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Ref LON/LVT/575

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Dr and Mrs T Robertson

Respondent: The Trustees of the Eyre Estate

RE: 30 Marlborough Place, London, NW8

Date of Tenant's Notice: 21 June 1994

Application to Tribunal dated: 12 April 1995

Heard: 7 September 1995

Appearances:

Mr T Dutton (of Counsel)

Mr P Ross, BSc (Est Man), FRICS - Messrs Haywards

for the Tenant

Mr A Radevsky (of Counsel)

Mr J E C Briant, BA, FRICS - Messrs Daniel Smith

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mr G F Bowden, TD, MA, FRICS, (Chairman)

Mr C J Bradley, BSc (Est Man), FRICS, JP

Mr A Selman, Dip Arch, FRIBA

Date of Tribunal's decision: 6 March 1996.

30 Marlborough Place

1. This is a decision made on an application by the tenants, Dr and Mrs T Robertson, under section 9(1A) of the Leasehold Reform Act 1967 ("the Act") as amended, for the determination of the price to be paid for the freehold interest in the house and gardens at 30 Marlborough Place ("the subject premises"). The tenants hold under a lease, dated 6 October 1978, for a term of 58 years, commencing 24 June 1978 at an initial ground rent (subject to review) of £200 per annum. Notice to enfranchise the subject premises was served on the freeholder, the Trustees of The Eyre Estate, on 21 June 1994 by John Philip Chesterman, the then tenant, and predecessor in title to the applicants. Accordingly the date of valuation is 21 June 1994, at which date the unexpired term was approximately 43 years.

2. The following facts were not in dispute:

(i) The present tenants took an assignment of the residue of the term of years of the subject premises from the previous tenant on 24 June 1994 for consideration in the sum of £1.

(ii) The extent of tenant's improvements to the subject premise carried out under licence from the landlords.

Valuation by Mr P W A Ross, BSc(Est Man), FRICS, on behalf of the tenants.

TERM

Ground rent		£200 pa	
YP 5 yrs @ 7.5%		<u>4.04</u>	£808
Uplift to (say) £16,666 pa	(1)		
YP 38 yrs @ 7.5%	12.48		
PV £5 yrs @ 7.5%	.696	8.68	£144,762
Reversion, to £1,250,000 in 43 yrs			
<u>Less</u>			
Improvements	£ <u>150,000</u>		
	£1,100,000		
PV £1 43 yrs @ 7.5%	.0446	£49,060	£194,630

LESSOR'S SHARE OF MARRIAGE VALUE:

Unencumbered freehold value	£1,250,000	(2)
<u>Less</u> improvements	£ 150,000	£1,100,000
<u>Less</u> (1) Value of 43 yr.		
lease	£1,000,000	(3)
<u>less</u> improvements	£ <u>150,000</u>	
	£ 850,000	
(2) Value of lessor's interest excluding prospects of "marriage"	£ <u>194,630</u>	<u>£1,044,630</u>
Gain on marriage		£55,370

50% to lessor

£ 27,685

£222,315

but say

£225,000

(1) F/H £1,250,000 @ 40% = £500,000 site value. 1/30th =
£16,666 pa

(2) The sale of a 72.5 year lease in 26 Marlborough Place in
September 1993 for £1,075,000 has been used as the best
comparable available.

(3) The price paid for the subject property in June 1994.

Valuation by Mr J E C Briant, BA, ARICS, on behalf of the landlords.

Lease details

Date	24 June 1978
Term	58.75
Expiry date	25 March 2037
Unexpired term	42.79
Ground rent (until review)	£200 to 24 June 1999
Estimated ground rent (from review)	£20,000 from 24 June 1999

VALUES

FHVP (less lessee's improvements)	£1,400,000
Unexpired term (less lessee's imps)	£700,000
Lessee's improvements	£100,000

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM 1</u>	Ground rent	£200	
	x YP	5.00 years @ 6.00%	<u>4.21</u>
			£842
<u>TERM 2</u>	Estimated ground rent	£20,000	
	x YP	37.75 years @ 6.00%	14.819303
	x PV	5.00 years @ 6.00%	<u>0.7472582</u>
			£221,477
<u>REVERSION</u>	FHVP (less lessee's improvements)	£1,400,000	
	x PV	42.75 years @ 6.00%	<u>0.0828275</u>
			£115,959
	Lessor's Interest		£338,278

MARRIAGE VALUE

		FHVP (less lessee's improvements)	£1,400,000
		less	
		Lessor's present interest	£338,278
		Lessee's Interest (less Lessee's Imps)	<u>£700,000</u>
		Marriage Value	£361,722
Take	75%	Marriage Value	£271,292
		TOTAL	£609,570
		SAY	£609,500

5. Mr T Dutton, of Counsel, appeared on behalf of the tenants. He said that the only outstanding issue between the parties was the price to be paid for the freehold interest. In support of the valuation for the tenant, he called Mr P Ross, BSc (Est Man), FRICS, Managing Director of Messrs Haywards, Chartered Surveyors, who specialised in mortgage and leasehold enfranchisement valuation in the NW6 and St John's Wood area. He described the subject property as an early Victorian Gothic Revival villa, in a prime residential part of St John's Wood. While the subject property itself is not a listed building, it is in a Conservation Area. It was a two storey building with stucco rendering beneath a steeply sloping roof of natural slate, with gables and pointed finials on the front elevation. The property had been extended at the rear, by way of tenant's improvements, adding a sixth bedroom, a third bathroom, and a large snooker room/conservatory. At the front a porch, in sympathetic style to adjacent properties, had been added. These improvements had been approved by both the local planning authority and the freeholders. The property has no garage, but there is ample off-street parking at the front of the property.

6. In support of his valuation of £225,000, Mr Ross stated that:

(i) With regard to yield, he had capitalised the ground rent at 7.5%, which he thought adequately reflected the quality of the investment and the excellence of the location. This was the rate the Tribunal had adopted in their decision in Black v Eton College [1994] (LON/NL/1) where there was a lease for a similar 43 year term.

(ii) With regard to the uplift of ground rent on review in 1999, he said that in the absence of sales of building land in the St John's Wood area, he had looked to the relationship between a site value and the freehold value of a completed building. Taking the freehold vacant possession value of the property as £1,250,000, he estimated 40% of that figure represented the site value, viz. £500,000, and one thirtieth of this was £16,666.

(iii) In arriving at a freehold value, he recognised that the best comparable was another freehold, but there were few freehold sales transactions in the St John's Wood area. However a lease of 50 years or more achieved a similar level of price as a freehold. There were three comparables that he drew to the Tribunal's attention:

(a) 8 St John's Wood Park; a modern 5 bedroom house overlooked by tower blocks, where the freehold interest was sold in September 1993 for £1,225,000.

(b) 2 Norfolk Road; a detached 3-4 bedroom house, where a 63 year lease (from the Eyre Estate) was sold for £1,150,000

(c) 26 Marlborough Place; a house of similar age and style, close by the subject premises, where a 72½ year lease was sold in September 1993 for £1,075,000.

(iv) With regard to the sale price for the subject premises, he stated that the property had been offered on the market at a figure of £1,150,000, and the applicants had purchased the lease in June 1994 in an arm's length transaction for £1,000,000.

(v) With regard to tenant's improvements, the difference in value of the property without tenant's improvements compared with the improvements was £150,000.

(vi) With regard to Marriage Value, he said that 50% for the landlord's share had been adopted in practice over many years, and that in open market transactions, there was no evidence to support a larger share than this.

7. Commenting on the comparables in the proof of evidence of Mr Briant, the expert witness for the landlords, Mr Ross said he felt 8 Wadham Gardens, NW3, and 33 Elsworthy Road, NW3, were not only of a different size and style, but were also effectively in a different part of London, viz. Primrose Hill; that 24

Marlborough Place was a totally unmodernised property; that 20 Marlborough Place was in a poor position, suffered from subsidence, had only one bathroom and that on the ground floor, and was in its present state uninhabitable; 40 and 44 Springfield Road were not period houses but inter-war properties on 3 floors with more beneficial ground rent provisions; that 34 Elm Tree Road was exceptional since it was in a road which enjoyed a particular cachet and achieved high prices for no really explicable reason.

8. In cross examination by Mr A Radevsky, Counsel for the landlords, Mr Ross rejected any suggestion that the price paid for the leasehold interest by the purchaser included any element of benefit attributable to the leaseholder's claim, that had been served only 3 days prior to the completion of that sale. He stated his professional opinion that a lease of 60 years or more is as good as a freehold and therefore 40 years or less were not as good as a freehold. That was why he had rejected 20 and 24 Marlborough Place as good comparables.

9. Mr Radevsky called Mr J E C Briant, BA, ARICS, of Messrs Daniel Smith, Chartered Surveyors, managing agents of the Eyre Estate, who spoke from a written proof of evidence. He stated that he was a partner in his firm, with twelve years of professional experience. He was the senior surveyor to the Eyre Estate and had been responsible for enfranchisement cases since 1986. He had also acted for other landed estates on enfranchisement matters and in particular for the John Lyon's Charity Estate which is also situated in the St John's Wood area.

10. Mr Briant, in support of his figure of £609,500 for the open market value of the freehold interest, drew the Tribunal's attention to five comparables in respect of the leasehold interest:

(i) 24 Marlborough Place, where a lease of $73\frac{1}{4}$ years at ground rent of £1,200 per annum with reviews every 21 years to 1/60th

of the freehold site value was sold in August 1993 for a premium of £561,000. The property was in poor state of repair and had suffered from subsidence, but was sold with the benefit of an insurance claim. It is estimated that the new lessee has spent about £300,000 on refurbishment. On analysis and making adjustments this suggested that the subject premises were worth less than £811,000.

(ii) 20 Marlborough Place, where a lease of 80 years at a ground rent of £500 per annum, with reviews every 21 years to 1/60th of the freehold site value was assigned in August 1995 with 71½ years unexpired. The property was in poor order and suffered from subsidence but was sold with the benefit of an insurance claim. It is estimated that the cost of refurbishment would be in the region of £325,000. On analysis, and making adjustments this suggested a value of less than £870,000 for the subject premises.

(iii) 26 Marlborough Place (a comparable also cited by the tenant) where it was stated a lease of some 73½ years unexpired with an initial ground rent of £1,000 per annum subject to review every 21 years to 1/60th of the freehold site value was assigned in September 1993 for a premium of £1,075,000. This premium reflected the fact it had an unexpired term of some 20½ more years than the subject property, and since the rent reserved in the lease is not in excess of £1,000 per annum the property is potentially enfranchiseable.

(iv) 40 Springfield Road, where the unexpired term of 43½ years subject to a fixed ground rent of £90 per annum was sold in June 1993 for a premium of £600,000. On analysis and with adjustments, this suggested a value of £690,000 for the subject premises.

(v) 44 Springfield Road, where the unexpired term of 43 years subject to a fixed ground rent of £90 per annum was sold in July 1993 for a premium of £755,000. On analysis and with

adjustments, this suggested a value of £800,000 for the subject property.

11. With regard to freehold value, Mr Briant offered two comparables:

(i) 8 Wadham Gardens, NW3, where the freehold of a turn of the century detached three storey house was sold in February 1994 for a premium in excess of £1,750,000. On analysis and with adjustments, this suggests a freehold value of £1,500,000 for the subject property.

(ii) 33 Elsworthy Road, NW3, where contracts have been exchanged for the sale of a turn-of-the-century freehold house for a premium of £2,100,000. On analysis and with adjustments, this suggests a freehold value of £1,500,000 for the subject property.

12. With regard to the ground rent review, Mr Briant offered three comparables, in adopting a land value of £600,000 for the subject property:

(i) 25 Marlborough Place, where the freehold site was sold in March 1993 for the sum of £365,000

(ii) 28 Elm Tree Road, where a site subject to a 99 year lease from March 1995 at a ground rent of £1,400 per annum, renewable to 0.5% of the freehold value every 21 years was sold in June 1995 for a sum of £1,500,000.

(iii) 34 Elm Tree Road, where the lease for a term of $72\frac{3}{4}$ years from June 1988, at a ground rent of £800 per annum subject to review every 21 years to $\frac{1}{60}$ th of the freehold site value, was assigned in April 1991 for £1,500,000.

13. With regard to Marriage Value, Mr Briant stated that the landlords, as a matter of policy, had not sold freeholds subject to long leases to lessees, either by agreement or on the open

market. There was, therefore, no evidence of transactions on the Eyre Estate. However he drew the Tribunal's attention to 126A Hamilton Terrace where the John Lyon's Charity accepted the surrender of a lease with 34 years unexpired, and the grant of a new lease of 99 years where the landlord achieved a split of 85% of the marriage value.

He also cited Flat 2, No 35 Hamilton Terrace where the John Lyon's Charity accepted the surrender of 13 years unexpired and granted a new 99 year lease where the landlord had achieved a 100% split of the marriage value. In the present instance he suggested a marriage value split of 75% for the landlord.

14. The applicant, Dr T Robertson, stated in evidence that contracts for the sale of the leasehold in the subject property (a certified copy of which was before the Tribunal), had been exchanged between himself and Mr J Chesterman on 26 November 1993. The date for completion of the transaction had been set for June 1994, to coincide with the time when Dr Robertson took up his academic appointment in London. After exchange of contracts had taken place, the vendor had offered, without additional consideration, to transfer to the purchaser the benefit of his application to purchase the freehold interest.

15. The contract of sale stated in Clause 5 that the purchase price was one million and fifty thousand pounds (£1,050,000), and Clause 15 stated "Contents: Of the purchase price one hundred and fifty thousand pounds (£150,000) shall be apportioned to the items referred to in the Inventory attached as Second Schedule which are included in the sale and ownership of such items will pass by delivery on completion." This would suggest that the actual purchase price for the leasehold interest was £900,000. Mr Dutton, in commenting on this apportionment suggested that it may have been made to take best advantage of tax liabilities and the stamp duty regime. With regard to the transfer, at no cost, of the benefit of the application to purchase the freehold, Mr Dutton said was simply an act of kindness on the part of the

vendor. He argued that the transfer of the lease should be at a global figure of £1,050,000.

16. INSPECTION

The Tribunal inspected the subject property on 24 October 1995. They found Marlborough Place to be a busy road, with a steady flow of traffic, in the heart of the prime residential area of St John's Wood, between Abbey Road and Loudon Road. The substantial houses, which were well set back, with wide, well tended front gardens, were of different styles and periods, some of recent construction. The area is designated as a conservation area, although the subject property was not a listed building. The subject property was a two/three storey, semi-detached, double fronted, early Victorian Gothic Revival villa, with white stucco rendering to the front and rear elevations. It had a slate roof with steep slopes with gables and pointed finials. There was no garage but the front garden had been paved to provide forecourt parking for some five cars.

The subject premises was one of some five adjoining properties of similar age and style. A porch, a tenant's improvement, had been built on to the front door in 1993, sympathetic to the style of the house. It was noted, however, that cracks had formed and it appeared to be pulling away from the main structure of the house.

Internally the accommodation comprised:

Ground Floor: entrance hall, dining room, drawing room, study, conservatory, kitchen, breakfast area, utility room, cloakroom;

Mezzanine: bedroom 5, cloakroom;

First Floor: bedroom 1 with en-suite dressing area and bathroom (sunken jacuzzi bath, two wash hand basins, walk in shower); bedrooms 2, 3, 4 and bathroom;

Second Floor: bedroom 6, bathroom, store cupboard;

The premises provided a residential "A" area (excluding bathrooms and circulation space) of 2977 sq.ft (276.59m²).

The Tribunal noted all the tenant's improvements listed in Mr Briant's proof of evidence, and in particular the alterations to the master bedroom, new bedroom 6, bathroom 3, and the conservatory-sun lounge agreed between the parties as affecting the relevant value. The fittings, finishes and general decoration was of the highest standard. The entrance hall with natural stone floor and classical columns established the ambience for the whole house. The staircase, by contrast, seemed somewhat small and out of scale. The conservatory, leading off the drawing room seemed rather big and out of proportion in relation to the overall area of the ground floor of the house. There was a paved terrace with balustrades and steps leading down to the garden itself with lawn, scrubs and mature trees. In the house itself the Tribunal noted some sloping floors, evidence of some earlier subsidence.

17. The Tribunal had the opportunity to inspect the interior of the comparable No 26 Marlborough Terrace, by courtesy of the occupants Mr and Mr Adams. While similar in style and floor area it had a different disposition of rooms, offering different accommodation. However like the subject property the quality of the fixtures, fittings and decorative finishes was of the highest standard. It too had an extension creating a utility room and a family room, opening on to the garden. The Tribunal inspected externally; 25 Marlborough Place, a site, which from outward appearances seems to have been developed as two properties with a high proportion of site coverage; 20 Marlborough Place where full scale reconstruction appeared to be in progress; 24 Marlborough Place similar in style to the subject property and in a well maintained state. They also inspected externally 40 and 44 Springfield Road but felt these two properties, of a markedly different style to the subject property, were not

particularly good comparables. They also inspected externally 8 Wadham Garden, 33 Elsworthy Road, and 28 and 34 Elm Tree Road. While these four properties assisted in giving good background to the general tone of St John's Wood area the Tribunal did not feel they were of direct comparable relevance to the subject property.

18. DECISION AND REASONS

In the present case the Tribunal decided that the appropriate capitalisation rate should be 7% throughout. They could see no special circumstances, nor had heard any compelling arguments to persuade them from departing from the rate generally accepted by the Tribunal in such cases.

On the evidence before them, the Tribunal accepted for the purposes of this decision, the consideration for the sale of the lease to be £1,000,000 as the open market vacant possession value with the benefit to enfranchise the freehold. This was the price registered at the Land Registry on 2 June 1994, notwithstanding the slightly higher figure of £1,050,000 mentioned in the contract of sale, and the apportionment for fixtures and fittings.

On the evidence of the comparables before them, the Tribunal preferred the reversion value of £1,250,000 proposed by Mr Ross, rather than the £1,500,000 of Mr Briant. On the basis that the site represented 40% of that value the Tribunal has taken into account that in 5 years time in 1999 the tenant would have been liable for a ground rent of some £16,600 per annum.

With regard to tenant's improvements, the Tribunal following their inspection preferred Mr Briant's valuation at £100,000 as being the extent to which the value of the property was enhanced, as distinct from the cost of those improvements.

With regard to marriage value, The Tribunal had no evidence

before them, nor were they made aware of any special circumstances in this case, to persuade them to depart from the established practice of the Tribunal of a 50% split.

The Tribunal's valuation is, accordingly, as follows;

VALUATION AND DETERMINATION

TERM

Ground Rent - per annum	200		
YP 5 yrs @ 7%	<u>4.1</u>		
		820	
Increase per terms of lease	16,666		
YP 38 yrs @ 7%	13.19		
P.V. in 5 yrs @ 7%	<u>.713</u>		
		156,735	
Reversion to V.P. value	1,250,000		
Less Improvements	<u>100,000</u>		
	1,150,000		
P.V. 43 yrs @ 7%	<u>.0545</u>		
		<u>62,675</u>	220,230

LESSOR'S SHARE OF MARRIAGE VALUE

Unencumbered freehold value	1,250,000		
Less improvements	<u>100,000</u>		
		1,150,000	
Value of 43 year lease	1,000,000		
Less improvements	<u>100,000</u>		
	900,000		
Lessor's present interest	<u>220,230</u>		
		<u>1,120,230</u>	
		<u>29,770</u>	
Gain on marriage value - 50%			<u>14,885</u>

VALUATION

Sum payable for freehold		<u>235,115</u>	
		say	<u>£235,000</u>

19. The Tribunal therefore, determines the sum to be paid for the freehold interest in 30 Marlborough Place, London, NW8, pursuant to section 9(1A) of the Leasehold Reform Act 1967, as amended, is £235,000 (two hundred and thirty five thousand pounds).

Chairman..... *Curaal Bowden*

Date..... *6th March 1996*