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LON/LVT/1504/02

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Cherbourg Properties Inc (The Tenant)

Respondent: The Trustees of the Eyre Estate (The Landlord)

RE: 42 Avenue Road, St John's Wood, London NW8

Date of Tenant's Notice: 6 April 2001

Application to the Tribunal dated: 24 May 2002

Heard: 8 October 2002

Appearances:

Mr E Johnson of Counsel
Mr D Conway of David Conway & Co, Solicitors
Mr K G Buchanan, BSc, MRICS of
Messrs Colliers CRE, Chartered Surveyors
Mr N Stone of Bargets Estate Agents
Mr E Lee of Cherbourg Properties Inc
For the Tenant

Mr G Cowen of Counsel
Mr J E C Briant BA MRICS of Messrs Cluttons
Chartered Surveyors
Mr E Roberts MRICS of
Messrs Cluttons Chartered Surveyors
For the Landlord

Members of the Leasehold Valuation Tribunal

Mrs J Charles LLB (Chairman)
Mr D L Edge FRICS
Mrs E A V Lewis

Date of the Tribunal's decision: 20 NOV 2002

This was an application by the lessee, Cherbourg Properties Inc to determine the enfranchisement price payable for the freehold of the property at 42 Avenue Road, St John's Wood, London NW8 under Section 9 (1C) of the Leasehold Reform Act 1967 as amended (hereinafter called the Act).

The Applicant is the tenant of the property under a lease dated 16 January 1974 for a term of 60¾ years from 24 June 1973. On 6 April 2001 he gave notice of his claim to acquire the freehold of the property under the Act. On 15 June 2001 the landlord, the Eyre Estate, served a notice in reply admitting the claim.

A hearing took place on 8 October 2002. The applicant was represented by Mr E Johnson of counsel instructed by Mr D Conway of David Conway & Co, Solicitors together with Mr K G Buchanan BSc MRICS of Colliers CRE, Chartered Surveyors and also Mr N Stone of Messrs Bargets, estate agents. The respondents were represented by Mr G Cowen of Counsel instructed by Pemberton Greenish, Solicitors, and by Mr J E C Briant BA MRICS and Mr E Roberts MRICS of Messrs Cluttons, Chartered Surveyors.

A statement of agreed facts was provided to the Tribunal (Appendix I). The only remaining issue is therefore the unimproved Freehold value of the subject property and hence the enfranchisement price.

Both parties agreed that the main comparable property was 46 Avenue Road, the freehold of which had been sold in November 2001 for £7,000,000. The Tribunal on 5 November 2002 inspected the other comparables referred to during the hearing and accepted that property as the best comparable. It was the closest in location and in time, the sale having been agreed a matter of seven months after the relevant valuation date on the subject property, 6 April 2001. They had been able to inspect the interiors of 64 and 47 Avenue Road and the exteriors of 46 Avenue Road, 39 Circus Road and 29 Cavendish Close.

Both surveyors began their calculation with the £7,000,000 price for 46 Avenue Road in November 2001 making independent adjustments for various elements.

(1) Style Both surveyors agreed a deduction of £500,000 for the less attractive appearance/style of No 42.

(2) Size

(a) Site At the hearing, the extract from the Ordnance Survey plan indicated that both plots were of similar width but that No 42 was marginally deeper and backed on to Primrose Hill at the rear. Mr Buchanan made no adjustment for the small difference, 1279 m² in respect of No 42 and 1170 m² for No 46. Mr Briant attributed a difference of £200,000 for what was said at the hearing to be a small additional triangular piece of land. He also considered that having rear access to Primrose Hill might be an advantage but also acknowledged on the other hand that having such access could be a security risk. The Tribunal considered as a result of their inspection, that any difference in size would

not have been discernible to a prospective purchaser as both plots were of very similar width and length and also that the advantages and disadvantages of access to Primrose Hill cancelled each other out. Therefore there should be no adjustment for plot size.

- (b) House size: The Tribunal reviewed the measurement on the agreed statement of facts and were of the opinion that the dimensions of the garage/laundry room should not be included in the floor area. The floor level of the garage/laundry room was at least three feet lower than the ground floor of the house and would have been virtually impossible to incorporate within the main structure without rebuilding. Therefore for size comparison purpose, the Tribunal agreed with Mr Buchanan's figure of 549 m² as compared with 601 m² for No 46. Mr Briant had included the garage/laundry room in his calculations concluding that there should be no deduction for size. The Tribunal were of the opinion that there should be a deduction of £250,000 to reflect the difference in size together with the recognition that despite being an out building, the garage/laundry room had some value.

3. Layout

Both surveyors made deductions for the superior layout of No 46 albeit in slightly different forms.

Mr Buchanan made a deduction of £200,000 for "poor layout", £200,000 for basement accommodation and associated flood risk and £200,000 for lower ceiling level on the second floor, a total of £600,000 .

Mr Briant had deducted a total figure of £350,000 for "layout".

The Tribunal considered that the layout of 46 Avenue Road was clearly superior. There were no basement rooms; there was an impressive atrium style entrance hall; The principal reception rooms were better proportioned and across the rear of the house overlooking the garden. They did not feel that the mansard second floor merited any further deduction as in their view the rooms were of reasonable size and the ceiling height was quite adequate.

The Tribunal considered that neither Mr Buchanan nor Mr Briant had made sufficient deductions to reflect those differences and therefore made a deduction of £1,000,000 in respect of the comparative layout of 42 Avenue Road as against that of 46 Avenue Road.

4. Development Potential

Mr Buchanan had suggested a deduction of £350,000 as No 46 Avenue Road had the benefit of planning consent to construct an underground leisure complex, a studio house in the rear garden, a 10m² infill at rear second floor level and two single storey rear extensions. No 42 Avenue Road on the other

hand had already carried out permitted extensions in 1991 and no further development was possible.

Mr Briant made a deduction of £100,000 a figure which an earlier Tribunal considering No 64 Avenue Road on 1 May 2002 (LON/LVT/1443/01) had concluded was justified. The Tribunal made a deduction in a similar sum of £100,000.

5. Overlooking Problem

Mr Buchanan deducted a figure of £500,000 because No 42 was overlooked by the windows along the flank of No 40 and by Radlett House at the bottom of the garden.

Mr Briant made no adjustment for overlooking as he did not see it as a problem in excess of other properties in the Eyre Estate.

The Tribunal accepted the contention of Mr Briant having inspected the subject house. They did not find that the overlooking problem inside the house was any different from other properties in Avenue Road in particular Nos 47 and 64 inspected by the Tribunal and also No 46 which was viewed externally.

6. Market Movement

Mr Buchanan made a deduction of £500,000 for market movement between 6 April 2001 (the valuation date) and 15 November 2001, the date of the contract for the sale of 46 Avenue Road. He had based that on the evidence of Mr Stone who had said that prices had increased by somewhere in the region of 7% over that period and that the events of 11 September 2001 had caused no more than a blip on the market which had recovered by 15 November. His opinion however was not supported by any evidence.

Mr Briant made no deduction for market movement as he felt that there was parity in the market over the relevant period. He said that he oversees all sales for the Eyre Estate and keeps in touch with the local market and had evidence that sales for identical houses in Carlton Hill indicated a slight fall in the market which had recovered and settled down over the relevant period.

The Tribunal took note of FPD Savills Residential capital values Index which showed movement in PCL houses and PCL North (flats and houses). The former showed an overall fall in values for the period April – November 2001 of 0.53% and the latter an increase of 5.34%. The evidence showed that the events of September 11, 2001 had affected the upper end of the housing market more than general flats and houses. The Tribunal therefore accepted the evidence of Mr Briant that the Index supported the contention that there had been little or no change in the market over the period April- November 2001.

7. Inspection

The Tribunal inspected the subject property on November 5 2000. They also inspected the interior of 64 and 47 Avenue Road and the exterior of 46 Avenue Road, 39 Circus Road and 29 Cavendish Close. The description, floor plans and details of accommodation of all those properties are contained in the statement of agreed facts.

8. The Freehold Value

The Tribunal made the following deductions from the figure of £7,000,000 value placed on 46 Avenue Road.

Style	£ 500,000
House size	£ 250,000
Layout	£ 1000,000
Development Potential	<u>£ 100,000</u>
	£1,850,000

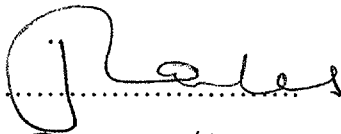
A further agreed deduction of £500,000 should be made for the tenant's improvements, arriving at an (unimproved) freehold value of £4,650,000.

The Tribunal therefore adjusted the figures produced by Mr Buchanan (Appendix II) and Mr Briant (Appendix III)

9. Determination

The Tribunal determined the enfranchisement price payable by the lessee to be £1,808,874 in accordance with their valuation annexed to the decision at Appendix IV

CHAIRMAN



DATE

20-11-02

APPENDIX I

1. INTRODUCTION

This Statement of Agreed Facts has been prepared by Colliers CRE acting on behalf of the lessee
Cherbourg Properties Inc, and agreed with Cluftons, acting on behalf of the landlords, the Trustees of the Eyre Estate.

2. ISSUE TO BE DETERMINED BY THE LEASEHOLD VALUATION TRIBUNAL-

The issue to be determined by the Leasehold Valuation Tribunal is the enfranchisement price as at 6 April 2001 the date of the Notice of Claim, for the freehold under Section 9(1C) of the Leasehold Reform Act 1967.

The issues underlying the dispute as the enfranchisement price are:

- The unimproved Freehold Value

3. DETAILS OF THE ACT:

A valuation under Section 9(1C) is based on Section 9 (1A) valuation subject to modifications.- It provides that the price payable for a house and premises "shall be the amount which at the relevant time the house and premises, if sold on the open market by a willing seller, might be expected to realise."

The first assumption is "... that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of the Act conferred no right to acquire the Freehold."

The second assumption is "... that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954."

The third assumption is "... that the price be deminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenants or their predecessors in title at their own expense."

The fourth assumption is "... that the vendor was selling subject to and in respect of rent charges and other rents of the same annual charge as the conveyance tot he tenant is to be subject to but the purchased would otherwise be effectively exonerated until termination of the tenancy from any liability or charge in respect of the tenants' encumbrances...

The fifth assumption is "... that the vendor was selling with a subject to the rights and burdens and subject to which the conveyance to the tenant is to be made."

The sixth assumption, in Section 9 (1A) (b), namely that at the end of the tenancy the tenant has the right to remain in possession of the house and premises, does not apply in this case:Section 9 (1 C). Here, the right to acquire the Freehold arose by virtue of sections 1A(l) of the Act, as the Rateable Value exceeded £1,500 on 1 April 1973.

4. DESCRIPTION AND SITUATION

The property comprises a detached, period house on lower ground, ground, first and second floors.

The premises occupy a plot on the East side of Avenue Road to the South of the junction with Eisworthy Road and comprises a site area of approximately 1279m².

5. ACCOMMODATION

The parties have agreed the following areas.

Existing House	549m ² (5,907sq.ft)
Original House	609m ² (5,467sq.ft)
Garage/Laundry Room	42m ² (452sq.ft)

6. LEASE DETAILS:

The Lease was granted in 1974 for a term of 60 $\frac{3}{4}$ years from 24 June 1973, expiring on 24 March 2034. The Ground Rent payable from the Date of Notice of claim was £14,000 per annum and was reviewed to £60,000 per annum with effect from 24 June 2001.

A full copy of the lease is included in the bundle of documents.

7. TENANT'S IMPROVEMENTS

The improvements and alterations carried out by the lessee are set out in a Licence for Alterations dated 18th June 1995. However, the parties have agreed that the value attributable to Tenant's Improvements is £500,000 in respect of the freehold value.

8. MARRIAGE VALUE

The parties have agreed that the marriage value should be shared equally between the two parties.

9. YIELD

The parties have agreed to adopt a yield rate of 6%.

10. LEASEHOLD VALUE

The parties have agreed that the unimproved leasehold value for the purposes of calculating the enfranchisement price shall represent 55% of the unimproved Freehold Value which shall be determined.

APPENDIX II

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE: October 2002

PROPERTY: 42 Avenue Road, London NW8

NOTICE DATE: 6th April 2001

LEASE DETAILS

DATE 16th January 1974

TERM 60 years from 24/06/73

EXPIRY DATE 25/03/2034

UNEXPIRED TERM 32.96 years as at 25/03/01

GROUND RENT (Until Review) £14,000 p.a. to 24/06/2001

GROUND RENT (From Review) £60,600 p.a. from 26/06/2001

VALUES UNIMPROVED

FHVP £3,550,000

UNEXPIRED TERM £1,952,500

LESSEE'S IMPROVEMENTS (£500,000)

VALUE OF REEHOLD PRESENT INTEREST

TERM 1	GROUND RENT x YP 0.21 years @ 6%	0.21	£14,000 p.a.	
				£2,885
TERM 2	GROUND RENT YP 32.75 years @ 6%	14.19	£60,000 p.a.	
	PV 21 years @ 6%	0.99		£841,138
REVIERSION	FHVP (less improvements) x PV 32.96 years @ 6%	0.1465	£3,550,000	
				£520,075
				Lessors interest £1,364,098

MARRIAGE VALUE

	FHW (less improvements)	£3,550,000
Less	Lessor's Present Interest	£1,364,098
	Lessees Interest (less improvements)	£1,952,500
	Marriage Value	£233,402
	50% Marriage Value	£116,701
TOTAL	£1,480,799	

Appendix III

JEC Briant

Section 9(1C)

PROPERTY: 42 Avenue Road, London NW8

NOTICE DATE: 06/04/01

LEASE DETAILS

DATE 16/01/74
 TERM 60.74
 EXPIRY DATE 24/03/34
 UNEXPIRED TERM 32.96
 GROUND RENT (Until Review) £14,000 to 23/06/2001
 GROUND RENT (From Review) £60,600 from 26/06/2001

VALUES

FHVP (Unimproved value) £5,500,000
 UNEXPIRED TERM (Unimproved value) £3,025,000 55.00%

VALUE OF FREEHOLD PRESENT INTEREST

TERM 1	GROUND RENT x YP 0.21 years @ 6.00%	£14,000 0.21	£2,885
TERM 2	GROUND RENT x YP 32.75 years @ 6.00% x PV 0.21 years @ 6.00%	£60,000 14.19 0.99	£841,138
REVERSION	FHVP (less improvements) x PV 32.96 years @ 6.00%	£5,500,000 0.1464956	£805,726
Lessors interest:			£1,649,749

MARRIAGE VALUE

	FHVP (less improvements)	£5,500,000
Less	Lessor's Present Interest	£1,649,749
	Lessee's Interest (less improvements)	£3,025,000
	Marriage Value	£825,251
Take 50% Marriage Value		£412,625
		£2,062,375

ENFRANCHISEMENT PRICE**£2,062,375**

42, Avenue Road, London, NW8

Valuation date: 6 April 2001

Lease: 60¾ years from 24 June 1973
 Expiry date – 25 March 2034
 Unexpired term 32.96 years
 Ground Rent (Until review) £14,000 per annum to 24 June 2001
 Ground Rent (From review) £60,000 per annum

Values: FHVP (unimproved) £4,650,000
 Unexpired term £2,557,500

Value of Freeholder's Present Interest**Term 1**

Ground Rent	£14,000	
YP 0.21 years @ 6%	<u>0.21</u>	2,885

Term 2

Ground Rent	60,000	
YP 32.75 years @ 6%	14.19	
PV 0.21 years @ 6%	<u>0.99</u>	
	<u>0.1405</u>	841,138

Revision

FHVP (unimproved)	4,650,000	
PV 32.96 years @ 6%	<u>14.05</u>	681,225

1,525,248

Marriage Value

FHVP (unimproved)	4,650,000
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less

Lessor's present interest	1,525,248
Lessee's interest	<u>2,557,500</u>

4,082,748

Marriage Value:-	567,252
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@ 50%	283,626
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<u>Enfranchisement Price</u>	<u>1,808,874</u>
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