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LVT 7 (3/94)

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Ref LON/LVT/597

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

Applicants: Trustee of John Lyons Charity

Respondent: Mr E Brett

RE: 139 Hamilton Terrace, London NW8

Date of Tenant's Notice: 14 February 1995

Application to Tribunal dated: 18 April 1996.

Heard: 13 November and 12 December 1996

Appearances: Mr E Brett - tenant in person (with son)  
Mr D P Conway, David Conway & Co, Solicitors  
Mr K G Buchanan, BSC(Est Man) ARICS, Conrad Ritblat  
Mr R Bernstone, Aston Chase  
Mr N Stone, Bargets

for the Tenant

Mr A Radevsky (of Counsel)  
Miss V Walton, Lee & Pembertons, Solicitors  
Mr J E C Briant, BA ARICS, Daniel Smith  
Mr T P C Reade, BSC ARICS, Daniel Smith

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs H Kelly LLB (Chairman)  
Mr G I Coe BSc (Est Man) FRICS  
Mrs J Martin JP

Date of Valuation: 14 February 1995

Date of Tribunal's decision 24 FEB 1997

1. This is an application made by John Lyon's Charity (the landlord) for the determination of the enfranchisement price as at 14 February 1995, the date of the notice of claim, for the freehold under section 9(1C) of the Leasehold Reform Act 1967, as amended by the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), in respect of the house and premises at 139 Hamilton Terrace NW8.

2. The tenant, Mr Ernest Brett, by a notice dated 14 February 1995, stated his wish to acquire the freehold, which right has been admitted by the landlord.

3. The tenant held under a lease dated 6 March 1969 for a term of 96½ years from 25 March 1965, expiring on 29 September 2061, at an initial rent of £250 per annum. The lease contained inter alia a rent review clause, later amended by a deed of variation dated 9 May 1986.

Under the deed, the rent was increased to £1,000 per annum with effect from 25 December 1985 and was thereafter subject to review to 0.25 % of the capital value of the building on 29 September 2015, 2030 and 2045, [the relevant dates].

In addition, there were further amendments to the insurance and registration clauses.

The deed of variation, by the second schedule, clause 1, referring to a sum equivalent to 0.25 % of the capital value of the demised premises at the relevant date, stated that it was agreed and declared that for the purposes of this Lease the term "capital value" shall mean the sum which on the relevant date could reasonably be obtained in the open market by the way of fine or premium...

The tenant acquired the tenancy on 6 December 1991.

#### 4. Inspection

The subject property is located on the south-western side of Hamilton Terrace, between Carlton Hill and Abercorn Place.

Hamilton Terrace is one of the most prestigious tree-lined streets in the heart of St John's Wood close to Lords Cricket Ground and Regents Park. It is a sought-after and expensive residential area. The majority of properties are occupied as houses and flats in private occupation.

The subject property is a detached brick built house constructed in the mid 1960's. It is on lower ground, ground, first and second floors, with an additional conservatory to the rear housing a swimming pool and sauna. It has a stucco front elevation, with decorative iron balcony features at first floor level.

The house also benefits from good provision for off-street parking behind the front boundary wall and double security gates, and a double length garage.

5. There is a well laid-out garden at the rear, but its depth, as included in the tenant's claim, is not large as part of it is held by the tenant from the landlord on a short term notice. It is further reduced by the construction of the rear extension by the tenant to house the swimming-pool/conservatory.

6. Internally, the property as we saw it on inspection had been transformed from its original condition to such an extent that we could see no useful reason for describing it in any detail. Except for the area on which the swimming pool complex had been built, the integral rebuilding and refurbishment was carried out by the tenant within the confines of the original structure, but included the re-arrangement of the use of the ground and lower ground floor accommodation, as well as significant alterations to the upper floors as a consequence of the repositioning of the staircase.

7. The subject house, as seen by the Tribunal on inspection, contained the following accommodation:

<u>basement</u>	Staff living quarters, kitchen, swimming pool complex and sauna, utility room.
<u>ground floor</u>	three principal reception rooms and a cloakroom.
<u>first floor</u>	three bedrooms with bathrooms en suite.
<u>second floor</u>	three bedrooms, two bathrooms, one being en suite, and a roof terrace.

The effective floor area of the house, excluding bathrooms, WC's and circulation space was 303m<sup>2</sup> or 3260ft<sup>2</sup>.

8. The parties agreed that elements of the following works constituted improvements for the purposes of the Act:

- a. Construction of a new rear extension to provide conservatory, swimming pool and sauna.
- b. Construction of a garage at the side of the property.
- c. The reconstruction of the lower ground floor accommodation including the installation of a new fully fitted kitchen/breakfast room with a slate floor and separate staff accommodation.
- d. Complete rewiring with new light fittings.
- e. New central heating and hot water boiler and complete replumbing.

- f. New stucco finish to front elevation.
- g. The installation and repositioning of a new staircase.
- h. Installation of electricity operated entrance gates to the driveway.
- i. Creation of larger bedrooms with dressing rooms and additional en suite bathrooms on the upper floors.

The parties agreed that the entire rear extension comprising the swimming pool and sauna (item no.1 above) should be ignored and the house should be valued as though this extension had not been built since none of the comparables had an extension of this type. In particular, elements of items d and e constituted repair and renewal.

9. As so many substantial changes had been made to the property by the tenant, we were much assisted by the parties agreed statement of facts, and the accompanying plans and photographs, identifying the extent and nature of the changes, improvements and repairs carried out to the property.

#### 10. Hearing

The following matters were in dispute between the parties: the yield rate, the landlord adopting a rate of 6% and the tenant 7%; the unimproved freehold value; the unimproved leasehold value; and the effect of the ground rent review as set out in the deed of variation. The parties agreed that the marriage value should be divided on 50/50 basis.

11. With regard to the rent review clause, Mr Radevsky for the landlord contended that the house should be valued at the time of the rent review with all its

improvements since any disregard for improvements had to be as a result of an express provision. Neither authority nor principle drove one to the conclusion that the property should be treated as unimproved for the purposes of a rent review. He referred to Ponsford v H.M.S. Aerosols Ltd [1979] A.C. 63, where the House of Lords held (Lord Wilberforce and Lord Salmon dissenting) that, on the facts of that case, a rent review clause "a reasonable rent for the demised premises" was to be assessed by having regard to the improved state of the premises without considering who had paid for the improvements. [Reference was also made to Norfolk v Trinity College, Cambridge].

12. Mr Conway for the tenant argued that for the purposes of the rent review clause, the property should be valued in its unimproved state in view of the provisions of section 9(1A)(d) of the Act of 1967. [Reference was made to Hague on "Leasehold Enfranchisement" and Woodfall on "Landlord and Tenant"].

13. Mr Conway also pointed out that the deed of variation expressly referred to "the assumption that the demised premises are fully repaired" but made no mention of any assumption that improvements should be included in the calculation under the rent review clause.

14. The parties' representatives submitted written proofs to substantiate their valuations, and their schedules of valuation are set out:

Appendix 2 - by Mr Briant on behalf of the landlord.

Appendix 3 - by Mr Buchanan on behalf of the tenant.

15. The parties submitted an agreed schedule of comparables which was of great help to the Tribunal: See appendix 4.

In addition, Mr Briant provided details of a number of settlements where he had acted on behalf of John Lyon Charity Estate and had given valuation reports for the purposes of The Charities Act 1993. These settlements he used principally in support of the yield rate that he had applied.

16. Mr Bernstone and Mr Stone gave evidence for the tenant, supported by a written proof of evidence, both witnesses supporting Mr Buchanan's evidence.

17. Mr Conway submitted that the Delaforce effect would have an impact on the settlement evidence put forward by the landlord, whereas Mr Radevsky considered that the Delaforce effect would have no influence in an area of high property values where most lessees would be professionally represented. [Reference was made to Cadogan v Hows [1989] 2 E.G.L.R 216].

18. The Tribunal's Conclusion

With regard to the yield rate, the Tribunal adopted 7% on the basis that: (a) No 43 Hamilton Terrace, in which the figure of 6% was accepted, was specifically stated by the Lands Tribunal not to be a precedent for other determinations; (b) settlement evidence was susceptible to varying analysis; (c) previous L.V.T. decisions for properties in the vicinity were more relevant to the present valuation than those relating to more central residential areas of London such as the Cadogan and Grosvenor estates; (d) No 125, Hamilton Terrace was a transaction in which 6% formed part of an agreed yield rate, following after 43, Hamilton Terrace decision in the Lands Tribunal where the Delaforce effect might have played a part; and (e) we had regard to the fact that a significant part of the rear garden could be recovered by the landlord on six months' notice and this would have the effect of making the property less desirable.

19. With regard to the freehold value in an unimproved state and without the swimming pool complex, we had regard to the comparables, drawn to our attention and especially to No 41 and No 136 Hamilton Terrace.

No 41 was sold in June 1996 for £1.95 million for a 97 year lease with a ground rent review in 2018. This was smaller than the subject house, lacked off-street parking and had been modernised to a high standard.

No 136 was sold in October 1996 for £1.42 million freehold. It was semi-detached and smaller than the subject but was in a very poor state with many defects due to water damage.

20. The Tribunal was of the opinion that the evidence showed the variations in sale price at different dates, in respect of various lease lengths and for different size and condition of properties. We concluded that the various transactions did not support an unimproved value as low as £1.6 million or as high as £2.050 million put forward by the parties.

21. The Tribunal decided that £1.9 million was sustainable both by reference to the limited market evidence and after taking account of adjustments to be made from the available evidence to exclude improvements.

22. With regard to the unimproved leasehold value, we considered the evidence provided by Nos 31, 54 and 58, Hamilton Terrace. We accepted Mr Briant's view that No 54 was not really representative of leasehold comparables and we considered that Mr Buchanan's adjustments adding up to about £1 million applied to that transaction were not sufficiently reliable to be a basis for valuation.



Both Nos 31 and 58 were sales for leases rather shorter than the subject and both took place in 1995 when the market was similar to that applicable on the valuation date.

23. Mindful of the somewhat longer lease of the subject property, we concluded that a value of £1,500,000 would be the unimproved leasehold value of the subject.

24. We noted that the parties agreed that the marriage value should be split on a 50/50 basis.

25. With regard to the rent review clause in the deed of variation dated 9 May 1986, we accepted that the capital value for the purposes of the first part of the second schedule included the improvements made to the property by the tenant. We noted the words of that clause and considered that, in view of the words "the sum which on the relevant date could reasonably be obtained in the open market..." and in the absence of a specific disregard provision, improvements had to be included. We also had in mind the case of Ponsford v HMS Aerosols Ltd [1979] A.C. 63 in which the House of Lords drew a distinction between "reasonable rent" and "open market rent".

26. We had in mind that both parties accepted that the property should be viewed in its unimproved state for the purpose of the freehold and existing leasehold value.

27. We noted that not all the works carried out by the tenant to the property were considered by the landlord to be improvements, his representative contending that some e.g. complete rewiring and replumbing and a new central heating and hot water boiler, were repairs. Nor did the parties agree on the consequences in terms of the capital value of the works. However, we felt that the substantial improvements and changes were so comprehensive that any element of repair would be virtually de minimis.

Moreover, we were not provided with any specific figures to enable us to apportion the repair element.

28. Decision

Accordingly, on the basis of the arguments put to us, all the evidence and our inspection, we determine the premium payable by the tenant for the freehold interest in respect of 139 Hamilton Terrace NW8 is £224,350 (two hundred and twenty four thousand and three hundred and fifty pounds).

Chairman.....*Hennietta Kelly*.....

Date.....*24 February 1997*.....

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993139 HAMILTON TERRACE, LONDON NW8

Valuation date: 14th February 1995

Value of Lessor's Present Interest

Term 1				
	Ground Rent receivable		£1,000	
	YP 20.6 years @ 7%		10.74	
			<u>          </u>	£10,740
Term 2				
	Estimated Ground rent		£5,000	
	YP 46 yrs @ 7%	13.65		
	Deferred 20.6 yrs @ 7%	0.25		
		<u>          </u>	3.413	
			<u>          </u>	£17,065
Reversion				
	Freehold interest excluding tenant's improvements		£1,900,000	
	Deferred 66.6 years @ 7%		0.011	
			<u>          </u>	£20,900
			<u>          </u>	£48,705
Value of lessor's interest				

Lessor's share of marriage value

	Freehold interest - as above		£1,900,000	
	Less :			
	Value of lessee's interest	£1,500,000		
	Value of lessor's interest - as above	£48,705		
		<u>          </u>	£1,548,705	
	Marriage Value		<u>          </u>	£351,295
	50% to lessor			<u>          </u>
				£175,648
				<u>          </u>
	Total			£224,353
	<u>Enfranchisement Price</u>	Say		<span style="border: 1px solid black; padding: 2px;">£224,350</span>

Valuation as at 14 February 1995 by Mr Briant

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE:- 11/12/96

PROPERTY 139 HAMILTON TERRACE, LONDON, NW8

NOTICE DATE 14/02/95

LEASE DETAILS

DATE	06/03/69	
TERM	96	
EXPIRY DATE	29/09/61	
UNEXPIRED TERM	66.62	
GROUND RENT (Until Review)	£1,000 to	29/09/15
ESTIMATED GROUND RENT (from review)	£5,000 from	29/09/15

VALUES

FHVP	£2,300,000
LHVP	£1,850,000
LESSEE'S IMPROVEMENTS	£250,000

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM 1</u>	GROUND RENT		£1,000	
	x YP	20.62 years @	6.00%	11.65
				-----
				£11,653
<u>TERM 2</u>	GROUND RENT		£5,000	
	x YP	46.00 years @	6.00%	15.52
	x PV	20.62 years @	6.00%	0.301
				-----
				£23,350
<u>REVERSION</u>	FHVP		£2,050,000	
	x PV	66.62 years @	6.00%	0.0206
				-----
				£42,255
				Lessors present interest
				<u>£77,258</u>

MARRIAGE VALUE

	FHVP		£2,050,000	
Less	Lessor's Present Interest		£77,258	
	Lessee's Interest		£1,600,000	
			-----	
	Marriage Value		£372,742	
	Take	50% Marriage Value		£186,371
				-----
			TOTAL	£263,629
			<u>SAY</u>	<u>£263,600</u>

**139 HAMILTON TERRACE, LONDON NW8**

Valuation as at 14th February 1995 by Mr Buchanan

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 1

Ground Rent	£1,000 pa	
YP 20 yrs @ 7%	£10.59	£10,590

Term 2

Ground Rent	£3,600 pa	
YP 46 yrs @ 7%	13.65 }	
	3.52 }	
PV £1 20 yrs @ 7%	0.258 }	£12,672

Reversion

Unimproved Freehold vacant possession value	£1,600,000	
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PV £1 66 yrs @ 7%	.0115	<u>£18,400</u>
		£41,662

But Say £41,500

Marriage Value

Unimproved Freehold vacant possession value	£1,600,000	
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£1,600,000

Less (i) Freeholders Interest	£41,500
(ii) Unimproved Leaseholders Interest	

£1,300,000

Marriage Value	£258,500
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Freeholders share at 50%	<u>£129,250</u>
	£170,750

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 £170,750.

**Statement of Agreed Facts**  
**Schedule of Comparables**

Address	Type of Property	Areas "a"	Accommodation/ Amenities	Date of Sale	Sale Price	Tenure/ lease length	Ground Rent
139 Hamilton Terrace	Detached 4 storey 1960's	303m <sup>2</sup> (3260sq ft)	6/7 beds, 5 bath, 4 rec Garage, off street parking, rear garden	N/A	N/A	66 yrs	£1,000pa subject to review in 2015 to 0.25% of capital value
23 Hamilton Terrace	Detached 4 storey period	227m <sup>2</sup> (2442 sq ft)	5 beds, 4 bath, 4 rec + staff flat Off street parking, garage, rear garden	Aug 93	£1.117m	60 yrs	£250pa subject to review in 1995 to 0.25% of capital value
31 Hamilton Terrace	Detached 4 storey period	313m <sup>2</sup> (3365 sq ft)	6 beds, 5 bath, 4 rec Off street parking, double length garage, rear garden	July 95	£1.4m	51 yrs	£100pa fixed for duration of the term
41 Hamilton Terrace	Detached 4 storey period	260m <sup>2</sup> (2797 sq ft)	6 beds, 5 bath, 4 rec Rear garden	June 96	£1.95m	97 yrs	£2,000pa subject to review in 2018 to 0.25% of capital value
54 Hamilton Terrace	Detached 4 storey period	343m <sup>2</sup> (3690 sq ft)	5 beds, 4 bath, 4 rec, 2 staff, utility room Off street parking, double garage rear garden	Sept 96	£2.45m	53 yrs	£300pa subject to review in 2000 to 0.25% of capital value
58 Hamilton Terrace	Detached 4 storey Art deco style (1930's)	309m <sup>2</sup> (3325 sq ft)	5 beds, 5 bath, 4 rec, staff accommodation Off street parking, double garage, rear garden	Oct 95	£1.31m	52 yrs	£500pa subject to review in 29.9.97 to 0.25% of capital value
136 Hamilton Terrace	Semi-detached, 4 storey period	221m <sup>2</sup> (2378 sq ft)	6 beds, 2 bath, 4 rec Off street parking, garage, rear garden, wider plot	Oct 96	£1.42m	F/H	
144 Hamilton Terrace	Semi-detached, 4 storey period	234m <sup>2</sup> (2518 sq ft)	6 beds, 1 bath, 4 rec Garage, rear garden	July 94	£760,000	71 yrs	£1,200pa subject to review in 2015 to 0.25% of capital value

# Leasehold Valuation TRIBUNAL

*Edited by Barry Denyer-Green, barrister*

## Williams v Portman Family Settled Estates Trustees

February 27 1996

LADY FOX QC, JA PICKARD FRICS AND PS ROBERTS RIBA

[1996] 25 EG 173

### *Leasehold Reform Act 1967 — Determination of price for freehold under section 9(1C) — Capitalisation rate — Effect of tenant's improvements*

The applicant tenant sought the determination of the price for the acquisition of the freehold interest in 15 Upper Berkeley Street, London W1 under section 9(1C) of the Leasehold Reform Act 1967. The tenant held a lease with an unexpired term of 61 years at a ground rent of £420 pa with reviews in 2001, 2022 and 2043. The tenant contended for a price of £15,175 and the landlords for £108,000.

**Decision:** The price payable by the tenant on enfranchisement should be £36,000. In valuing the landlords' interest in the term and the reversion, a 7% rate was appropriate. The present freehold value was £450,000 from which should be deducted £135,000 for tenant's improvements. The tenant's present interest was worth £375,000 from which should be deducted £122,500 for tenant's improvements. 50% of the total marriage value of £33,000 was also payable as part of the enfranchisement price.

The tenant, PJM Williams, appeared in person; Edward Cole (instructed by Wilde Sapte) represented the landlords.

Giving her decision, LADY FOX said: This is a decision on an application by Mr Peter Williams ARICS, the tenant, for the determination pursuant to section 9(1C) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) of the price for the freehold interest in the house and premises at 15 Upper Berkeley Street, London W1 (the subject premises). The tenant holds from the Portman Family Settled Estates Trustees, the landlord, the said premises on a lease for 75 years commencing on March 25 1980 at a ground rent of £420 pa with rent reviews at 2001, 2022, and 2043. By consent order dated January 9 1995 made in Central London County Court, the parties agreed that the tenant had the right to acquire the freehold in the subject premises. At the date of the tenant's notice, which is the date of the valuation, the unexpired term of the lease was 61 years.

### *Valuation of the freehold interest made on behalf of the tenant by Mr Clifford Marr-Johnson FRICS.*

<b>Freehold valuation as at:</b>	<b>1994</b>	<b>2055</b>	
	<b>claim</b>	<b>expiry AD</b>	
Ground rent pa:			£420
Years' purchase for: 61 years at	10.0%		<u>9.97014</u>
			£4.187
Extra rent on review at Ladyday	2001 to approx: (years) (rate)		£630 pa*
Years' purchase for: 61	10.0%	9.97014	
less ditto for: 7	10.0%	<u>4.868419</u>	<u>5.10172</u>
			£3,214
Reversion to unimproved value, freehold with vacant possession			£150,000
Present value of £1 after: 61 years at	10.0%		<u>0.002986</u>

	<u>£448</u>	
Open market value of landlords' interest		£7,849
<b>Marriage calculation</b>		
Freehold as above	£150,000	
less landlords' interest	£7,849	
and lessee's interest @ 85%	<u>£127,500</u>	
(ignoring the right to claim)	£135,349	
Total marriage value	£14,651	
Landlords' share @ 50%	<u>0.5</u>	
		<u>£7,325</u>
Total enfranchisement price		<u>£15,175</u>

\*Reviewed rent £350,000 @ 90% @ 1/3% = £1,050 pa so extra rent is £1,050 — £420 pa = £630 pa

### *Valuation of the freehold interest made on behalf of the landlord by Mr Julian Briant ARICS.*

<b>Value of freehold present interest</b>			
Term 1	Ground rent	£420	
	x YP 6.89 years @ 6.00%	<u>5.51</u>	
			£2,315
Term 2	Ground rent	£1,402	
	x YP 54.03 years @ 6.00%	15.95	
	x PV 6.89 years @ 6.00%	<u>0.6693335</u>	£14,969
Reversion	FHVP	£460,000	
	x PV 60.92 years @	<u>0.0287321</u>	
			£13,217
	Lessor's present interest		<u>£30,501</u>
<b>Marriage value</b>			
	FHVP	£460,000	
Less			
	Lessor's present interest	£30,501	
	Lessee's interest	<u>£310,000</u>	
	Marriage value	£119,499	
	Take 65% Marriage value		<u>£77,674</u>
			<b>Total</b> <u>£108,175</u>
			<b>Total enfranchisement price</b> <u>£108,000</u>

[See p178 for schedule of comparables]

The tenant, Mr Williams gave evidence in accordance with a written proof. He stated that he had been trained as a general practice commercial surveyor, and had a degree of expert understanding and knowledge of the residential property market in the area of the subject premises where he lived with his wife and family. The landlord, after rebuilding the front and back walls of the subject premises and providing a new roof, had sold the house for £120,000 on a 75-year lease as a shell for development in March 1980 to Messrs Cochrane. Either Messrs Cochrane or the assignee, Mr Brian McGee, had carried out improvements to put the house in its present condition. He himself had taken over the assignment of the lease on July 31 1986 at a price of £330,000.

Mr Williams said that the subject premises, a five-storey mid-terrace house was located on Upper Berkeley Street, which was a link road between Gloucester Place and Edgware Road and had the characteristics of a commercial thoroughfare with two international hotels, the Portman and the Churchill, commercial offices, smaller hotels and bed-sitting accommodation in close proximity. Only 28% of the street was in use as residential flats/houses. Traffic flows east/west and north/south were constant throughout the 24 hours of the day with consequent noise, dirt and traffic jams. Traffic diversions in 1991 and 1993 had sent east-bound buses, coaches and heavy goods vehicles past the subject premises. The ban subsequently imposed by Westminster City Council on coaches and HGVs passing along the section of Upper Berkeley Street was consistently ignored and traffic volumes were increasing. Mr





Williams said that the area was suffering from weak estate management with many vacant shops and unoccupied flats. Adjoining the subject premises was a four-storey block of bedsits, which in 1990 and 1993-94 gave rise to considerable water damage to the subject premises. He produced photographs and evidence in support of the transactions at 13, 31 and 32 Upper Berkeley Street, as comparables for the valuation made by Mr Marr-Johnson. In support of the figure for cost of improvements he produced an estimate totalling £181,550 inclusive of fees but exclusive of VAT for the cost of fitting out the house in its present layout, made by Mr Mark Yeadon ARICS. In support of the 10% figure used as yield, he drew the tribunal's attention to: the length of the lease; the relatively low rent; the secondary location with many vacant properties; and the inferior condition of adjoining property; he also relied on a schedule of yields achieved at ground rent auction sales. In support of a 50% share for the landlord of the marriage value, he included in his appendix a copy of an opinion given by Alan Stanfield. He requested the tribunal to accept Mr Marr-Johnson's valuation taking into account the situation and character of Upper Berkeley Street, the diminution of the price by reason of the improvements carried out by the tenant's predecessors, and the higher yields now obtaining due to increased awareness of risks involved in the property market.

In answer to questions from members of the tribunal, Mr Williams said he thought Mr Yeadon's estimate of the cost of improvements was reasonable, although it worked out at £58 per sq ft. No schedule of works to be done had been agreed with the landlord at the time. He considered present-day cost of improvements represented their value.

Mr Marr-Johnson, partner in Marr-Johnson & Stevens, chartered surveyors, gave evidence in accordance with a written proof. He had been in practice 37 years, in his own firm since 1979 and had made a special study of valuations under the Leasehold Reform Act as amended, acting for both landlord and tenant. Major landlord clients included the Campden Charities, Church Commissioners, Henry Smith's Charity, Howard de Walden and St John's College Cambridge and he had acted for individual clients and major residents associations, including Belgravia, Eaton Square, Oakwood Court, Eyre Estate. He described the subject house as "a very pleasant but quite ordinary house", only two windows wide and slightly narrower than nearby properties, with a small patio and suffering from noise, dirt and vibration from constant and heavy traffic. In making his valuation he followed the assumptions set out in section 118 of the Housing Act 1974 as amended by Schedule 15 of the 1993 Act: no amount for compensation for loss to other property was claimed.

#### *Rent review:*

The ground rent of £420 pa under the lease is reviewable in 2001, 2022 and 2043 to a third of one per cent of the capital value of the house as improved, on an 80-years lease at the review date. Mr Marr-Johnson put the longer lease at 90% of his freehold value of £350,000 giving a rent of £1,050 pa, ie an increase of £630. In the other two stages of the valuation he took the house as unimproved.

#### *Rate of capitalisation and deferment:*

He adopted 10%, 1% higher than the rate used in leasehold valuation tribunal decisions relating to houses at 9, 39 and 22 St Mary Abbots Terrace and 65 Abbotsbury Road under the 1967 Act; 10% had been adopted in a tribunal decision relating to the collective enfranchisement of two flats at 23 The Little Boltons. Although it was standard practice to use a rate for leaseholds

1% higher than for freeholds, he considered 10% appropriate by reason of the secondary location of the subject premises where many occupants were transitory or commercial. He was aware that many settlements in the Grosvenor and Cadogan estates revealed 6%, but he considered such a rate resulted in a large element of double counting where a share of the marriage value was also given to the landlord. A valuation with 6% or 7% rate of interest already provided for marriage value when compared to the rate of 10% or over achieved in the open market for ground rents, both at auction and by private treaty.

In support of a 10% rate Mr Marr-Johnson produced a schedule of bank valuations carried out for Cliveden Land Ltd specialising in purchase of long-dated ground rents, the brochure of BESSA Income Trust relating to their property based ground rent investment scheme, and particulars of a sale of ground rents of £1,000 at a price of £10,000 in May 1994 for 8 Eccleston Square, SW1. He challenged the landlord's reliance on evidence derived from settlements; negotiations were often prolonged for years to the disadvantage of the tenant and tenants lacked the money, advisers and mutual support which the trustees of larger London estates enjoyed.

#### *Comparables:*

Mr Marr-Johnson considered a ratio of 85% leasehold to freehold about right for a 61-year lease. He used transactions in 13, 31 and 32 Upper Berkeley Street, which when adjusted for size, length of lease, difference in date, produced figures of freehold value of £415,000, £360,000 and £325,000 respectively. (He included a value of £125,000 for the lower maisonette in no 13.)

#### *Improvements:*

On the basis of a gross area of 3,000 sq ft he estimated the present cost of conversion and modernisation at £50 per sq ft, giving a figure of £150,000 (adjusted to £180,000 in the light of Mr Yeadon's estimate). He added a sum to cover risk, finance and fees involved in carrying out refurbishment, to give a total of £200,000, making the net value £150,000 equivalent to 43% of the improved value of £350,000.

#### *Marriage value:*

He considered 50% to be the appropriate share of the marriage value which was in line with LVT and Lands Tribunal decisions in several cases, and reflected the statutory requirement of a willing purchaser as well as a willing seller.

In answer to questions from Mr Cole on behalf of the landlord, Mr Marr-Johnson rejected any deduction in the figure for improvements by reason that they related to items of repair or renewal required by the terms of the lease or outmoded refurbishment. He accepted that the yield adopted might reflect potential of the property to produce capital from restructuring of leaseholds or selling of freeholds. In answer to questions from the tribunal, Mr Marr-Johnson did not accept that his figure of £150/£180,000 for improvements looked too high, taking into account that the tenant was prepared to pay £330,000 in 1986 for the subject premises in improved condition.

He did not accept that the value of a 15-year old conversion might be less than the cost of carrying it out at today's prices.

Mr Edward Cole, counsel, appeared on behalf of the landlords. He explained that the rateable value limits on enfranchisable houses had been removed by the 1993 Act. The subject premises, with a RV of £1,430, for the ground to third floors and £338 for the basement flat determined in 1984, qualified for enfranchisement by reason of the lease exceeding 21 years at a low ground rent, and the valuation of the



enfranchisement price was to be made in accordance with section 9(1C), as introduced into the 1967 Act by the 1993 Act. The valuation was to be made on the same assumptions as under section 9(1A) save that the tenant at the end of the lease had no right to remain in possession; it was expressly stated that the tenant's share of the marriage value was not to exceed one half of it; and compensation was payable (though in the present case none was claimed).

Mr Cole called Mr Julian Briant ARICS, partner in Daniel Smith, chartered surveyors, to give evidence in support of his valuation on behalf of the landlords. Mr Briant said he acted as surveyor and gave advice to many landlords, including the Eyre Estate, John Lyon's Charity and Corporation of Trinity House Norington Estate. He described the subject property, noting that despite problems with traffic, it was a high-value area, centrally located with excellent transport.

*Ground rent review:*

Assuming the property to be in good repair and with vacant possession, and disregarding all repairs carried out by the tenant, he estimated the rent following review would be £1,402 pa, derived from a capital value of £425,000 for the hypothetical 80-year lease.

*Yield:*

He adopted 6% by reason of the good central location, high value of the property, the unexpired term of 61 years and presence of rent reviews in the lease. He based this rate on that applied in settlements achieved for the Eyre Estate, of 5/6 Northwick Close, NW8, for the John Lyon's Charity Estate (particulars of which he attached in an appendix); and as a rate in line with Lands Tribunal and LVT decisions, citing *Lloyd-Jones v Church Commissioners for England* (1981) 261 EG 471\*, 74 *Maida Vale* (LON/LVT/508) and *Queensmead*† (LON/LVT/541).

*Marriage value:*

Mr Briant said there had been no sales of freeholds subject to long leases on the landlord's estate to provide evidence relating to the split of marriage value. He relied on transactions which he had negotiated for John Lyon's Charity at Flat 2/35 Hamilton Terrace and 126A Hamilton Terrace involving surrender of no 13 and 34-year leases respectively and a grant of 99-year non-enfranchisable leases, where a share of 100% and 85% of the marriage value to the landlord had been agreed. It was his view that a tenant would be prepared to offer over 50% as the landlord's share where the profit on a high-value house would make it financially worthwhile for him to do so. The tenant would "gain" free from taxation, £42,000, if a 65% share of the marriage value was given to the landlord.

*Comparables:*

Mr Briant gave particulars of the sale in 1995 at 7 Connaught Square, in support of his leasehold value for the subject premises and maintained no adjustment for difference in date was necessary as prices had remained static since the date of valuation. Making deductions of £125,000 for superior location and £75,000 for larger size, and an addition of £50,000 for longer lease, he arrived at a figure of £350,000 which supported his leasehold value. In support of his freehold value he adjusted the purchase price achieved for 13 Connaught Square by deducting £150,000 for superior location, and the purchase price of 43 Upper Montagu Street (deducting £30,000

for recent redecoration, and adding £20,000, and £10,000 for increased repairing liability and inferior location respectively), to arrive at a value of £500,000 for the freehold of the subject premises. A similar analysis in respect of 27 Upper Montagu Street with a further allowance for a structural problem of £40,000 supported this valuation. As to the tenant's comparables, Mr Briant thought it unreliable to use transactions relating to leases to support freehold values; he queried whether Mr Marr-Johnson's figure of £125,000 for the basement and ground-floor maisonette at 13 Upper Berkeley Street was sufficient; the location of 31 Upper Berkeley Street close to the synagogue was inferior and the terms of the conveyance of no 32 had not been agreed.

*Improvements:*

He considered that only the additional bathrooms and installation of central heating constituted improvements, which he valued at £40,000, all other work amounting to repair or renewal. It was important to note that the subject house had all its floors and room layout when it was sold unimproved.

In answer to questions from the tenant, Mr Briant said that he did not rely on the transactions relating to other properties in Upper Berkeley Street as they were differently located, and in the case of no 13 omitted the basement maisonette, making the adjustment of values a subjective exercise. In answer to questions from the tribunal, Mr Briant said that he explained the high price paid by the tenant in 1986 for the subject premises in improved condition by reason of the market peaking up to 1988. He considered values since 1986 had fluctuated but had changed little overall. He would value the unimproved leasehold at £240-275,000 in 1986. Mr Briant explained the disparity in his deductions for location in relation to 7 Connaught Square and 43 Upper Montagu Street as attributable to the difference in leasehold and freehold. He justified his reliance on evidence of settlements in that the landlord and his advisers were also under pressures to reach a settlement and that the tenant, free of the requirements of a statutory valuation, was in a stronger position in a negotiated settlement. It was his view that the parties, by agreeing the freehold and extended lease values, also implicitly agreed the yield and share of marriage values.

In closing the landlord's case, Mr Cole said that the burden of proof was upon the tenant to establish that improvements, not repair, or renewal or outmoded fittings, existed in the subject premises and that they added value (not represented by their cost either in 1980 or at present day prices).

*Inspection:*

We inspected the subject premises on October 9 1995. It is a Georgian terraced house on five floors, situated on the north side of the street close to the busy junction with Great Cumberland Place. Upper Berkeley Street is a busy thoroughfare and mainly consists of five-storey georgian terraced properties given over to mixed uses including: residential flats/houses, commercial offices, hotel/bed and breakfast premises, and bed-sitters. The street runs from east to west between Gloucester Place and Edgware Road; at the junction with Gloucester Place and Portman Square there are two large international hotels, the Churchill and the Portman. Towards the Edgware Road end there is the West London Synagogue. The subject property is on five floors:

- Basement: living room (with kitchen area), two bedrooms, bath/wc, wc;
- Ground floor: dining room, playroom, kitchen, cloakroom;
- First floor: reception room, rear room, cloakroom on half landing below and access to roof terrace;

\*Editor's note: Also reported at [1982] 1 EGLR 209

†Editor's note: See *Eyre Estate Trustees v Shack* [1995] 1 EGLR 213; [1995] 24 EG 153



Second floor: master bedroom, ensuite dressing room and bathroom, boiler room/utility on half landing below;

Third floor: three bedrooms, two bathrooms (one en suite).

Externally the subject premises appears in good structural and decorative condition with two window openings across the frontage; the outlook to the rear is reasonable for an inner city location and is not directly overlooked.

Evidence of the substantial refurbishment works carried out subsequent to the grant of the lease was visible on inspection and appeared to include:

(i) erection of a small two-storey extension to the rear lightwell at lower-ground floor and ground-floor levels with roof terrace over;

(ii) creation of a self-contained unit on the basement level, including new bathroom, kitchen area, and damp-proofing works;

(iii) refitting of main ground-floor kitchen;

(iv) formation of master bedroom suite;

(v) formation of upper-floor bedrooms and bathrooms;

(vi) installation of new services, electrical wiring and fittings, gas central heating and hot water system, new bathroom fittings;

(vii) new plaster finishes/cornices, panelled doors, timber skirtings/architraves, fitted wardrobes, etc.

The interior fittings and finishes are of a good to high standard; the accommodation is spacious and well laid out for family living with the advantage of a self-contained unit on the basement level with independent street access.

The following properties were viewed externally from the street on October 9 1995.

*Comparables put forward by Mr Marr-Johnson for the tenant:*

13 Upper Berkeley Street W1 — upper maisonette in georgian Grade II listed terraced house.

A similar style property on the same side of the street and one door removed from the subject. The front elevation is approx 600mm (2 ft) wider with three window openings as opposed to two in the subject. It appeared to be in sound condition. The accommodation, as shown in the agents particulars, is broadly similar on the upper floors but with five bedrooms, two bathrooms, one cloakroom as opposed to four bedrooms, dressing room, three bathrooms and utility in the subject house. At the first-floor level the drawing room although wider (18ft to 16ft) is smaller in area; the kitchen of compact size is at the half landing below with the maisonette's front door directly off the ground-floor common entrance hall. It was noted that the maisonette required updating and redecoration.

31 and 32 Upper Berkeley Street W1

Two adjacent houses on five floors including basement, situated towards the Edgware Road end of the street and backing on to the West London Synagogue. Similar to the subject house, with a wider frontage than the subject with three window openings and with taller upper-floor windows; no 32 has reduced height upper-floor windows, the centre one being blanked off. The properties have been recently refurbished and the accommodation appears to be broadly similar to the subject property. Access to the basement from the pavement is by new timber steps. It was noted that the agent's description included extensive fittings, ie kitchen appliances, fitted wardrobes, video entry phone, jacuzzi bath.

It was noted that no 33 next door had suffered extensive fire damage to the upper floors and that reinstatement works were pending.

*Comparables put forward by Mr Briant of Daniel Smith for the landlord*

7 Connaught Square W2

No 7, a georgian period house on five floors with stuccoed elevation up to the first-floor level, is on the east side of the square overlooking private central gardens, and appeared to be in good overall external condition. Connaught Square lies just to the west of the Edgware Road and north of the Bayswater Road, with Hyde Park within a few minutes walk.

13 Connaught Square W2

This georgian period house on five floors with stuccoed elevation up to the first floor level, similar to no 7 and on the east side of the square, appeared in good condition with brickwork to front elevation recently cleaned; kitchen and dining room on the lower-ground floor and with separate street access.

43 Upper Montagu Street W1

Situated towards Marylebone Road and in a quieter and more residential location than the subject property, this georgian Grade II listed terrace house on five floors is in good order and retaining its original character. It is smaller than the subject property in size and scale and with a slightly narrower frontage.

27 Upper Montagu Street W1

This is a georgian Grade II listed terraced house on five floors with stuccoed elevation up to first floor. It has a wider frontage with three window openings, in good decorative condition, but apparently sold with a structural problem (replacement of load bearing wall required, removed by previous owner). It is similar in overall size to the subject, but in a quieter location.

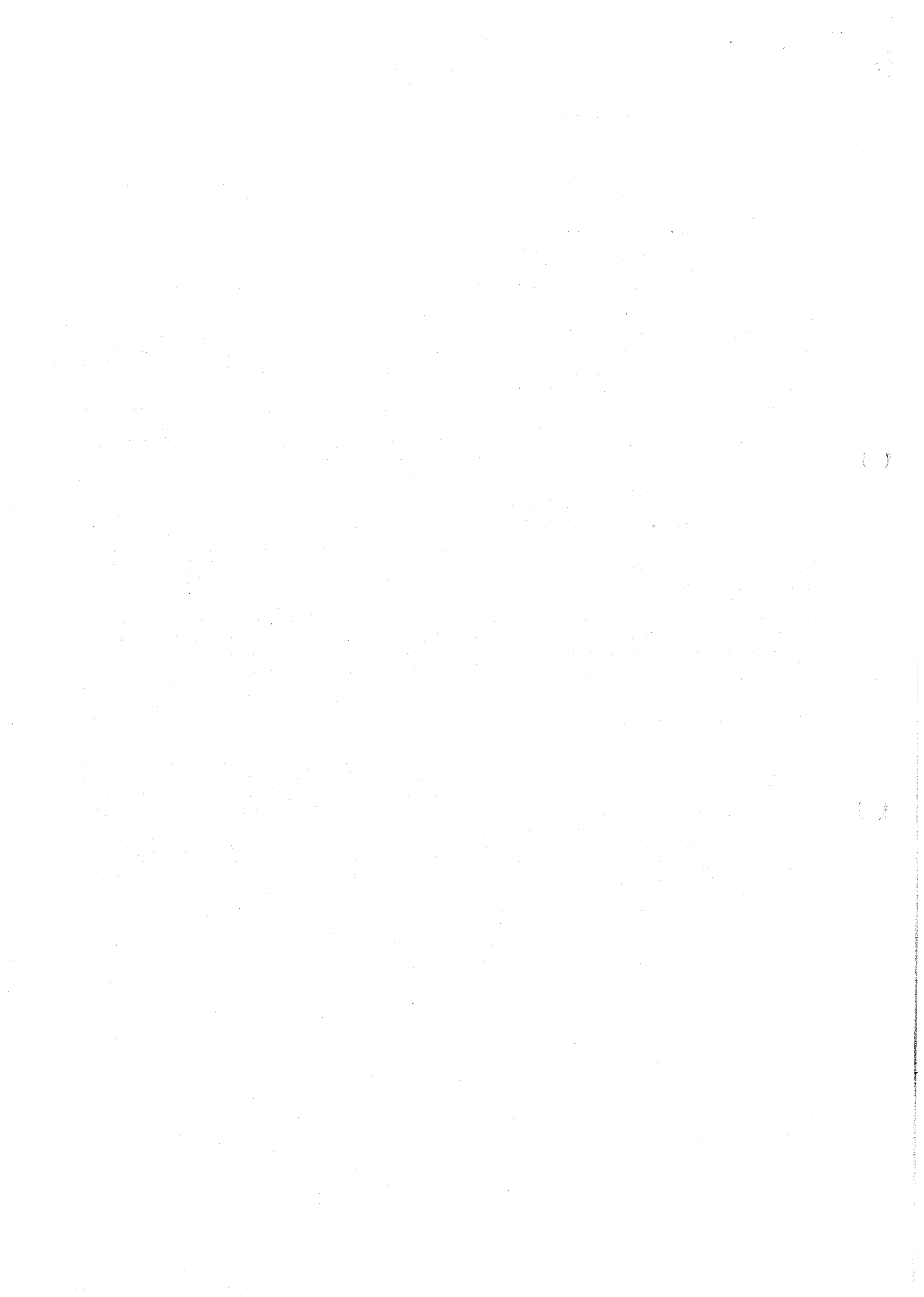
*Decision and reasons*

The present case relates to a house with a rateable value in excess of £1,500. Both parties accepted that pursuant to the 1993 Act the tribunal had jurisdiction to determine the price of the freehold and that the method of valuation was set out in section 9(1C) of the Act which required no deduction for the tenant at the end of the term staying on, expressly limited the tenant's share of the marriage value to 50% and allowed for compensation (which, however, was not claimed in this case).

The matters at issue between the parties were:

	Landlord	Tenant
Estimated ground rent after first review in 2001	£1,402 pa	£1,050 pa
Capitalisation and deferment rate	6%	10%
Value of freehold interest	£500,000	£350,000
Value of improvements	£40,000	£200,000
Value of leasehold interest unimproved	£310,000	£127,500
Landlord's share of marriage value	65%	50%

The tribunal derived considerable assistance from both the landlord's and the tenant's comparables although none was directly comparable with the subject property. On balance we considered the location of 31 and 32 Upper Berkeley Street to be inferior because of the close confines of the West London Synagogue and the general ambience of property in that immediate locality. The sale of 32 Upper Berkeley Street for £325,000 on August 31 1995, with an unexpired term of 120 years (though the particulars of sale showed 137 years), which



persuaded Mr Marr-Johnson to reduce his freehold value of the subject property from £400,000 to £350,000, appeared to us to be somewhat depressed, perhaps by reason of the fire-damaged property adjacent, which was still boarded up at our inspection date, and by reference to no 31, said to be under offer subject to contract at £385,000. A useful ceiling was provided by the sale of 43 Upper Montagu Street, a five-storey Grade II terraced house, which sold freehold for £470,000 in July 1995. Smaller than the subject property it was near the Marylebone Road end of the street, but less affected by traffic and more residential in character. The Connaught Square properties were better situated and in appearance identical to each other; no 7 had 47 years' unexpired term and no 13 had 114 years unexpired. Mr Briant's analyses of these transactions was complicated by the need to adjust for location, length of lease and size.

The tribunal concluded that the freehold value of the subject property was £450,000.

With regard to the value of the tenant's leasehold interest with 61 years unexpired, Mr Marr-Johnson took 85% of the freehold value which on his adjusted freehold value of £350,000, had he made a calculation at that stage of his valuation, would have given him £297,500, a sum less than the tenant paid for the property in 1986. This does not sit easily alongside the sale of the leasehold interest at 13 Upper Berkeley Street in April 1995 for £290,000 with 60.5 years unexpired. This was in respect of the upper maisonette comprising entrance hall, kitchen on the upper-ground floor and the first, second and third floors. To make a valid comparison, the value of the basement and the main ground-floor accommodation must be added. Mr Briant's figure of £350,000 for the leasehold interest represents 70% of his freehold value. However, in the sales in June/July 1995 of 7 and 13 Connaught Square, the relationship in price in two ostensibly similar properties with different lengths of unexpired terms equated to 76.34%. Taking Mr Briant's adjustment of £50,000 to reflect the differences between a 47-year term and the 61-year term and rent review clauses, the figure becomes 83.97%.

The tribunal decided upon £375,000 as the value of the tenant's leasehold interest as improved.

This may be contrasted with the price paid by Mr Williams in July 1986 of £330,000 when the unexpired term was 69 years. It was common ground that property prices were increasing rapidly at that time and continued to do so. A sustained period of falling prices resulting from the recession followed. It was Mr Marr-Johnson's view that prices had levelled out and that overall there was a slight increase over 1986 values. The sale of part only of the property at 13 Upper Berkeley Street at £290,000 in April 1995 one year after the material date for valuation suggests that this was understating the situation.

We turned next to the determination of the unimproved value of the freehold and leasehold. Ideally, comparables drawn from unimproved property would provide the best or most direct evidence, but there is none apart from the sale of the subject property itself in its unimproved state in 1980 for £120,000. For this transaction we had the particulars of the original sale which indicated that the whole of the front wall and much of the rear wall had recently been rebuilt and an entirely new roof constructed. The whole property required complete internal refurbishment and the renewal of the services, and the estate required a lessee to refurbish the interior of the property to provide two or more residential units. The existing accommodation was stated simply as providing 14 rooms. We were provided with floor plans from April 1980 showing proposed works, including a small new rear extension at basement and ground-floor levels. Regrettably, and perhaps

surprisingly, the landlord was unable to provide any first-hand evidence of the layout or condition of the interior at the time of the original sale to Cochrane or how much repair work was required as distinct from improvements.

Even if this had provided a firm base for the establishment of the unimproved value, inflation rates between 1980 and 1986 when Mr Williams purchased the refurbished and much improved property, might well have been different for unimproved and improved properties and indeed for the cost of such improvements. Mr Briant indicated that refurbishment invariably includes elements of repair as well as improvement and suggested that rewiring the house was a repair, an additional bathroom installed was an improvement, and a new fitted kitchen, following the removal of old kitchen units, was a renewal. He found it difficult to quantify the value of such improvements (as distinct from repairs and renewals). However he valued the tenant's improvements at £40,000 based, not on cost, but on the additional value of the property which he considered was attributable to the improvements.

Mr Marr-Johnson put the cost of improvements at £150,000 based on present cost of conversion estimated by him at £50 per sq ft and to this added for risk, finance, fees, etc to give a total of £225,000 revised to £200,000 in his adjusted valuation. This he supported by the development appraisal subsequently prepared by the tenant's building surveyor Mr Yeadon, who estimated the current cost of fitting out the property in the sum of £181,550, inclusive of fees, but exclusive of VAT. The date of that appraisal was September 18 1995. It is abundantly clear from section 9(1A) of the 1967 Act that it is the value and not the cost of improvements which is to be ascertained.

Cost does not equate with value although it could conceivably do so in some cases. The tribunal found it difficult to reconcile the opposing parties' approach to arrive at the unimproved value of the property. Mr Briant applied the same deduction of £40,000 to both the freehold and leasehold values, notwithstanding that the leasehold interest was a wasting asset. He also raised the question of obsolescence with the passage of time. Mr Marr-Johnson deducted £200,000 from his improved freehold value; and took 85% of that value for his leasehold value, effectively making the same percentage deduction for improvements in each case.

While the cost of improvements would be the same whether the interest was freehold or leasehold, both the value of the leasehold and the value of such improvements will decline as the term reduces. Mindful that the improvements to the subject property changed its character from a shell to a high-quality residence, and, in the absence of evidence of unimproved property to support a different view, the tribunal adopted the same percentage deduction for tenant's improvements in the freehold and the leasehold valuations.

It was clear that the improvements were of a substantial character and the tribunal decided therefore on a 30% deduction, which in relation to our freehold value of £450,000 amounted to £135,000 and to our leasehold value of £375,000 was £112,500.

The tribunal accepts that the same percentage is applicable at each stage of the valuation, vide section 9(1A)(d), notwithstanding that ordinarily, at the expiry of the term, the value of the improvements would enure to the benefit of the landlord. However in estimating the ground rent payable at the review date the capital value of the house was taken as improved in accordance with the terms of the lease.

Finally the tribunal considered the rate per cent for capitalising the ground rent and in deferring the capital value. Mr Briant adopted 6% for the reasons set down above. He put





forward settlements on the Eyre Estate and at 5/6 Northwick Close, London NW8, where this rate was adopted. While it is clear that the tenants and their professional advisers agreed the final figure in these settlements, namely the agreed price, it seems to us that the elements in the calculation can be rearranged to support different rates of return, so we find little assistance in the evidence of settlements. While the tribunal recognised Mr Briant's reasoning as regards the central London location and the relatively high value property, the location was mixed residential and commercial, the unexpired term of 61 years was medium term and the review rent at 21-year intervals was to a comparatively low one third of one per cent of the capital value. Indeed the initial ground rent of £420, relative to the £120,000 unimproved value, represented a similar proportion.

In the leasehold valuation tribunal determination on 74 Maida Vale 6% yield was adopted with a 10-month unexpired term. In the case of *Lloyd-Jones v Church Commissioners for England* the yield rate was 5.5% with an unexpired term of 12 years. Finally, in the *Trustees of the Eyre Estate* case relating to 7 *Queensmead NW8*, 7% was adopted with 68<sup>3</sup>/<sub>4</sub> years unexpired, and a fixed ground rent for the duration of the term.

Mr Marr-Johnson adopted 10% for the reasons set down in para 8 above. In the leasehold valuation tribunal decisions referred to in Kensington the reversions were all in excess of 71 years on houses in good locations where a 9% yield was used. He accepted that there had been many settlements on the Grosvenor and Cadogan Estates around 6%, but believed that there must be a large element of double counting if a low remunerative rate is added to by a share of the marriage value. The tribunal understood his argument but there was little

evidence to support that view. As to the sale of ground rents at 8 Eccleston Square, from the supporting documentation it would appear that the transaction also related to sums in a maintenance fund which may have affected the consideration. The tribunal considered the BESSA Income Trust, an unauthorised unit trust which invested in ground rents, to be unhelpful. The investment criteria concentrated on long leases where the rent multiplier was low with the property manager seeking to maximise opportunities for capital gain. On the evidence adduced on both sides the tribunal concluded that 7% was the appropriate yield in the particular circumstances of this case.

With regard to the share of the marriage value the tribunal was not persuaded by Mr Briant's evidence that a figure greater than the one-half share indicated in section 9(1C) should be adopted; once again the marriage share is but one element in the calculation which can be adjusted without affecting the final price which the tenant pays. Accordingly, accepting Mr Cole's argument that both landlord and tenant must be willing parties to the transaction, we determined the landlord's share of the marriage value as 50%.

In determining the ground rent on review the lease provides that the rent should be one third of one per cent of the capital value assuming an 80-year term at the review date. The tribunal have already decided that the unencumbered freehold value is £450,000 and the tenant's existing leasehold interest in its present improved state with 61 years unexpired is £375,000. For the purpose of the first rent review, for the remainder of the term, we have used a capital value of £420,000.

The calculation for the review rent would therefore be:  
£420,000 x 1/3% = £1,400.

Accordingly, taking all the evidence and the above matters

*The following comparables were relied upon by the parties:*

**Tenant's comparables:**

Address	Date	Length of lease	Price	Accommodation	Size
Subject premises	1980	75 years	£120,000	House unimproved as shell	'A' area 2091 sq ft
Subject premises	July 31 1986	69 years £420 pa	£330,000	8 rooms, 3 B/WCs, S/C basement flat	
13 Upper Berkeley Street W1 Upper maisonette	August 4 1995 Contracts exchanged	60 1/2 years	£200 pa £290,000	7 rooms, 2 B/WCs, shower room, WC, kitchen, gas central heating	GFA 2044 sq ft
31 Upper Berkeley Street, W1 House	September 1995	137 years £100 pa doubling every 25 years	£385,000	House on 4 floors and basement	
32 Upper Berkeley Street, W1 House	August 31 1995	144 years £100 pa	£325,000	House on 4 floors and basement	

**Landlord's comparables**

7 Connaught Square, W1 House	June 1995	47 years £250 pa subject to review 1994 to 1% capital value	£500,000	House on 4 floors and basement	'A' area 2235 sq ft
13 Connaught Square, W1 House	July 1995	114 years	£655,000	House on 4 floors and basement	'A' area 2339 sq ft
43 Upper Montagu Street, W1 House	July 1995	Freehold	£470,000	5 storey Grade II terrace house	'A' area 1373 sq ft
27 Upper Montagu Street, W1 House	August 1995	Freehold	£430,000	5 storey Grade II terrace house	'A' area 1904 sq ft



WILLIAMS v PORTMAN FAMILY SETTLED ESTATES TRUSTEES (continued)

into account and applying our own knowledge and experience we make the following valuation:

*Valuation*

Price payable by tenant on enfranchisement under section 9(1C) of the Leasehold Reform Act 1967.

<i>Ground rent</i>	£420	
YP for 7 years @ 7%	<u>5.389</u>	£2,263
Reversion to	£1,400	
YP for 54 years @ 7%	13.916	
PV of £1 in 7 years @ 7%	0.6227	<u>8.665</u>
Reversion to freehold value	£315,000	£12,131
(net of tenant's improvements)		
PV of £1 in 61 years @ 7%	<u>0.01613</u>	<u>£5.081</u>
		£19,475
Value of freeholder's present interest	Say	£19,500
 <i>Marriage value</i>		
Freehold value	£450,000	
Less for tenant's improvements	£315,000	
30%	<u>135,000</u>	
Deduct aggregate of:		
(a) Lessee's present interest	£375,000	
Less for tenant's improvements		
30%	<u>112,500</u>	
	£262,500	
(b) Freeholder's present interest as above		
	<u>£19,500</u>	<u>£282,000</u>
Difference	£33,000	
Share of marriage value	50%	<u>£16,500</u>
Price payable by tenant on enfranchisement		<u>£36,000</u>

The tribunal, therefore determines the sum to be paid for the freehold interest in 15 Upper Berkeley Street W1 to be £36,000 (thirty six thousand pounds).

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