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LON/LVT/759

Leasehold Reform Act 1967

Housing Act 1980

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

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

Applicants:

Mr and Mrs R Russell (tenants)

RECEIVED  
08 APR 1998

Respondent:

The Trustees of the Eyre Estate

**Re 42 Queen's Grove, London NW8**

Applicants' notice of claim and valuation date: 14 April 1997

Application to the tribunal: 5 September 1977

Hearing date: 12 February 1998

Inspection: 25 March 1998

Appearances:

Mr E Johnson (counsel)

Mr D Conway (David Conway & Co, solicitors)

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

for the tenants

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

for the freeholder

Members of the Leasehold Valuation Tribunal:

Lady Wilson

Mr C J Bradley JP BSc FRICS

Mr D Myer-Smith

Date of the Tribunal's decision: - 6 APR 1998

## The facts

1. 42 Queen's Grove was built in the 1930s on lower ground, ground, first and second floors. It has an agreed effective floor "A" area of 227m<sup>2</sup> and a gross internal area of 395m<sup>2</sup>. It is held under a lease dated 20 September 1938 for a term of 99 years expiring in June 2034 of which 37.22 years remained unexpired on the valuation date, 14 April 1977. The ground rent is £90 per annum. A number of improvements have been carried out by the tenants' predecessors in title following a licence dated 27 October 1977.

2. Mr Buchanan, for the tenants, proposes a premium of £382,390, and Mr Briant, for the freeholder, proposes a premium of £569,637. Their valuations are attached to this decision as appendices A and B respectively. An agreed schedule of comparables is attached as appendix C.

3. It is agreed that the marriage value should be shared equally, and the issues are:

(i) the value of the lease,

(ii) the value of the freehold,

(iii) yield, and

(iv) whether the transfer (the other terms of which are agreed) should permit off street parking, in front of the garage, for one or two cars.

4. On 25 March 1998 we internally inspected the property, we externally inspected all the freehold comparables relied on by either of the valuers. We also inspected 14 Grove End Road NW8, 6 Grove End Road and 22B Elm Tree Road, relied on by Mr Buchanan on the issue of yield, and, at the request of the parties, and with the permission of its owner, we on 27 March inspected the garden of 123 Hamilton Terrace

in order to compare its location to that of the subject.

## **Decision**

### **(i) The value of the lease**

Mr Buchanan proposes £1,400,000 and Mr Briant £1,425,000. Both agree that the difference between them is very well within valuation tolerance. We have concluded that the difference is so minimal that we should split it, and we therefore value the lease at £1,412,500.

### **(ii) The value of the freehold**

Mr Buchanan's valuation is £2,000,000. He relies on the comparable evidence of the transactions relating to 37 Queen's Grove, 33 Elsworthy Road and 16 Avenue Road which are listed in appendix C. These he adjusts for factors such as size, style, tenure, condition, location, garden, parking space and market movement. He accepts that the differential of 70% between the value of the freehold and the value of the lease which his figures show is greater than the average shown on a graph prepared by Mr Briant's firm, but says that we should arrive at values by market evidence rather than statistics, and says that in any event the graph is unreliable because a number of the settlements from which the graph is derived are based on the landlords' estimates of value rather than on market transactions. He says that Mr Briant should have adjusted for location when comparing 123 Hamilton Terrace to the subject, which he regards as in a worse location than the comparable.

Mr Briant's figure is £2,300,000. He relies on 25 Queen's Grove and 123 Hamilton

Terrace. In his written proof he had also relied on an offer of £2,300,000 made for the purchase of 29 Acacia Road, but, that offer having been withdrawn, he no longer relied on it. He adjusted his comparables for size, location, parking space and condition. In his opinion, Mr Buchanan had made insufficient allowance for market movement in adjusting his comparable sales, which took place in July 1996 (37 Queen's Grove), September 1995 (33 Elsworthy Road), and August 1995 (16 Avenue Road) and said that if Mr Buchanan had made a greater and more accurate adjustment for that factor, their respective freehold values would be very close. He says that the location of 123 Hamilton Terrace is similar to that of 42 Queen's Grove.

We accept Mr Briant's evidence that upward market movement in the general location of Mr Buchanan's comparables has been greater than he suggests, and in the light of our inspection of subject and all the comparables we accept Mr Briant's figure on this aspect of the valuation and we accordingly conclude that the unimproved freehold value at the valuation date was £2,300,000.

### **(iii) Yield**

Mr Buchanan proposes a yield of 7%. He says that leasehold valuation tribunals have determined rates of between 6% and 7½% for properties in St John's Wood, and in most of the cases where a yield greater than 6% has been determined, the landlord has appealed to the Lands Tribunal on the issue of yield. In one such appeal (43 Hamilton Terrace), the Lands Tribunal had determined a yield of 6% instead of the 7% determined by the leasehold valuation tribunal, but the tenant had not appeared to oppose the landlord's case and the Lands Tribunal Member had said that the decision was not to be treated as a precedent. In other appeals the tenants had settled at a higher price without reference to the Lands Tribunal to avoid the delay, risk and costs

of an appeal, and such settlements did not support a yield of 6%. In the case of *41 Queen's Grove* (LON/LVT/618), the adjoining house, with only a slightly longer (40 years) unexpired lease and a similar low fixed ground rent, the leasehold valuation tribunal had determined a yield of 7%. The determination had been appealed to the Lands Tribunal and compromised at a higher figure, but this, like the other settlements, was an example of the *DeLaforce* effect. In *43 Queen's Grove* (LON/LVT/607), also subject to a pending appeal to the Lands Tribunal, the leasehold valuation tribunal had determined a yield of 6½% because of a very onerous (to the tenant) rent review clause. In a number of enfranchisement claims in respect of substantial houses on the neighbouring MCC Estate, the landlord, represented by Knight Frank had agreed to a yield of 7%.

Mr Briant proposes a yield of 6%. He says that factors relevant to yield are location (the most important), the capital value of the property, and the length of the unexpired term (shorter leases tending to attract lower yields). He relies on settlements and on leasehold valuation tribunal decisions other than those which are subject to appeal. He does not accept that settlements should be disregarded as products of the *DeLaforce* effect and considers that not only tenants but landlords are prejudiced by delay, the landlords because of the fixed valuation dates in cases under the 1967 Act, since, in the event of an appeal, premiums do not carry interest until 60 days after the appeal is determined.

This narrow issue occupied much of the hearing. We accept that there is an element of inconsistency on yield rates which have been applied by leasehold valuation tribunals in respect of properties in St John's Wood, and we are glad that some guidance may shortly be forthcoming from the Lands Tribunal in the case of *139 Hamilton Terrace*, in which, we understand, the only issue was yield and both parties were represented. We consider that the principal factors relevant to yield are location, the value of the property, the length of the unexpired term and lease terms, including ground rent and any provision

for its increase. We accept that all settlements are, as a matter of common sense, likely to be governed by questions of cost, risk and delay, and we also consider that the landlord's interest in establishing a yield rate which may influence other settlements is greater than that of the tenant, who is naturally most interested in his own case. In all the circumstances, including in particular the location of the property in Camden, in a fairly busy road and overlooked from the rear by tower blocks, and the low fixed ground rent, we have concluded that the yield should be 7%.

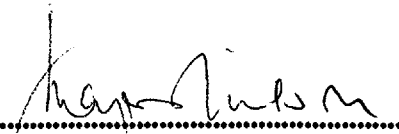
**(iv) Parking Space**

The tenant wishes to have the right to park two small cars, one in front of the other, on the drive in front of the garage. Mr Briant says that while the Estate has in practice no objection to her doing so, provided the cars do not obtrude on to the pavement, there is really only space for one car. Having seen the property, we conclude that Mr Briant is correct.

**Determination**

We therefore conclude that the transfer should contain permission for the tenant to park one car, and that the price for the freehold should be £537,000, in accordance with our valuation which is attached to this decision as appendix D.

CHAIRMAN.....



- 6 APR 1998

42 QUEEN'S GROVE, LONDON NW8

Valuation as at 14th April 1994/7

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 I

Ground Rent	£90 pa	
YP 37 yrs @ 7%	13.11	£1,180

Reversion

Unimproved Open market	£2.0m	
Freehold value		
PV £1 37 yrs @ 7%	.0818	<u>£163,600</u>
		£164,780

Marriage Value

Open market Freehold Value	£2.0m	
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Less (i) Freeholders Interest	£164,780	
(ii) Unimproved Open market	<u>£1.4m</u>	
Leasehold Value		
Marriage Value	£435,220	

Freeholders share at 50%		<u>£217,610</u>
		£382,390

**42 Queens Grove S 9 (1c)**

Valuation Date: 14/04/97

LEASE TERMS:

Lease commenced: 24/06/35

Lease to expire: 24/06/34

Unexpired Term: 37.22

Ground rent (pa): £90

FHVP £2,300,000

Value of Underlease: £1,425,000 61.96%

LANDLORDS INTEREST:Term:

Ground Rent: £90

YP 37.22 @ 6% 14.76

£1,329

Reversion:

FHVP Less improvements: £2,300,000

PV £1 37.22 @ 6% 0.11

£262,945

**Landlords present interest****£264,273**MARRIAGE VALUE:

FHVP (less improvements): £2,300,000

Less

Landlords present interest: £264,273

Leasehold Interest (less improvements): £1,425,000

Total Marriage Value:

£610,727

Take 50% of Marriage Value

£305,363**Freeholders interest:****£569,637**



## 42 QUEEN'S GROVE, LONDON NW8

### Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A <sup>2</sup> AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
<b>SUBJECT PROPERTY</b>							
42 QUEEN'S GROVE	1930's 3 storey detached double fronted house under a tiled mansard roof	227 m <sup>2</sup> 2443 sq. ft	INTERNAL : 6 bedrooms, dressing room, 4 bathrooms (2 en suite), sauna/shower room, kitchen, study, drawing room, dining room, playroom, cloakroom, , utility room. EXTERNAL : Double garage, OSP 1, rear garden.	99 years from 24/6/35, expiring 24/6/2034 40 years unexpired.	£90 fixed for the duration of the term.		Valuation date: 14/4/97
<b>FREEHOLD COMPARABLES</b>							
25 QUEEN'S GROVE	Detached 1930's low-built house situated on corner of Ordnance Hill.	358 m <sup>2</sup>	INTERNAL: 7 bedrooms, 2 bathrooms, 2 WC's, 4 reception rooms, kitchen, pantry, boiler room. EXTERNAL: Small garden, OSP 4	41 ¾ years Unexpired and FREEHOLD SALE.	£90pa Fixed	£2,200,000 for L/H interest. £450,000 extra for P/H interest.	April 1997
123 HAMILTON TERRACE	4 storey linked detached 1930's house. Good condition	295 m <sup>2</sup> 3175 sq ft	INTERNAL : study, family room, kitchen/ breakfast room, dining room, reception room, utility room, 7 bedrooms, 2 bathrooms (1 en suite) EXTERNAL :Rear garden OSP 4 cars	FREEHOLD	N/A	£2,600,000	April 1997
23 AVENUE ROAD	Detached Tudor style house. Poor condition.	372 m <sup>2</sup> Gross Internal Floor Area.	Accommodation currently arranged in three flats. To be converted into a single dwelling by the purchasers.	FREEHOLD	N/A	£2,500,000	August 1997
29 ACACIA ROAD	4 storey detached house in need of internal modernisation.	207 m <sup>2</sup> 2228 sq ft	INTERNAL : Entrance hall, guest cloakroom, living room, dining room, kitchen, 8 bedrooms, 2 bathrooms, self contained lower ground floor flat comprising 5 rooms. EXTERNAL : Garage, OSP for 3 cars.	FREEHOLD	N/A	£2,300,000	Under Offer October 1997
16 AVENUE ROAD	Double fronted detached house. Poor condition.	400 m <sup>2</sup>	INTERNAL : 3 reception rooms, kitchen/breakfast room, 8 bedrooms, 4 bathrooms, kitchenette Separate wing: laundry, bathroom, staff bedroom 8; EXTERNAL : Large carriage driveway providing ample off-street parking, extensive rear garden.	FREEHOLD	N/A	£2,400,000	March 1995
33 ELSWORTHY ROAD	Detached double fronted house. Required modernisation.	287 m <sup>2</sup>	INTERNAL : Reception hall, 3 reception rooms, kitchen/breakfast room, master suite, 3 further bedrooms, second bathroom, WC.	FREEHOLD	N/A	£2,100,000	March 1995

Without reservation

### 42 QUEEN'S GROVE, LONDON NW8

#### Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. AREA	ACCOMMODATION/AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
<b>SUBJECT PROPERTY</b>							
42 QUEEN'S GROVE	1930's 3 storey detached double fronted house under a tiled mansard roof	227 m <sup>2</sup> 3089 sq. ft	INTERNAL : 6 bedrooms, dressing room, 4 bathrooms (2 en suite), sauna/shower room, kitchen, study, drawing room, dining room, playroom, cloakroom, , utility room. EXTERNAL : Double garage, OSP 1, rear garden.	99 years from 24/6/35, expiring 24/6/2034 40 years unexpired.	£90 fixed for the duration of the term.		Valuation date: 14/4/97
<b>LEASEHOLD COMPARABLES</b>							
39 QUEENS GROVE	4 storey stucco fronted detached house	326 m <sup>2</sup> 3455 sq. ft	INTERNAL: Entrance hall, drawing room and gallery, kitchen/ breakfast room, family room, study, 6 bedrooms, dressing room, 5 bathrooms (3 en suite), steam room/shower room, utility room, wine store, cloakroom EXTERNAL: Single garage, OSP	46.5 year lease from the 25/3/88, expiring 25/9/2034	£600 p.a. subject to review every 21 years.	£1,950,000	November 1996
41 QUEEN'S GROVE	1930's 4 storey detached house under a tiled mansard roof	287 m <sup>2</sup> 3089 sq. ft	INTERNAL : 6 bedrooms, dressing room, 6 bathrooms (5 en suite), shower room, kitchen, study, drawing room, dining room, bar area, billiard room, family room, cloakroom, , utility room. EXTERNAL : Double garage, OSP 1, rear garden.	99 years from 24/6/35. 38.75 years unexpired.	£90 fixed for the duration of the term.	£1,730,000	October 1996

42 QUEEN'S GROVE, LONDON NW8

SCHEDULE OF FREEHOLD COMPARABLES

ADDRESS	TYPE	AREA M <sup>2</sup> "A" / GIA		ACCOMMODATION	TENURE	GROUND RENT	PRICE	DATE OF SALE
33 Elsworthy Road	Low built detached 3 storey house built circa. 1900	287	444	4 beds, 3 bath, 4 receps, 2nd floor used as Doctors Surgery. Carriage drive, garage, rear garden overlooking Primrose Hill.	F/H	—	£2.1m	September 1995
37 Queen's Grove	4 storey semi-detached Victorian house	<del>178</del> 187		5 beds, 3 bath, 4 receps, kitchen, 2 cloak/WC. Garage, rear garden, unmodernised.	New 99 year lease	£1,200 pa subject to review in 2½ yrs to 0.5% of F/H value	£1.385m	July 1996
16 Avenue Road	Large detached house on 3 floors	400	661	8 beds, 4 bath, 5 receps, kitchen/ breakfast room, utility, 2 cloak/ WC. Double garage, large garden, unmodernised.	F/H	—	£2.4m	August 1995

SCHEDULE OF LEASEHOLD COMPARABLES

ADDRESS	TYPE	AREA M <sup>2</sup> "A" / GIA		ACCOMMODATION	TENURE	GROUND RENT	PRICE	DATE OF SALE
42 Queen's Grove	3 storey detached brick built, 1930's style	227	395	6/7 beds, 2 dressing rooms, 4 bath, 3 receps, kitchen/breakfast room. Garage, o/s parking, rear garden.	37 yrs	£90 pa fixed		Date of valuation 14.4.1997
41 Queen's Grove	3 storey detached brick built house, 1930's style.	288	464	5 beds, 2 dressing rooms, 4 bath, 5 receps, kitchen/breakfast room, utility room, staff accommodation. Double garage, o/s parking, landscaped rear garden.	37.75 yrs	£90 pa fixed	£1.75m + Benefit of Notice	September 1996
25 Queen's Grove	2 storey detached brick built, 1930's style.	250	446	7 beds, dressing room, 3 bath, 4 receps, kitchen/breakfast room, staff room. Double garage, carriage driveway, small rear garden.	42 yrs	£90 pa fixed	£2.2m + Benefit of Notice	May 1997
39 Queen's Grove	Reconstructed 4 storey detached Victorian style house	337	566	5 beds, 4 bath, 5 receps, staff accommodation. Garage, rear garden.	38 yrs	£600 pa subject to review in 2009 to 1/60th site value	£1.95m	January 1997

## APPENDIX D

42 Queens Grove S9(1c)

Valuation Date: 14/04/97

LEASE TERMS:

Lease commenced: 24/06/35  
 Lease to expire: 24/06/34  
 Unexpired Term: 37.22  
 Ground rent (pa): £90

FHVP 2,300,000  
 Value of Underlease: 1,412,500

LANDLORDS INTEREST:Term:

Ground Rent: £90  
 YP 37.22 @ 7% 13.134

1,182

Reversion:

FHVP Less improvements: £2,300,000  
 PV £1 37.22 @ 7% .08063

185,452

**Landlords Present interest**

186,634

MARRIAGE VALUE:

FHVP (less improvements): £2,300,000  
 Less  
 Landlords present interest: 186,634  
 Leasehold Interest  
 (less improvements): £1,412,500

Total Marriage Value: 700,866

Take 50% of Marriage Value 350,433

**Freeholders interest:**£537,067Say £537,000