

32

Ref LON/LVT/ 638

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

RECEIVED
06 MAY 1998

Applicant: The Trustees of the Eyre Estate

Respondent: Mr M I Eleini

RE: 3 Clifton Hill, St John's Wood, London NW8

RV at date when Tenant's Notice was given: £ 579

Date of Tenant's Notice: 3 February 1994

Application to Tribunal dated: 12 August 1996

Heard: 7 July 1997

Appearances: Mr M I Eleini - the tenant in person
Mr K G Buchanan BSc ARICS (Conrad - Ritblat, Chartered Surveyors)

for the Tenant

Mr A Radevsky (of Counsel)
Mr T A Stotesbury BSc ARICS (Messrs Daniel Smith)

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mr G F Bowden TD MA FRICS (Chairman)
Mr D R Stevens FRICS FRVA
Mr R Skinner

Date of Tribunal's decision 2 April 1998.

1. THE FACTS

The Tribunal find facts, in addition to those set out on page 1, as follows:

1. Clifton Hill is a high value residential road in the St John's Wood area. It runs between Abbey Road and Loudoun Road. The road is relatively free from through traffic, but subject to parking restrictions. The houses although of differing styles and periods nevertheless come together to enhance the sense of it being a high quality and sought after residential area. The subject property is situated at the Loudoun Road end facing north with a southward aspect to the rear, but overlooking a petrol service station and motor mechanics work shop in Loudoun Road with a popular public house beyond that.

2. The subject property is a brick built detached house with a pitched roof behind a parapet wall, constructed in the 1930's and displaying some neo Georgian features in its design. It appears from the front to be on two storeys, but there is a third storey in the roof space, not apparent from the front, but with dormer windows to the rear and sides. There is an integral garage with further parking space in front of the house. The enclosed rear garden has a high fence to provide some privacy and security from the garage premises at the rear.

The house provides substantial accommodation which is set out in the Statement of Agreed facts, and clarified on the floor plan prepared by both parties for the Tribunal hearing.

The Tribunal found the description of accommodation and plan were in accordance with what they saw on their inspection.

3. The tenant Mr Eleini holds under the assignment of a lease dated 14 July 1938 granted for a term of 95¼ years from 24 June 1937, expiring on 29 September 2032. The rent is £75 per annum fixed for the duration of the term.

4. The matter in dispute at the time of the hearing was the price to be paid by the tenant for the freehold interest.

5. The parties submitted written proofs to substantiate their valuations, and their schedules are set out:-

Appendix 2. Mr Stotesbury, on behalf of The Eyre Estate in the sum of £210,309.

Appendix 3. Mr Buchanan, on behalf of Mr E Leini in the sum of £104,696.

II. THE TRIBUNAL'S CONCLUSIONS ON DISPUTED MATTERS OF VALUATION

1. There were three matters at issue between the parties in relation to the price to be paid for the landlords freehold interest for the subject property.

- (i) The open market freehold value,
- (ii) The open market leasehold value,
- (iii) The capitalisation and deferment rate.

2. With regard to the open market freehold, Mr Stotebury argued for a value of £925,000, citing some five transactions, (set out in detail on pages 8 to 13 of his proof of evidence) such adjustments were made as he thought appropriate, to make a direct comparison with the subject property. Mr Buchanan argued for a freehold value of £825,000 citing some four properties (set out on pages 8-11 of his proof of evidence) and making such adjustments as he thought appropriate to make a direct comparison with the subject property. Both Mr Stotesbury and Mr Buchanan cited the sales of three of the same properties, namely:- 8 St John's Wood Park; 28 Carlton Hill; and 43 Springfield Road, but in their adjustments coming to a different final figure. The Tribunal inspected externally the properties brought to their attention

by both parties, and gave careful consideration to the analyses set out in the proofs of evidence, and advanced at the hearing. The Tribunal came to their view that the freehold unimproved vacant possession value, at the valuation date was £875,000.

3. With regard to the open market leasehold value, Mr Stotesbury argued for a value of £600,000, citing three properties (set out on pages 15-17 of his proof of evidence), and adjusted as he felt appropriate to make a more direct comparison with the subject property. Mr Buchanan argued for a freehold value of £650,000, citing two properties (set out on pages 4 to 7 of his proof of evidence) and adjusted as he felt appropriate to make a more direct comparison with the subject property. Both valuers cited the transactions of two of the same properties in support of their contention namely:- 6 Springfield Road, and 40 Springfield Road, but in giving different emphasis to their adjustments and analysis coming to a different final figure. The Tribunal inspected these comparables externally, giving careful consideration to the analysis set out in the proofs of evidence, and to the arguments advanced at the hearing. They gave particular attention to Mr Stotesbury's submissions in respect of the assignment of the lease of the subject property in May 1994 for £700,000 when it was sold with the benefit of a valid notice of claim. All things considered the Tribunal came to the view that the unimproved leasehold value at the valuation date was £620,000.

4. With regard to the capitalisation and deferment rate. Mr Stotesbury argued for a rate of 6% citing, in support of this contention the analysis of some 25 Leasehold Reform Act settlements on The Eyre Estate and the John Lyon Estate (set out in Appendix 1 of his proof of evidence). He also set out, (in Appendix 2) the agreed Breakdown of Valuation, in respect of some five properties, in four of which Mr Buchanan had been acting for the leaseholder, and two further properties (Appendix 3) in one of which Mr Buchanan had acted for the other party. In supporting a 6% rate Mr Stotesbury drew particular attention to some 15 of the above mentioned properties (referred to in (a) para 2 page 2 of his proof) arguing that

the factors affecting yield are location, value and lease length, and since the subject property is set in a prime residential area is of high value, and has a short unexpired term of 38.68 years. The correct yield should be 6%.

Mr Buchanan argued for a rate of 7%, stating that the Tribunal had adopted rates of 7% and 7½% in the St John's Wood area .

He argued that cases 'settled' without reference to the Leasehold Valuation Tribunal, or appeal to the Lands Tribunal, would be influenced by a "Delaforce" factor, and any higher figure paid could be to avoid delay, risk and associated costs of an appeal to the Lands Tribunal. This outcome, it was contended, is supported by the fact that no breakdowns were agreed, and the 6% yield adopted by the landlord is his own analysis. Mr Buchanan referred to six Leasehold Valuation Tribunal decisions in the St John's Wood area, in support of his contention for a 7% capitalisation rate, acknowledging that some were subject to appeal to the Lands Tribunal.

The Tribunal gave careful consideration to the landlord's argument with regard to the factors influencing a lower yield, and also to the landlords analysis of transactions which suggested a figure of 6%. They noted instances where the landlord's analysis was endorsed by Mr Buchanan. They took note of Mr Buchanan's contention at the hearing that such endorsements were sometimes at the insistence of clients who were content with the bottom line figure, but not concerned with the detail of how it was arrived at. In such circumstances the leaseholder, anxious for a speedy settlement would seek to endorse the landlord's analysis. The Tribunal recognised that the subject premises was a high value property situated in a prime residential area, but took into account some drawbacks to this particular property's location, (as noted in I para 2 above) and in all the circumstances felt that the appropriate rate of capitalisation should be 7%.

III DECISION

Accordingly, on the basis of the helpful arguments advanced, on the evidence and on the inspection of the properties, the Tribunal determined the price to be paid for the freehold interest in 3 Clifton Hill, London, NW8, pursuant to Section 9 of the Leasehold Reform Act 1967, is £160,350 (one hundred and sixty thousand, three hundred and fifty pounds). The details of the Tribunal's valuation is set out in Appendix 1.

CHAIRMAN *Curaw Bowden*

DATE 2 April 1998.

Determination by Leasehold Valuation Tribunal of the premium payable by the tenant in accordance with the Leasehold Reform Act 1967, as amended by Leasehold Reform Housing and Urban Development Act 1993

1. Value of the Freeholders Interest

Ground Rent	£75	
YP 38½ years @ 7%	<u>13.229</u>	£ 992
Reversion to Freehold Vacant Possession Value (unimproved)	£875,000	
RV £1 in 38½ years @7%	<u>0.0739556</u>	<u>£ 64711</u>
		£65,703

2. Marriage Value

Freehold Vacant Possession Value £875,000
(unimproved)

Less

Freeholders present interest £ 65,703

Current Leasehold interest

(unimproved) £620,000 £685,703

Marriage Value £189,297

Freeholders share 50% 94648

£160,351

Say £160,350



Valuation by Mr T A Stotesbury, BSc, ARICS on behalf of the landlord, The Eyre Estate

PROPERTY 3 Clifton Hill

NOTICE DATE 03/02 94

LEASE DETAILS

DATE 14/07/38
 TERM 95 25
 EXPIRY DATE 29/09/32
 UNEXPIRED TERM 38 68
 GROUND RENT £75 p a fixed

<u>VALUES</u>	<u>Improved Values</u>	<u>Unimproved Values</u>
FHVP	£925,000	£900,000
UNEXPIRED TERM	£600,000	£575,000
LESSEE'S IMPROVEMENTS	£25,000	

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM</u>	GROUND RENT		£75
x YP	38.68 years @	6.00%	14 92

			£1,119

<u>REVERSION</u>	FHVP		£900,000
x PV	38.68 years @	6.00%	0.1049995

			£94,499
		Lessors Interest	£95,618

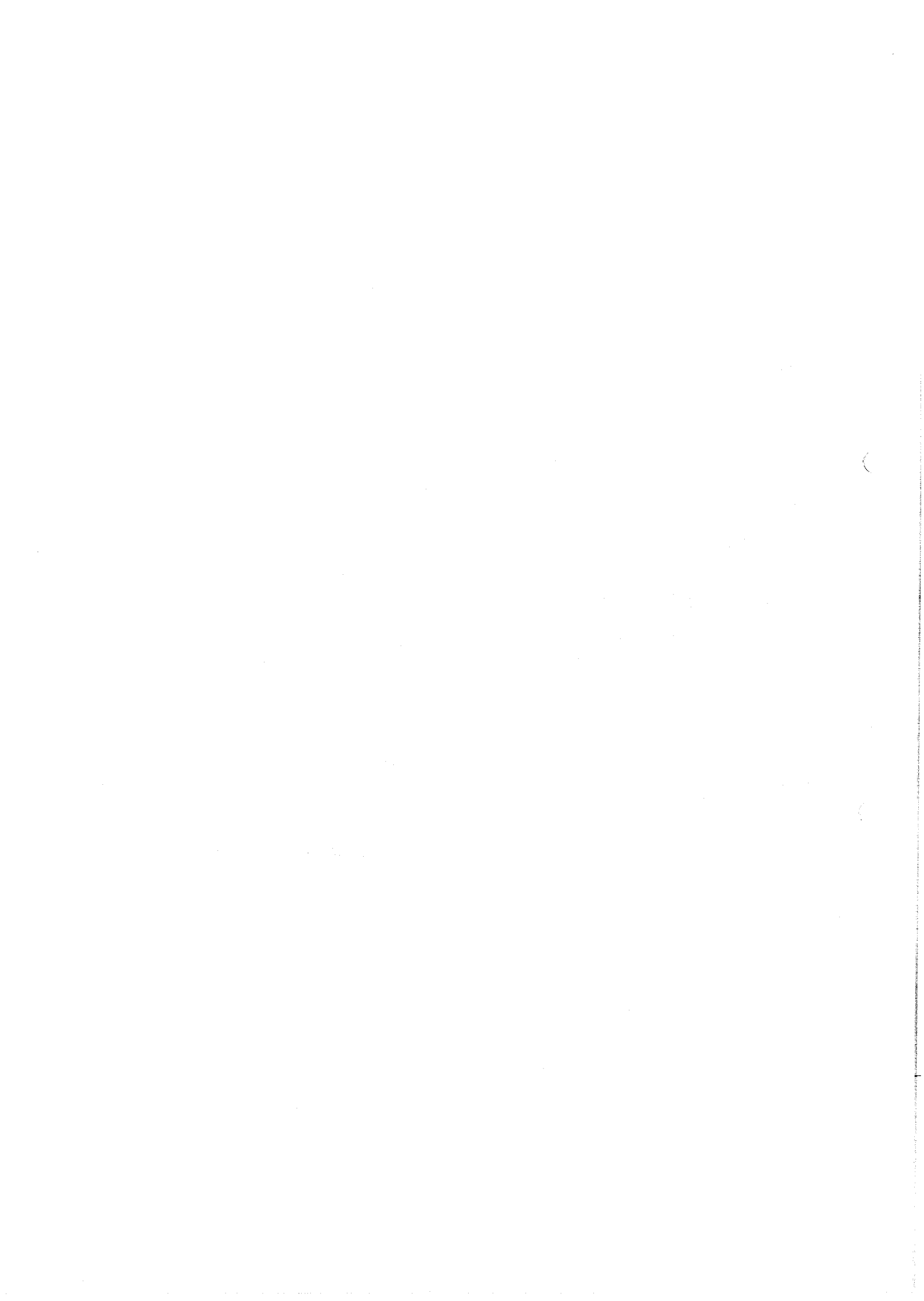
MARRIAGE VALUE

	FHVP	£900,000
Less	Lessor's Present Interest	£95,618
	Lessees Interest	£575,000

Marriage Value		£229,382

Take	50% Marriage Value	£114,691

TOTAL	£210,309
-------	----------



3 CLIFTON HILL, LONDON NW8

Valuation as at 3rd February 1994

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 £75 pa
YP 38½ yrs @ 7% £992

Reversion

Unimproved Freehold vacant £800,000
possession value

PV £1 38½ yrs @ 7% .073 £58,400
£59,392

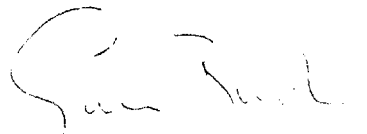
Marriage Value

Unimproved Freehold
vacant possession value £800,000

Less (i) Freeholders Interest £59,392
(ii) Unimproved Leaseholders Interest £650,000
Marriage Value £90,608

Freeholders share at 50% £45,304
£104,696

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 £104,696.


K G Buchanan BSc ARICS
Conrad Ritblat