

14

Ref LON/LVT/610

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 S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: The Trustees of the Eyre Estate

Respondents: Mr and Mrs S Douer

Re: 1 Clifton Hill, St John's Wood, London NW8

RECEIVED
12 JUN 1997

Date of tenants' notice: 30 March 1995

Application to Tribunal dated 25 July 1996

Heard 24 April 1997

Appearances:

Mr J E C Briant BA ARICS (Daniel Smith, chartered surveyors)

for the applicant

Mr K G Buchanan BSc ARICS (Conrad Ritblat, chartered surveyors)
Mr S Douer, tenant

for the respondents

Members of the Leasehold Valuation Tribunal:

Lady Wilson MA
Mr C J Bradley BSc FRICS JP
Mr P Tobin FRICS ACI Arb

Valuation date: 30 March 1995

Unexpired term at valuation date: 37.5 years

Ground rent: £85 per annum

Price payable for the acquisition of the freehold: £190,000

Date of the Tribunal's decision: 29 May 1997.

The facts

1. 1 Clifton Hill is a three storey detached 1930's house with accommodation which, at the valuation date, included seven bedrooms, drawing room, dining room, family room, kitchen and two bathrooms. It has a small garden and off street parking space for three cars. The property is in the course of extensive renovation which is irrelevant to this application. The effective floor area of the property at the valuation date, excluding bathroom and circulation space, is agreed to be 218.5 square metres. It is held by the tenants under a full repairing lease dated 2 April 1938 for a term of ninety five and a quarter years from 24 June 1937, expiring on 29 September 2032, at a fixed annual ground rent of £85. There thus remained unexpired at the valuation date approximately thirty seven and a half years.

2. The following matters affecting valuation were agreed:

- (i) the value of the tenant's existing interest in the property is £700,000;
- (ii) the marriage value should be shared equally between the parties;
- (iii) there are no improvements carried out by the tenants or their predecessors in title which should diminish the price payable;
- (iv) the price is to be determined in accordance with section 9(1C) of the Leasehold Reform Act 1967 as amended.

3. The issues which we have to determine are thus:

- (i) the value of the freehold on 30 March 1995;
- (ii) the rate to be used for capitalisation and deferment.

4. A valuation prepared by Mr Briant on behalf of the freeholder is attached to this decision as appendix 1, and a valuation prepared by Mr Buchanan on behalf of the

tenants is attached as appendix 2. Mr Briant proposes an enfranchisement price of £262,471 and Mr Buchanan proposes one of £135,883. Most of the comparable properties relied on by the parties are listed in an agreed schedule, a copy of which is attached as appendix 3.

Decision

(i) The value of the freehold on 30 March 1995

Mr Briant suggests that the freehold is worth £1,100,000. To reach this conclusion he relies not only on market evidence but also on settlements of enfranchisement claims reached between Mr Buchanan on behalf of the tenants and himself on behalf of the Eyre Estate in respect of 5 Clifton Hill and 35 Loudoun Road NW8.

5 Clifton Hill, next door but one to the subject property, is, he says, a similar, but smaller, house (183 square metres against 218.5 square metres), with a lease which expires at the same time as that of No 1. The valuation date for No 5 was 7 February 1995, and a valuation, agreed and signed by him and by Mr Buchanan, showed a freehold value of £1,000,000 and a leasehold value of £640,000, the differential between the two values being 64 per cent. Such percentage differentials are, he says, of use as a check and are not conclusive. He says that we should give very great weight to a signed breakdown. He agreed, in answer to a question from the tribunal, that Mr Buchanan's signature on the valuation had been a condition of the Estate's agreement to the settlement.

35 Loudoun Road is, he says, a similar house to 1 Clifton Hill but in an inferior location. 42.25 years of the term remained unexpired at its valuation date, 25 March 1994. The

component parts of the valuation were not agreed with Mr Buchanan, but the Estate's breakdown of the valuation showed a freehold value of £950,000 and an existing leasehold value of £625,000 (a differential of 65.8 per cent).

Mr Briant also relied on open market evidence of sales of 8 St John's Wood Park, and 7, 28 and 64 Carlton Hill, details of which are set out in appendix 3. To arrive at his proposed freehold value, he adjusted these sale prices to reflect such factors as size, location, condition, date of sale, and the fact that three of the comparables were stucco rendered and would thus require regular and expensive redecoration.

Mr Buchanan suggests a freehold value of £900,000. He invites us to attach little weight to the settlements relied on by Mr Briant. He says that such settlements are governed by considerations irrelevant to a valuation under the 1967 Act. In the case of 5 Clifton Hill his client had instructed him to settle at any price, and the tenant of 35 Loudoun Road had negotiated the final settlement himself. Like Mr Briant, he relies on the open market sales of 8 St John's Wood Park, 7 and 28 Carlton Hill; and also of 43 Springfield Road, 24 Loudoun Road and 56 Clifton Hill, details of which are contained in appendix 3.

We inspected 1 Clifton Hill internally and externally. While it is (even without the alterations currently under way) a substantial house, it has the disadvantage of being situated at the corner of the noisy and busy Loudoun Road and of backing on to a petrol filling station with carwash and MOT testing facilities, which is itself next to a restaurant/public house. In our view the long return frontage of the property to Loudoun Road compromises its security to some extent, and the garden is small for the size of the house. We considered that the location of the property was less good than that of 5 Clifton Hill which is further from the junction with Loudoun Road but is

otherwise a very similar, though smaller, house. We inspected externally all the properties relied on by Mr Briant and by Mr Buchanan. None of them, apart from 5 Clifton Hill, was in our view very closely comparable to the property under consideration, but we derived most assistance from the transactions relating to 8 St John's Wood Park and 56 Clifton Hill. In our view the location of 35 Loudoun Road was only marginally inferior to that of 1 Clifton Hill. We did not regard the valuations of 5 Clifton Hill and 35 Loudoun Road as conclusive evidence of their value, although we attached some weight to the signed valuation in respect of 5 Clifton Hill. While we had no evidence of the circumstances which in fact influenced these settlements, common sense suggests they were subject to a *DeLaforce* effect, in that factors such as the risk, expense and delay of litigation, particularly against a landlord with an extensive estate and the means to appeal a determination which it finds unpalatable, are likely to influence such settlements, and we therefore consider that such valuations should be treated cautiously. This applies particularly to a valuation such as that relating to 35 Loudoun Road, which was not agreed by the tenant or his advisers, and is capable of analysis which differs from that proposed by Mr Bryant. We agree with Mr Briant that percentage differentials between leasehold and freehold values cannot be applied with mathematical consistency and are not conclusive.

In all the circumstances we have come to the conclusion that the value of the freehold on the relevant date was £1,000,000.

(ii) Yield

Mr Briant suggests that the appropriate rate for capitalisation and deferment is 6 per cent, and Mr Buchanan 7 per cent.

Mr Briant says that the factors which affect yield are location, value and lease length. He relies on a number of agreed enfranchisements in St John's Wood which he has negotiated on behalf of the Eyre Estate and John Lyon's Charity, all of which show, according to his breakdowns, a yield of 6 per cent. In respect of four of them (in addition to the settlement relating to 5 Clifton Hill referred to above) he produced breakdowns signed by the tenant's representative, who, in three instances, was Mr Buchanan. He also relies on the two settlements discussed under (i) above. The agreed valuation relating to 5 Clifton Hill shows a yield of 6 per cent, and his own analysis of the valuation relating to 35 Loudoun Road shows a yield of 6.5 per cent. He relies on the agreed yield in the former valuation to support a yield of 6 per cent in the present case, taking into account the similarities in the lease terms, location and values of the two properties. He says that the poorer location of 35 Loudoun Road adversely affected the capital growth prospects of the property, which was why a 6.5 per cent yield was adopted, and the superior location of the subject property supports a yield of 6 per cent. In the case of 70 Loudoun Road he had, on behalf of the Estate, agreed a yield of 7 per cent because of the length of the lease and of its location, which was very close to 7 Queensmead, (a relatively small 1960's town house with a lease length of 68.75 years) where a leasehold valuation tribunal had applied a rate of 7 per cent which the estate had accepted. He also relies on the decision of the Lands Tribunal in the case of 43 Hamilton Terrace, where, in the absence of any evidence from the tenant, the yield rate of 6 per cent, suggested by the landlord but not tested by cross-examination, was accepted by the Tribunal. And he refers to a recent leasehold valuation tribunal decision in relation to 27 Springfield Road, where a yield of 6 per cent was agreed by Mr Buchanan for the tenant.

Mr Buchanan relies on five leasehold valuation tribunal decisions in respect of houses in St John's Wood, in all of which the tribunal determined rates of 7 or 7.5 per cent. In

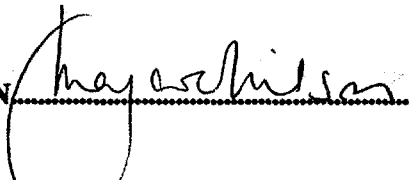
the case of 73 Springfield Road (7.5 per cent) the landlord appealed to the Lands Tribunal and the parties then settled on a price of £49,950, against a leasehold valuation tribunal determination of £48,000. The additional sum paid by the tenant reflected, he said, the fact that his costs of an appeal would have exceeded the increase in price, and although Mr Briant for the landlord had produced a revised valuation showing a yield of 6.5 per cent, the agreed figure also supported a yield of 7 per cent. In 121 Hamilton Terrace (7 per cent), the landlord also appealed to the Lands Tribunal, and the increased price of £166,850, as against £158,264, primarily reflected a deferred completion date. In 43 Hamilton Terrace, the landlord's appeal was heard by the Lands Tribunal, but the tenant took no part in the appeal, and, although the yield rate was set at 6 per cent, the determination made clear that the decision should not be treated as a precedent. In 30 Marlborough Place the landlord's appeal to the Lands Tribunal was settled before the hearing at a revised price of £350,000, compared with the price of £235,000 determined by the leasehold valuation tribunal. In his opinion an analysis of the revised price could support a yield of either 6 per cent or seven per cent. In 139 Hamilton Terrace (which is subject to an appeal, not yet determined, to the Lands Tribunal, where, we are told, the sole issue will be the yield rate applied) the reasons expressed for the leasehold valuation tribunal determination of a rate of 7 per cent included that yields adopted for properties in the vicinity were more relevant than those which had been adopted in respect of more central residential areas such as the Cadogan and Grosvenor Estates. He had settled 35 and 70 Loudoun Road with the Eyre Estate at 6.5 and 7 per cent respectively.

We have come to the conclusion that 7 per cent is the appropriate yield rate in the circumstances of this case. In our view, some distinction is to be drawn between St John's Wood and the most prime central residential areas of London, although we accept that the best properties in the best parts of St John's Wood might be as attractive to an

investor as properties in prime central London. While we can accept with Mr Briant that different yield rates may be appropriate for different properties in different parts of St John's Wood, the yield will depend on many factors which may include the value of the property, the excellence of its location, the length of the lease and the possibility of ground rent reviews, we consider that these factors may create differences in the appropriate yield rate when a number of them differ from the norm. In reaching our conclusion in the present case we have had regard principally to the drawbacks of the precise location of the property and to the low fixed ground rent. We have not felt obliged to apply the rate used in the settlement relating to 5 Clifton Hill for the reasons given under (i) above.

Decision

We accordingly determine the price payable by the tenants for the freehold in possession of 1 Clifton Hill to be £190,000 (one hundred and ninety thousand pounds) in accordance with our valuation which is attached to this decision as appendix 4.

CHAIRMAN 

DATE 29 May 1997.

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993.

1 Clifton Hill S 9 (1c)

Valuation Date: 30/03/95

LEASE TERMS:

Lease commenced: 24/06/37
 Lease to expire: 20/09/32
 Unexpired Term: 37.50
 Ground rent (pa): £85

Lessees improvements: £0

| | | | |
|----------------------|------------|------------|--------|
| FHVP | £1,100,000 | £1,100,000 | |
| Value of Underlease: | £700,000 | £700,000 | 63.64% |

LANDLORDS INTEREST:

Term:

Ground Rent: £85
 YP 37.50 @ 6% 14.7926

£1,257

Reversion:

FHVP Less improvements: £1,100,000
 PV £1 37.50 @ 6% 0.1124

£123,685

£124,943

LESSEES INTEREST (less improvements): £700,000

MARRIAGE VALUE:

FHVP (less improvements): £1,100,000
 Less
 Landlords Interest: £124,943
 Leasehold Interest (less improvements): £700,000

Total Marriage Value: £275,057

50% MV to Freeholder £137,529 £137,529

Leaseholders interest: £837,529

Freeholders interest: £262,471

Valuation as at 8th March 1995
 Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as
 amended by the Leasehold Reform Housing and Urban Development Act 1993

1. Value of Freeholders Interest

Term

| | | |
|-----------------|--------------------|--------|
| Ground Rent | £85 p ^a | |
| YP 37½ yrs @ 7% | 13.15 | £1,117 |

Reversion

| | | |
|--|--|----------|
| Unimproved Freehold vacant possession value | | £900,000 |
|--|--|----------|

| | | |
|--------------------|-------|----------------|
| PV £1 37½ yrs @ 7% | .0785 | <u>£70,650</u> |
| | | £71,767 |

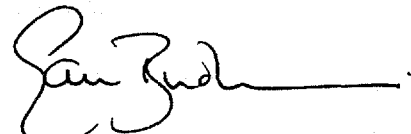
Marriage Value

| | | |
|--|--|----------|
| Unimproved Freehold vacant possession value | | £900,000 |
|--|--|----------|

| | | |
|---------------------------------------|--|----------|
| Less (i) Freeholders Interest | | £71,767 |
| (ii) Unimproved Leaseholders Interest | | £700,000 |
| Marriage Value | | £128,233 |

| | | |
|--------------------------|--|----------------|
| Freeholders share at 50% | | <u>£64,116</u> |
| | | £135,883 |

In my opinion, the price payable for the Freehold under Section 9(1)c of the
 Leasehold Reform Act 1967 as amended should be determined at £135,883.



K G Buchanan BSc ARICS
 Conrad Ritblat

1 CLIFTON HILL, LONDON NW8

Schedule of Comparables

| ADDRESS | TYPE OF PROPERTY | APPROX. A' AREA | ACCOMMODATION / AMENITIES | TENURE / LEASE LENGTH | GROUND RENT | PRICE | DISPOSAL DATE |
|------------------------------|---|------------------------------------|---|---|---|--|--|
| SUBJECT PROPERTY | | | | | | | |
| 1 CLIFTON HILL | A 3 storey brick built town house under a tiled roof. | 218.5 m ² 2352 sq ft | INTERNAL : 8 Bedrooms, dressing room, 4 bathrooms (2 en suite), living room, dining room, family room, kitchen/ breakfast room, study, utility room, cloakroom. EXTERNAL : In and Out driveway with off street parking for 3 cars, rear garden. | Lease for a term of 95 years from 24/6/37, expiring 29/9/2032. Unexpired term 37 ½ years. | £85 p.a. fixed for the residue of the term. | | Valuation date: 30 March 1995 |
| FREEHOLD COMPARABLES | | | | | | | |
| 7 CARLTON | A 3 storey detached grade II listed period house. | 175 m ² 1880 sq ft | INTERNAL : 5 bedrooms, 1 bathroom, dining room, L shaped drawing room, cloakroom, kitchen, breakfast room. EXTERNAL : Front and rear garden. | 99 year lease from 24/6/96, expiring 24/6/2095. Unexpired term 99 years. | £1200 p.a. reviews every 21 years to 0.5% of the freehold capital value | £570,000 | July 1996 |
| 28 CARLTON HILL | A 4 storey detached double fronted period house with stucco elevations. | 236 sq m 2544 sq ft | INTERNAL : Drawing room , dining room , TV room, kitchen/ breakfast room, family room, master bedroom with en suite bathroom and dressing room, 5 further bedrooms , 3 further bedrooms (1 en suite), utility room, guest cloakroom. EXTERNAL : Internal garage | FREEHOLD | N/A | £875,000 | May 1993 |
| 64 CARLTON HILL | Double fronted detached period house with stucco elevations. | 183 m ² 1964 sq ft | INTERNAL : 5 bedrooms, dressing room, 2 bathrooms, shower room, work room, double aspect drawing room, dining room, kitchen/breakfast room, cloakroom. EXTERNAL : OSP 3, rear garden | FREEHOLD | N/A | £1,000,000 | February 1996 |
| 56 CLIFTON HILL | Semi detached period house. | 234 m ² 2,520 sq ft | INTERNAL : Entrance hall, 3 reception rooms, kitchen, 4 bedrooms, 2 bathrooms, 1 shower room. lower ground level currently used as doctors surgery, has secondary entrance and comprises of 4 rooms, kitchen and shower room. EXTERNAL : Garden, OSP 1 | FREEHOLD | N/A | £875,000 | August 1996 |
| 8 ST JOHN'S WOOD PARK | A low brick built detached house arranged over 3 floors. | 278 m ² 2992 sq ft | INTERNAL : 5 Bedrooms, Games room, Study, 3 reception rooms, kitchen, utility room, guest cloakroom, Games room. EXTERNAL : Double Garage, OSP 3. | FREEHOLD | N/A | £1,025,000 £1,225,000 £1,400,000 | September 1993 June 1995 August 1996 |

1 CLIFTON HILL, LONDON NW8

Schedule of Comparables

| ADDRESS | TYPE OF PROPERTY | APPROX. A' AREA | ACCOMMODATION / AMENITIES | TENURE / LEASE LENGTH | GROUND RENT | PRICE | DISPOSAL DATE |
|-----------------------------|--|------------------------------------|---|---|---|----------|-------------------------------|
| SUBJECT PROPERTY | | | | | | | |
| 1 CLIFTON HILL | A 3 storey brick built town house under a tiled roof. | 218.5 m ² 2352 sq ft | INTERNAL : 8 Bedrooms, dressing room, 4 bathrooms (2 en suite), living room, dining room, family room, kitchen/ breakfast room, study, utility room, cloakroom. EXTERNAL : In and Out driveway with off street parking for 3 cars, rear garden. | Lease for a term of 95 years from 24/6/37, expiring 29/9/2032. Unexpired term 37 ½ years. | £85 p.a. fixed for the residue of the term. | | Valuation date: 30 March 1995 |
| FREEHOLD COMPARABLES | | | | | | | |
| 24 LOUDOUN ROAD | Detached grade II listed gothic style house. | 156 m ² 1679 sq ft | INTERNAL : 4/5 bedrooms, 2 bathrooms, 2 reception rooms, study/bedroom 5, 2 cloakrooms, kitchen/breakfast room, utility room. EXTERNAL : Rear garden | FREEHOLD | N/A | £772,500 | November 1995 |
| 43 SPRINGFIELD ROAD | Double fronted detached house located on South side of Springfield Road. | 193 m ² 2077 sq ft | INTERNAL : Entrance hall, guest cloakroom, 3 reception rooms, kitchen/breakfast room, utility room, 5 bedrooms, 3 bathrooms EXTERNAL : Rear garden, single garage, carriage drive providing additional off-street parking for approx. 5 cars. | FREEHOLD | N/A | £800,000 | November 1992 |

1 CLIFTON HILL, LONDON NW8

Schedule of Comparables

| ADDRESS | TYPE OF PROPERTY | APPROX. A' AREA | ACCOMMODATION / AMENITIES | TENURE / LEASE LENGTH | GROUND RENT | PRICE | DISPOSAL DATE |
|------------------------------|---|------------------------------------|---|--|---|---|-------------------------------|
| SUBJECT PROPERTY | | | | | | | |
| 1 CLIFTON HILL | A 3 storey brick built town house under a tiled roof. | 218.5 m ² 2352 sq ft | INTERNAL : 8 Bedrooms, dressing room, 4 bathrooms (2 en suite), living room, dining room, family room, kitchen/ breakfast room, study, utility room, cloakroom. EXTERNAL : In and Out driveway with off street parking for 3 cars, rear garden. | Lease for a term of 95 years from 24/6/37, expiring 29/9/2032. Unexpired term 37 ½ years. | £85 p.a. fixed for the residue of the term. | | Valuation date: 30 March 1995 |
| LEASEHOLD COMPARABLES | | | | | | | |
| 3 CLIFTON HILL | Low-built 1930's detached house. | 190 m ² 2045 sq ft | INTERNAL : Entrance hall, master bedroom suite, 4 further bedrooms, 3 bathrooms, reception room, family room, dining room, kitchen/breakfast room, utility. EXTERNAL : Patio, landscaped garden (fitted Jacuzzi), single garage, OSP 3 cars. | 95 ¼ year lease from 24/6/37, expiring 29/9/2032. 38¾ years unexpired. | £75 p.a. | £700,000 Sold with benefit of notice | 3 May 1994 |
| 3 LANGFORD PLACE | A 1930's detached double fronted low built house. | 203 m ² 2185 sq ft | INTERNAL : Entrance Hall, Guest Cloakroom, drawing room, dining room, family Room, kitchen/Breakfast room, 5 bedrooms, dressing area, 3 bathrooms (1 en suite), utility room, cellar storage. EXTERNAL : Paved forecourt, 1 OSP, Internal garage, rear garden. | 99 year lease from 25/3/34, expiring 25/3/2033. Unexpired term 36 years. | £80 p.a. | £942,500 | 1 January 1997 |
| 6 SPRINGFIELD ROAD | 1930's detached double fronted house. | 202 m ² 2181 sq ft | INTERNAL : 6 Bedrooms, 4 bathrooms (2 en suite), Study, 3 reception rooms, kitchen, guest cloakroom, Playroom / utility room. EXTERNAL : Garage, OSP 1, 60 ft rear garden | 99 year lease from 24/6/1937 expiring 24/6/2036, unexpired term 43 ½ years. | £90 p.a. | £530,000 | 26 February 1993 |
| 40 SPRINGFIELD ROAD | 1930's detached double fronted low built house. | 254 m ² 2730 sq ft | INTERNAL : 7 Bedrooms, 2 bathrooms, shower room, Study, 2 reception rooms, kitchen / breakfast room, guest cloakroom, utility, WC. EXTERNAL : Garage, OSP 2, landscaped garden, 2 tradesman's entrances, loft storage. | 99 year lease from 24/6/1937 expiring 24/6/2036, therefore with 43 ¼ years unexpired term. | £90 p.a. | £600,000 | 25 March 1993 |
| 44 SPRINGFIELD ROAD | 1930's detached double fronted low built house. | 213 m ² 2293 sq ft | INTERNAL : 5/6 Bedrooms, large dressing room, 3 bathrooms (1 en suite), sauna, study, 3 reception rooms, kitchen / breakfast room, guest cloakroom, playroom. EXTERNAL : Garage, OSP 1. | 99 year lease from 24/6/1937 expiring 24/6/2036, unexpired term 43 years. | £90 p.a. | £755,000 Immaculate condition | 5 July 1993 |

1 CLIFTON HILL, LONDON NW8

VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL

Value of Freeholders Interest

| | | | |
|---|---------------|---------------|-----------------|
| Term | | | |
| Ground Rent | £85 | | |
| YP 37.5 yrs @ 7% | 13.155 | | 1118 |
| Reversion | | | |
| Unimproved Freehold Vacant Possession Value | | 1000000 | |
| PV £137.5 yrs & 7% | | 0.0785 | <u>78500</u> |
| | | | 79618 |
| Marriage Value | | | |
| Unimproved Freehold Vacant Possession Value | | 1000000 | |
| Less: (i) Freeholders Interest | 79618 | | |
| (ii) Unimproved Leaseholders Interest | <u>700000</u> | | |
| | | <u>779618</u> | |
| | | 220382 | |
| Freeholders share at 50% | | | <u>110191</u> |
| | | | 189809 |
| | | But say | <u>£190,000</u> |