did not agree with Mr Buchanan's deduction for location. The Tribunal prefers the location Property in Avenue Road to the location of 34 Woronzow Road, which was opposite a terrace of three smaller houses. The Tribunal also prefers the corner position of the Property. The Tribunal considers that an addition of £500,000 is appropriate to reflect

these factors. The Tribunal also considers that £500,000 should be added to reflect the site size and potential provided by the mews house.

The Tribunal noted an addition of £250,000 for house size in Mr Buchanan's report. The Tribunal considered this unnecessary, as the house was sold for demolition in order to construct a larger house and this potential would have been built into the purchase price.

The Tribunal's adjustments are:

34 Woronozow Road	£7,000,000	August 2003
Add for location	+£500,000	
Add for site size/mews potential	+£500,000	
Adjusted price	£8,000,000	

17. **15 Acacia Road**

- 1] Mr Buchanan said that he acted on behalf of the lessee of 15 Acacia Road, who acquired the leasehold interest for £3.25m and subsequently purchased the freehold for £1.25m under a Notice of Claim. In his view, the combined figures indicated that the freehold value was £4.5m in October 2002. This property was acquired with the intention of demolishing the existing house and constructing a larger house on the site. It had been demolished and planning permission had been granted for a larger house. However the site area was smaller (817 sq m v 1,672 sq m).

Mr Buchanan's adjustments were as follows:

15 Acacia Road	£4.5m	October 2002
Add for site size	£2,700,000	
Add for house size	£ 250,000	
Add for market movement	£ 250,000	
Deduct for location	£ 500,000	
Adjusted Price	£7,200,000	

2] **The Tribunal's findings – 15 Acacia Road**

Mr Buchanan also considered 15 Acacia Road. The Tribunal noted his adjustments particularly the £2.7 million addition for site size and considered this comparable to be unhelpful.

18. As a check, Mr Buchanan also considered 37 Elsworthy Road. This is an improved and modernised house which was sold for £11,200,000 in October 2004. The GIA was approximately 9,500 sq ft. In his view, this property occupies a superior location backing onto Primrose Hill compared with the Property which is on the corner of Elsworthy Road and Avenue Road. In Mr Buchanan's view this would reduce the value by at least £1,000,000. This supported an unimproved value of between £7,000,000 and £7,500,000.

19. **The GIA before improvements**

- 1] Mr Briant assessed the estimated unimproved gross internal area at 10,500 sq. ft. Mr Buchanan assessed this at approximately 9,600 sq. ft. plus a double garage.
- 2] Mr Briant and Mr Buchanan were unable to reconcile their differences as to the GIA before improvements. The difference between them was largely as a result of the different treatment of the double garage / mews house. However, both valuers agreed that the difference between the values was not critical given their approach was not to a value p.s.f. GIA.

20. **The GIA before improvements – the Tribunal's decision**

There were unresolved differences between the valuers. However the Tribunal agreed that these differences are not significant as neither valuer had used a rigid analysis by reference to a value p.s.f.

21. **The effect on value of improvements which are to be disregarded**

- 1] It is common ground that the Property has been improved by the current owners and that the effect on value of those improvements is to be disregarded. The works, which were licensed to be carried out, are identified in the licence for alterations dated 12<sup>th</sup> May 2004. There are before alteration drawings and licensed alteration drawings. Later revisions of some of the drawings were produced. What was actually built differed from the licensed drawings. It is also common ground that the fact that some of the alterations were unauthorised does not have valuation implications.
- 2] Mr Briant identified the improvements that he considered add value. The most important is the increase in GIA that he assessed at approximately

1,800 sq ft. The Respondents said that the increase in the GIA was approximately 2,500 sq ft.

- 3] The Eyre Estate had issued a schedule of dilapidations requiring the main items of repair but no refurbishment. Mr Buchanan said that the Property previously had been in a poor state of repair. The top and bottom of the Property were particularly affected. The kitchen in the basement was very damp. The sale of the Property was subject to liability for the schedule of works. What took place was a full refurbishment that had remodelled the accommodation to a high level of specification and put the Property into a very high standard of repair. Mr Buchanan said that the total works cost approximately £4,000,000. The Respondents had told him this figure. Other than the licence and drawings, which did not accurately show the works actually carried out, he had no details of the works or documents to support the cost of the works. He had expected to receive further information from the architect or quantity surveyor, but this had not materialised. He assumed that the £4,000,000 included carpets and drapes but did not know if it included soft furnishings, artwork beds etc. He thought that the works might have included a small element of repair. He did not know why it had taken from 1999 until 2004 to complete the works.
- 4] Mr Buchanan's opinion was that as a general rule the value of an improvement is usually in excess of and not less than the cost of making that improvement. He submitted that in this case where the extent of the improvements was substantial, the value of the tenants' improvements would not be less than the cost. He thought it would cost about £400K to put the original house back into a state of repair and decoration.
- 5] Mr Briant had said that there was no post work inspection. The Applicants had not appreciated the departure from the licensed drawings. Given the size of the contract the likelihood must be that there are as built drawings and detailed pricings and these had been requested but not produced.
- 6] Mr Munro submitted that there is no warrant for the proposition that the value of an improvement is usually in excess of the cost. It depends on the nature of the improvement. In St John's Wood a lot of people customize and when they sell the purchasers strip this out. He invited the Tribunal to reject Mr Buchanan's figure of £4,000,000 as the cost of the works, in the absence of any direct evidence as to what was spent and on what it was spent. The Tribunal should not rely on the figure of £4,000,000 as even a starting point for the assessment of improvements on value. He submitted that in those circumstances the only course is to do what Mr Briant had done and value by reference to unimproved comparables.

22. **The effect on value of improvements which is to be disregarded – The Tribunal's decision**



The Tribunal was provided with very limited evidence of the cost of improvements. The Tribunal considered that this was unreliable and attributed very little weight to it. The Tribunal accepted Mr Briant's figure of 1,800 sq ft increase in GIA. The Tribunal, doing the best it could on the evidence provided, the plans submitted of the building both before and after refurbishment / extensions, and our inspections of both the house and the mews, valued the Property by reference to unimproved comparables, on an unimproved and unextended basis.

23. **Unimproved freehold vacant possession value of the Property – the Tribunal's decision**

Taking into account the findings and adjustments above, **The Tribunal finds that the unimproved freehold value of the Property is £8,200,000.**

24. **Unimproved value of the existing lease / Relativity**

- 1] The Tribunal has to value the leasehold interest in the Property in its unimproved condition without the benefit of the Act. Both valuers relied upon the sale of the lease of the Property in August 1999 for £4,000,000, but make different adjustments.
- 2] Mr Briant's relativity was 55%, Mr Buchanan's was 50% revised to 53.5%.
- 3] An allowance must be made for (1) the shorter lease and (2) market movement and (3) the effect of the Act.

(1) The shorter lease

Mr Male pointed out that Mr Briant accepted that he had not made allowance for the shorter lease. In August 1999 the term of the lease of the Property was just under 30 years. At the valuation date the term of the lease was just under 25 years. Mr Buchanan's assessment of the difference in value was 5%. Mr Briant's Appendix 15 provides some evidence of the effect on value of differing lengths of term. The range of deductions is between 5% (Mr Buchanan's figure) and 14% (Mr Briant's figure derived from his Appendix 15).

Mr Briant accepted that he should have made an adjustment for lease length by 5% to 10% depending on the evidence. If the reduction is 5% then Mr Briant's figure for the leasehold reduces to £4,275,000. If the reduction is 10% then Mr Briant's figure for the leasehold reduces to £4,050,000.

Mr Male submitted that the knock on effect is that Mr Briant's freehold value is too high.

(2) Market movement

The valuers agreed this at 50%

(3) Effect of the Act

Mr Buchanan contended that there has to be an adjustment of 22 ½ % based on the Tribunal's decision in 64 Avenue Road. Mr Briant contended for an adjustment of 25%. Mr Male said that it may well be that as time had gone on the Act has had a greater effect and that Mr Briant's figure is therefore correct. Mr Buchanan was prepared to concede 25% in cross-examination.

- 4] Mr Buchanan's revised leasehold valuation was £4,350,000 (in which he deducted 22 ½% for rights under the Act) and his revised relativity came in at 53.5%.
- 5] Mr Buchanan also looked at other leasehold properties including the sale of Radlett House in November 2003. Mr Briant said that Radlett House had been demolished without consent but that consents were now being obtained. It was a 1950's house situated on a small private road off Avenue Road. Before it was demolished it did not have particularly good views over Primrose Hill, and he thought that a locational adjustment would not have been appropriate. There is now planning permission to put two houses on the site.
- 6] Mr Male submitted that Mr Buchanan's careful approach and consideration of another leasehold sale should be preferred to Mr Briant's reliance on the scatter graph at Appendix 16 to his report. Mr Male contended that the graph is self-serving in that it set out his analysis of house enfranchisement settlements over the last 20 to 30 years. He submitted that without knowing the underlying data the Tribunal should be wary of relying on this.
- 7] Mr Munro submitted that Mr Buchanan's difficulties in justifying his chosen relativity were compounded by his arithmetical error in calculating 59%, which he in any event rejected, based on transactions affected by the Act, i.e. the sale of 56 Avenue Road to the Respondents.

25. **Unimproved value of the existing lease / relativity – the Tribunal's decision**

The Tribunal did not consider that Radlett House was a good comparable in order to assess the leasehold value having regard to the adjustments which were required.

The Tribunal finds that the correct adjustment for the effect of the Act is 25%.

The Tribunal agrees with Mr Briant's figure of £4,275,000, which took into account an adjustment for difference in lease length of 5%.

**The Tribunal finds that the unimproved value of the existing lease is £4,275,000.**

**The Tribunal finds that the appropriate relativity is in the region of 52.13% on the unimproved freehold vacant possession value of £8,200,000 as determined by the Tribunal.**

26. **Deferment rate**

- 1] Mr Briant applies a yield rate of 5.25%. Mr Buchanan applies a rate of 6.0%.
- 2] It was anticipated during the hearing that the decision of the Lands Tribunal in six appeals heard in July and August 2005 would be available following the hearing. The Tribunal were provided with a copy of the decision, which is referred to in this decision as the "Arbib" decision. The Arbib decision was a joint decision in 5 appeals in which the deferment rate was in issue.  
The opening submissions of Mr Munro and Mr Male were revisited in written representations following the Arbib decision.
- 3] Mr Munro said that the Arbib decision involved a comprehensive consideration of the issue of deferment rates. It was intended to give guidance to the LVT. To the extent that it gives guidance, the Applicants accepted the guidance and their opening submissions should be read in the light of that guidance.
- 4] Mr Munro submitted that the Lands Tribunal's guidance can be summarised as follows:
  - (1) There is unlikely ever to be market evidence untainted by the effects of the Act or the 1993 Act.
  - (2) Any LVT that reaches a decision based upon an "established" deferment rate is wrong.
  - (3) Deferment rates are likely to remain constant over several years.
  - (4) In the absence of dependable market evidence the LVT must consider the money market.

- (5) Settlement evidence is admissible but open to criticism.
- (6) The starting point is a risk free investment, e.g. index linked gilts.
- (7) To that risk free rate there should be added an allowance for risks and the comparative illiquidity of a reversionary investment.
- (8) The comparative illiquidity of a reversionary investment justified an allowance of say 1%.
- (9) The lesser management problems associated with houses justifies a 0.25% differential between flats and houses.
- (10) Deferment rates may be sensitive to unexpired lease length.
- (11) Changes in deferment rates will not occur until a change in the trend in risk-free yields has become established or the continuation of a trend establishes a new level of yields.
- (12) Deferment rates are unlikely to be volatile. They are of their nature long-term rates. They will not respond instantly to changes in other yield rates. They will rather move slowly as changes in trends become apparent. There is no direct link to base rate movements.
- (13) A "norm" or "general rate" will apply in any particular "broad location".
- (14) Specific factors for any property in that location may require a deviation from that norm.
- (15) Any deviation will arise because of some factor which markedly increases or reduces the risk as compared with other properties of a quality and value which prevails across the broad location.
- (16) Any differential would be the result of a difference in security of the investment, that is to say a greater comparative risk of obsolescence or greater volatility in values or reduced growth rates. Other purely locational differences would reflect themselves in capital values as opposed to deferment rates.
- (17) The statutory assumption in the Act that there is no tenant's repairing covenant must theoretically increase the risk factor to be brought into consideration in comparing a house with individual flats or a block of flats.

5] Mr Munro submitted that in the Cadogan appeals, the Lands Tribunal concluded that:

- (1) On the Cadogan Estate the norm for houses and collectives was 4.5% being a risk free 2% plus 2.5% for risk and illiquidity for valuation dates between 1<sup>st</sup> April 2003 and 23<sup>rd</sup> June 2004.
- (2) There was no evidence to justify a departure from the norm save for the landlord's concession in Arbib itself that there should be a 0.25% adjustment to reflect the size of the notional investment in the reversion to the lease of 40 Chelsea Square.

6] In his report, Mr Briant contended in the present case that the deferment and yield rates should be 5.25%. He pointed out that it is only relatively recently that surveyors acting for freeholders had actively pursued lower

yield rates. In part this had been because it had taken time for yield and deferment rates to become established and in part because of the difficulty in proving what the rates should be.

Mr Briant said that there are two reasons why the yield and deferment rates should be reduced from their "established" levels. The first is that during the period from December 1992 and June/September 2004, in which the rates have become established, interest rates generally have fallen and yield and deferment rates for other forms of property investment have come down and are at relatively low and stable levels. The second is that the prospect for capital growth is good for residential property, particularly in St. John's Wood.

Mr Briant produced in Appendix 4 to his report a graph showing the retail prices index, base rate, the yield from long term gilts and mortgage rates from December 1992 to June or September 2004. Looking at the graph as a whole, he submitted that the retail prices index reached a high in September 1995 of 3.9% and a low in December 2001 of 0.7%, and that in September 2004 it was 3.1%. Base rate reached a high in June 1998 of 7.5% and a low of 3.5% in September 2003 and in September 2004 was 4.75%. Long dated gilts reached a high of 8.82% in September 1994 and a low in September 2002 of 4.39% and in September 2004 were 4.85%. Average mortgage rates reached a high in December 1992 of 8.98% and a low in September 2003 of 4.25% and in September 2004 were 5.43%. He submitted that while there had been fluctuations and all the indices were in September 2004 expected to rise, the general trend for base rate, long dated gilts and mortgage rates have fluctuated through a relatively narrow band (base rate 4.75% to 3.75%, long dated gilts 5.18% to 4.39% and mortgage rates 5.43% and 4.25%).

Mr Briant submitted that yield rates from residential investments have also fallen. In Appendix 5 to his report, Mr Briant showed the gross residential yield rates as compiled by Savills and Chesterton.

Mr Briant submitted that against the background of a relatively low Base Rate, low rates from long dated gilts, low mortgage rates, low rates from other residential investments, all of which fluctuated relatively little since 2002, and with Avenue Road having excellent capital growth prospects, he considered that the deferment rate to adopt should be no higher than 5.25%.

In his closing submissions Mr Male made a number of criticisms and observations in respect of the information contained in Mr Briant's report.

- 7] Mr Buchanan relied upon an extract of the Eyre Estate list of settlements in relation to Avenue Road as at February 2004. He said that without

exception that all the adopted yields were between 6% and 6.5%, although most of the cases adopted 6%. In particular he had been involved in 42 and 64 Avenue Road, both of which were LVT determinations although in the case of No. 42 the yield was agreed prior to the Tribunal hearing. The unexpired terms in both cases were slightly longer than the lease of the Property.

Mr Buchanan was also involved in the claim for 30 Avenue Road where no agreement was reached on the correct yield. He had settled a claim for 40 Avenue Road. Mr Buchanan's analysis of the premium showed that he adopted a yield of 6%.

Mr Buchanan said that at the time of writing his report, there had only been one LVT case in St John's Wood where a yield of less than 6% was determined. This related to 64 Hamilton Terrace, a collective claim on a house divided into four flats with an unexpired term of 14.66 years where he acted for the nominee purchasers. However he said that the yield rate reflected the short unexpired term and more importantly the possibility of conversion back to a house before the expiry of the lease. He referred to the decision on 43a Acacia Road (Mermaid House) where the Tribunal determined 6% for probably the highest value house in St John's Wood with a valuation date in February 2004.

- 8] Prior to the decision in *Arbib*, Mr Munro's opening submissions in respect of the deferment rate were as follows:
- (1) The Applicants accepted that 6% had been commonly used on the Grosvenor, Belgravia and Cadogan Estates and had become accepted for most property on their own estate, and had been supported by a large number of settlements. Notwithstanding this, the Applicant's contended that 6% had for some time been too high. The Applicants relied on decisions including 57 Shawfield Street, a house in Chelsea (Cadogan Holdings Limited and Richard Pockney and Antoinette Elizabeth Pockey, LRA/27/2003).
  - (2) The fact that income returns on central London residential property and other alternative forms of investment have been falling throughout the 1990's.
  - (3) The historic nature of much of the settlement evidence.
  - (4) The willingness of the LVT to reduce yields from that which would have been considered appropriate in the past in the 2 pre Pockney cases.
  - (5) The willingness of the LVT to reduce yields from that which would have been considered appropriate in the past in 4 post Pockney cases.
  - (6) The sustained long term growth of Central London residential prices and the attraction which Prime Central London residential

- has as a relatively safe place with good prospects of steady long term growth for investment in its residential property.
- (7) The trend in falling yields for comparable prime Central London residential properties apparent from  
Chesterton's research (JECB 5)  
FDP Savills' indices (JECB 6)  
FDP Savills' research (JECB 7)
  - (8) Past experience leads to the expectation that residential property, particularly in central London will continue to prove a good investment, with a growth rate in excess of inflation.
  - (9) The fact that the influence of the economies of the European Union with historically lower interest rates has been, and is, a significant factor in reinforcing the established trend to lower interest rates in GB
  - (10) Current and anticipated low inflation
  - (11) Yields and rates of return achieved by the Freehold Income Trust sponsored by Close Brothers Property Investment.
  - (12) The relative characteristics of residential ground rent investments in Central London compared with other property investments and gilts being
    - (a) security of net income
    - (b) minimal outgoings or liabilities
    - (c) potential to release capital before expiry of the term
    - (d) historically good capital growth
  - (13) Settlements of 1967 Act claims on their Estate and the neighbouring Eyre Estate
  - (14) Evidence given by others to the LVT seeking to justify sub 6% yields
  - (15) The "Grosvenor" letter in which Gerald Eve on behalf of the Grosvenor alerted lessees seeking to enfranchise of the Grosvenor's decision to seek yields lower than 6%.

9] In his written closing submissions following the Arbib decision, Mr Munro submitted that the contents of his above opening submissions had in a large part been accepted by the Lands Tribunal. However the Applicants accepted that:

- (1) The reliance on the Freehold Income Trust material did not find favour.
- (2) Settlement evidence is likely to be given less weight in the future than it has in the past.
- (3) The Lands Tribunal considered settlement evidence on the Cadogan Estate provided nothing useful either by way of analysis of agreements as to payments or by seeking to discover the motives and circumstances which led to the settlements.
- (4) Settlement evidence on the Brompton Estate did provide some assistance because valuers on the Brompton Estate have been

willing to consider with more open minds what adjustments should be made to the previous prevailing views to reflect changing circumstances in such markets as they were aware of..

- 10] Mr Munro submitted that applying the Lands Tribunal's guidance given to the present case:
- (1) There is no evidence of any factor which markedly increases or reduces the risk as between reversions on the Cadogan Estate and the Eyre Estate that would justify a departure from the norm established for the Cadogan Estate.
  - (2) There is no evidence of a difference in security of the investment between the Cadogan Estate and the Eyre Estate either because of a greater comparative risk of obsolescence or greater volatility in values or reduced growth rates that would justify a departure from the norm established for the Cadogan Estate.
  - (3) Given the length of the unexpired term, the value of the property and the amount the Respondents were prepared to spend on it, there is no possibility that the property should be obsolescent at the term date.
  - (4) The locational differences between the Cadogan Estate and the Eyre Estate will reflect themselves in capital values as opposed to deferment rates.
  - (5) The 5.25% put forward by Mr Briant is not too low and on the basis of the guidance given is 0.75% too high.
- 11] In his written closing submissions Mr Male submitted that, prior to the decision in *Arbib*, Mr Briant had accepted that the prevailing rate in Avenue Road was 6% and had also accepted that there was no Tribunal decision supporting his proposed rate of 5.25%. Mr Male submitted that there was no open market evidence to support 5.25%.
- 12] Mr Male made a number of points relating to Mr Munro's submissions referred to at 8] above, including the following:
- (1) The decision in 57 Shawfield Street is unhelpful. The location of that property was very different and that the decision did not square with the decision of the Lands Tribunal in *Blendcrown Limited* and the Church Commissioners (LRA/50/2002).
  - (2) It is not correct to suggest that much of the settlement evidence is of an historic nature. He submitted that Mr Briant's evidence shows that 6% had been agreed or used well into 2004.
  - (3) It is necessary to take a long term view and consider whether after the period of sustained growth we are now entering a benign period.
  - (4) At the valuation date interest rates had started to climb again.



- (5) The Freehold Income Trust had been a source of confusion. No prospectus or brochure of supporting details had been provided regarding the Trust.
- (6) The factors in 8](12) above were known at the time when 6% was agreed
- (7) No agreed analysis shows a sub 6% yield.
- (8) The Grosvenor letter was not before the Tribunal.

13] In respect of the effect of the Arbib decision, Mr Male submitted that:

- (1) The Arbib decision is inadmissible in the present case. Mr Male relied on the decision in Land Securities Plc v Westminster City Council [1992] 2 EGLR 15

- (2) Arbib is a decision on its own particular facts and on the particular evidence relied upon by the parties before the Lands Tribunal. He submitted that none of that evidence is before the Tribunal in the present case.

The duty of the Tribunal is to determine the case on the evidence before it. Just because Mr Munro referred to Arbib in his closing submissions does not mean that the evidence in that case is before the Tribunal. He submitted that none of the crucial evidence in Arbib is before the Tribunal.

- (3) The decision in Arbib turned on the particular evidence before the Lands Tribunal regarding financial markets, gilts, risk premiums and the like. Mr Male submitted that there is no material before the Tribunal to justify it reaching a similar decision.
- (4) Mr Male submitted that there is no evidence before the Tribunal of how, if it is admissible, the decision in Arbib should be applied in St. John's Wood.

## 27. **The Tribunal's decision – deferment rate**

- 1] **The Tribunal considers that the appropriate deferment rate in the present case is 5.5%.**
- 2] In reaching the above conclusion the Tribunal had regard to the evidence available to it in this matter, the parties' submissions and taking into account the guidance provided by the Lands Tribunal in the decision in Arbib.
- 3] Mr Buchanan's proposed deferment rate was 6%. Mr Briant accepted that prior to the decision in Arbib, 6% was the prevailing rate on the

Grosvensor, Belgravia and Cadogan Estates, had been widely used on the Eyre Estate and was supported by a number of settlements. Mr Briant accepted that 6% was the previously established level for Avenue Road. If, and in so far as, 6% was an “established” deferment rate, the Tribunal places no reliance upon that factor.

- 4] Neither Mr Buchanan nor Mr Briant was able to produce open market evidence in support of their proposed deferment rates. This is consistent with Mr Munro’s observation that there is unlikely ever to be market evidence untainted by the effects of the Act.
- 5] The Tribunal notes that settlement evidence is open to criticism and in the absence of agreed analysis by both parties, is a matter of valuation interpretation. The Tribunal places little weight upon it.
- 6] There was limited financial evidence, but such evidence that was available reinforced the Tribunal’s view that a deferment rate of 6% was too high. The Tribunal notes that in cross-examination Mr Buchanan said that he was open to the concept that deferment rates can change over time but it was difficult to be precise over what time scale you would expect deferment rates to move, but he would not expect to see them moving over a nine month period. He considered that the main driver of deferment rates is capital growth. The growth in St. John’s Wood had been extraordinarily strong. Mr Buchanan said that in some ways he sympathised with Mr Briant and recognised that there was an argument for reduction in yields in a swiftly rising market.
- 7] The risk associated with deferment is greater the longer the lease, however with a long lease there is more potential for capital growth. In this case the lease had 24.7 years unexpired at the valuation date. It is an attractive investment for an investor / purchaser, but there are risks associated with potential changes in the law as recent history shows to be moving in favour of lessees and against landlords.

28. **Capitalisation rate**

Both valuers use a single rate for capitalisation and deferment. Mr Briant uses 5.25% and Mr Buchanan uses 6%.

Mr Munro submitted that In Arbib the Lands Tribunal made it clear that nothing in the decision related to capitalisation rates. There is nothing in the evidence in the present claim to suggest that Mr Briant’s choice of 5.25% was wrong. He observed that, given the modest contribution of the ground rent in the present claim to the value of the reversion, the choice of rate has little effect on the price to be paid for the freehold.

29. **The Tribunal's decision – Capitalisation rate**

**The Tribunal finds that the appropriate capitalisation rate is 5%.**

The risks associated with a ground rent especially the reasonable ground rent of £300 per annum on this property are minimal and therefore the Tribunal considers a lesser rate than that used for deferment of the reversion is justified.

30. **In accordance with the Tribunal's above findings and decisions, the Tribunal determines that the enfranchisement price payable for the Property is £3,053,963 as set out in the Tribunal's valuation, which is attached to this decision.**

CHAIRMAN.....*Anne Seifert*.....

DATE.....*27<sup>th</sup> March 2006*.....

**Members of the Leasehold Valuation Tribunal**

Miss A Seifert FCI Arb  
Mr D L Edge FRICS  
Mr C White FRICS

**VALUATION BY THE TRIBUNAL**

**of**

**56 AVENUE ROAD, LONDON, NW 8**

**under**

**THE LEASEHOLD REFORM ACT 1967 as amended.**

**Agreed facts**

1. Valuation date : 20<sup>th</sup> September 2004
2. Lease : 99 years from 24<sup>th</sup> June 1930
3. Unexpired term : 24.76 years
4. Ground rent : £300 fixed for the remainder of the term.

**Facts decided by Tribunal**

5. Yield for ground rent : 5%
6. Deferment rate: 5 ½ %
7. Freehold value : £8,200,000 ( unimproved )
8. Value with current lease : £4,275,000 ( unimproved )

**VALUATION**

A	Ground rent	£300 @ 5% for 24.76 years	
		300 x 14.0232	£ 4,207
B	Reversion	£8,200,000 @ 5 ½ % deferred 24.76 years	
		8,200,000 x 0.2656474	<u>£2,178,719</u>
C	Total of landlords interest		£2,182,926
D	Marriage value	Freehold vale	£8,200,000
	<u>LESS</u> current interests		
		Landlord	£2,182,926
		Lessee	<u>£4,275,000</u>
			<u>£6,457,926</u>
			£1,742,074
	50% of marriage value		<u>£ 871,037</u>

**AMOUNT PAYABLE**

**£3,053,963**