

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: The Trustees of the Phillimore Kensington Estate

Respondent: Mrs J D South

RE: 26 Upper Phillimore Gardens, London W8

RV at date when Tenant's Notice was given: £ 2,763

Date of Tenant's Notice: 11 March 1997

Application to Tribunal dated: 11 July 1997

Price requested: £2,625,000

Valuation Date: 11 March 1997

Unexpired term: 14 days

Heard: 2 March (adj) 18 May (adj) 27th, 28th, 29th July  
Inspections 2 March, 19 May and 30 July.

Appearances:

Mr S Berry QC (of Counsel)

Ms F Joyce FRICS (Chestertons)

Mrs A McNeil (Frere Cholmeley Bischoff, Solicitors)

Mr V R Belcher MA

Mr E D Heath BA FRICS F B Eng, ACI Arb (Boyle & Co)

Mr C J Knott FRICS (Watts & Partners)

for the Landlord

Mrs J D South - the tenant in person

Mr S Marr-Johnson FRICS (Marr-Johnson & Stevens) (2 March, 18 May)

for the Tenant

Members of the Leasehold Valuation Tribunal:

Mrs B M Hindley JP LLB

(Chairman)

Mr G I Coe BSc (Est Man) FRICS

Mr P S Roberts Dip Arch RIBA

Date of Tribunal's decision 15 September 1998.

### Lease Chronology

- 4 April 1855 Original building agreement between Charles Phillimore and Joseph Gordon Davis, builder, 99 years from 25 March 1855.
- 11 July 1861 Leased to Henry Burton for a term of 93 years from 25 March 1861 at a rent of £21 pa.
- 4 August 1865 Henry Burton, at the request of Joseph Gordon Davis assigned the lease to John Satchell.
- 30 August 1883 The executors of John Satchell assigned the lease to Walter Nash.
- 8 November 1883 Walter Nash assigned the lease to John Fulton.
- 23 April 1920 John Fulton assigned the lease to Frank Bailey
- 18 August 1922 In consideration of the sum of £300 paid by Frank Bailey to the Trustees and of the surrender of a lease of the premises, formerly held by Frank Bailey, the property was demised to Hugh Charles Sowerby Dumas for a term of 75 years from 25 March 1922 at a rent of £41 per annum.
- 1 September 1960 Mr & Mrs South acquired the tenancy.

## Description

One of a pair of semi-detached Victorian houses situated on the southern corner of Upper Phillimore Gardens with Phillimore Gardens. The house is built on basement, ground, first, second and attic floors. The property has gardens to the front and rear.

## Arrangement

The property is presently arranged as follows:

Lower Ground Floor:	Reception room, two bedrooms, kitchen, bathroom and store room.
Ground Floor:	Three reception rooms, kitchen and bathroom.
First Floor:	Three rooms one with roof terrace, one with ensuite bathroom, wc.
Second Floor.	Three bedrooms, bathroom.
Third (Attic) Floor:	Two bedrooms, kitchenette, bathroom.
Outside:	Front and rear gardens, double garage.

## Gross Internal Floor Area

This was not agreed between the parties.

The applicants having instructed The Capital Group to measure reported 5542 sq ft including 718 sq ft as the area of the attic. Mrs South, having measured it herself calculated 4968 sq ft excluding the area of the attic but including the staircase to it.

1. The treatment of improvements had not been agreed by the parties by the start of the hearing. This was because Mrs South sought to establish that there was an identity between the last lessee under the 1861 lease and the first lessee under the 1922 lease (see lease chronology).
2. The Tribunal heard argument on this preliminary issue and was satisfied that the indenture of 18 August 1922 made it plain that, in consideration of the sum of £300 paid by Frank Bailey to the Trustees and the surrender of his lease, a new lease was granted by the Trustees but at his direction to Hugh Charles Sowerby Dumas. They found further confirmation of their view from the fact of the first Land Registry entry.
3. Mrs South contended that by the time the new 1922 lease was granted Frank Bailey had already assigned his existing lease to Judge Dumas. She found further support for her view from Judge Dumas' answers in his completed Quinquennial Valuation return of 1935 which suggested that there had been such an assignment.
4. The Tribunal, like Mr Belcher, (who gave evidence upon aspects of the history of the Estate and subject property) accepted that Judge Dumas responses were puzzling but, in the knowledge that they were being made some 12 years after the grant of the 1922 lease, found them insufficient to displace the clear wording of the indenture.
5. That being so the Tribunal did not consider the ancillary questions of the application of Section 3(3) of Section 9(1A)(d) of the Leasehold Reform Act 1967 to the 1861 lease.
6. This preliminary ruling having been given to the parties it was then agreed between them that the improvements effected under the 1922 lease, and therefore to be disregarded, were as listed by Mrs South (see Appendix 1 for a list made by the Tribunal from information supplied by Mrs South.) Neither party was certain that the improvements listed at B(iii)-(vii) and item (ix) of Appendix 1 had been effected during the currency of the 1922 lease. However, both agreed that the main improvements effected by Mr & Mrs South were the construction of a double garage, the conversion of the attic space into habitable accommodation, the installation of central heating and additional windows and the conversion of the basement into a self contained flat.
7. It was also agreed between the parties that the valuation date was 11 March 1997, there was no element of marriage value and no question of the application of a yield rate. Ms Joyce proposed £2.8m and Mrs South proposed £1.1m as the price to be paid for the freehold interest in the subject property.

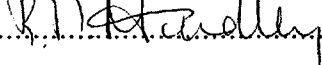
8. For ease of reference the Tribunal prepared a composite schedule of comparables submitted by both parties and this is attached at Appendix 2.
9. Ms Joyce approached the valuation of the freehold interest in what she regarded as a wholly unmodernised house by reference particularly to the sale, by tender, in September 1996, of the freehold interest in 11 Phillimore Gardens at £2.231m. Seven tenders had been submitted ranging from £1.8m to £2.231 m. The property, prior to the sale, had been used by the government of Senegal. At the hearing Mr Heath gave evidence that the property was in need of major repair and renovation and Mr Knott estimated that it would cost in the region of £255,000 inclusive of VAT but excluding professional fees to put it (without improvement) into good repair and condition. The property had an estimated gross internal area of 4965 sq ft.
10. Ms Joyce also referred to transactions in respect of Nos 45 and 46 Phillimore Gardens, 19/21 Phillimore Place and 15 Upper Phillimore Gardens. Attached at Appendix 3 is Ms Joyce's analysis on a rate per square foot basis of these transactions adjusted for date (by reference to Savill's Index), location and other differences. This produced a minimum rate per square foot of £561, but Ms Joyce said that her valuation of £2.8m demonstrated a rate per square foot of £505. Considering the application of rates per square foot not to be a primary method of valuation she expressed herself as content with her 'conservative' valuation of £2.8m.
11. Throughout the hearing Ms Joyce was adamant that purchasers of substantial properties on the Estate took little account of past modernisation and improvements since they wished to effect extensive and expensive schemes of refurbishment. In her view this explained why there was relatively little difference between the prices achieved for dilapidated, unmodernised houses and houses kept in reasonable repair but having dated improvements.
12. Before the hearing Mrs South had submitted two valuation reports from Mr Marr-Johnson. He was not called at the hearing but the reports were not withdrawn. Mr Marr-Johnson had noted transactions at Upper Phillimore Gardens, Phillimore Gardens and Phillimore Place as well as others in Essex Villas and Campden Hill Road. In his opinion this evidence pointed to "an improved and unmodernised valuation of about 50% of the fully improved value ie £1.1m".
13. Mrs South gave valuation evidence on her own behalf. She challenged Ms Joyce's opinion that improvements had little or no value asserting that houses in the vicinity had been purchased specifically because they were improved and thus released the buyer from the disruption of major building works. She asserted that there were special features about No 11. Phillimore Gardens which made it sought after regardless of its condition. These included a 100

ft garden with an open view over Holland Park. She added that it was 'a much more integrated house architecturally the proportions of its rooms are much finer'. The basement was 'more usable' because of having 'a full scale staircase going down to it.'

14. Mrs South cited the sales of Nos 14 and 20 Upper Phillimore Gardens as further evidence that improvements had a substantial effect on price reducing the unimproved and unmodernised value to 50% of the fully improved value.
15. Mrs South relied particularly on the completion of the sale of a 67 year lease of No 12 Upper Phillimore Gardens in April 1997, very close to the valuation date, at £2.55m. She said that this was substantially larger than the subject property and had been refurbished to a very high standard including a lift. The purchaser had had a special (family) reason for purchasing the property and 'was very conscious that he was paying an overprice' which included substantial amounts for removable furnishings and fittings.
16. Mrs South was of the opinion that another transaction of significance was the purchase, under the Act, of the freehold of 10 Upper Phillimore Gardens, in February 1997 subject to an unexpired lease term of 20 years. The purchase price paid was £670,000 which the lessee interpreted as reflecting an unimproved freehold value of £1.25m-£1.5m.
17. Strongly opposed to any use of a valuation approach based on the application of rates per square foot, Mrs South saw the Phillimore Estate as a particularly unsuitable subject. She also questioned the adjustment of market values by reference to Savill's Index.
18. Finally Mrs South pointed out that a rental of around £3000 a week was being achieved for 24 Phillimore Gardens which was fully modernised. A discussion ensued and it was accepted by the parties that a rental of around £1500 might be achievable for the subject property by letting to students. From this difference in potential rental levels Mrs South derived further support for her view as to the relative values of modernised and unmodernised houses but Ms Joyce rejected any correlation between capital and rental values.
19. The Tribunal inspected internally the subject property and also Nos 11 and 45 Phillimore Gardens and No 10 Upper Phillimore Gardens. They also inspected externally all of the other properties listed on the schedule attached at Appendix 2.
20. The Tribunal found the two freehold sales (Nos 11 and 28 Phillimore Gardens) to be the most helpful since these transactions required fewer subjective adjustments. They noted Ms Joyce's comments that whilst No 28 had been modernised, refurbishment was now planned by the new owners.

From their own observation they saw that the garden of No 28 was not as potentially attractive as that of No 11 and, certainly, was not as large. They also noted the present limited accommodation on the attic floor of No 28.

21. The Tribunal agreed that No 11 was wholly unmodernised and unimproved and, indeed, was uninhabitable having no bathroom(s) or kitchen facilities. They also accepted that its large garden, backing onto Holland Park, was a particular feature. In their view, with a transaction date only some 6 months before the valuation date, it clearly demonstrated the high value set on properties on the Estate offering purchasers scope for remodelling and possible enlargement in the course of substantial improvement works.
22. In the Tribunal's opinion no assistance was to be gained from the evidence of the sale of the freehold interest at No 10 Upper Phillimore Gardens since any calculation based on the one known figure was pure speculation.
23. The Tribunal gave careful consideration to the sale in April 1997 of 12 Phillimore Gardens. Noting that it was appreciably larger than the subject and modernised to a high but, apparently, individual standard they considered that a further significant adjustment was required to equate the 67 year lease with the freehold value - which could approach the £3m level.
24. Finally, the Tribunal found helpful, as providing a ceiling on values, the sale of the freehold of 28 Phillimore Gardens in February 1998 at £2.65m. The property was similar in size to the subject but the price required adjustment to reflect its modernised state and the later date of the sale.
25. Having carefully reviewed all of the evidence the Tribunal was of the opinion that the subject property would be attractive to a wide range of potential purchasers including those who might wish to retain its existing essentially unspoilt, period character, as well as those who might wish totally to remodel it. That being so the Tribunal determined the freehold vacant possession value under the Act at £2.1m. However, in view of the doubt which a prudent purchaser might perceive in achieving immediate vacant possession the Tribunal considered a deduction of £25,000 appropriate.
25. Accordingly, the Tribunal determined the premium payable under the Act in respect of 26 Upper Phillimore Gardens, London W8, to be £2,075m. (Two million and seventy five thousand pounds).

CHAIRMAN .....  .....

DATE ..... 15 September 1998. ....





## APPENDIX 1

B. John Fulton: 8 November 1883 - 23 April 1920.

### Improvements:

- (i) Two dormer windows at attic level and roof alteration creating two bedrooms out of previous roof space and boxroom provision only.
- (ii) Arch cut between two sitting rooms on ground floor.
- (iii) Bathroom made on first floor by dividing previous dressing room into bathroom and separate lavatory and extending out roof light for lavatory.
- (iv) New door opening between front bedroom on first floor and newly-formed bathroom, making bedroom and bathroom connect.
- (v) Bathroom/lavatory made out of previous dressing room on second floor.
- (vi) New window opening in the second-floor back bedroom on south west side of the house.
- (vii) Small roof light over stairs leading from second floor to attic floor.
- (viii) Dado rails on stairs and in dining-room Panelling in two connecting sitting rooms on ground floor. Decorative plaster work on ground floor.
- (ix) The engraved glass in inner screen inside front door and in ground-floor bathroom windows.

C. Judge Dumas & Daughters: 18 August 1922 - 1 September 1960.

### Improvements:

- (i) Concrete car-float and formation of garage gates at back.
- (ii) Formation of ground-floor bathroom from previous cloakroom and large coat cupboard.

D. Ronald and Joan South: 1 September 1960 - present day

Improvements:

- (i) Large system of central heating comprising 26 radiators.
- (ii) Building of garage for two cars.
- (iii) Major extension of electrical services and complete re-wiring of house.
- (iv) Attic floor made viable with 4 new roof-lights and added bathroom and utility room in previously unfloored and unlined roof space.
- (v) Two new window openings in the larger of the two rooms at the back of the second floor (natural light had previously been sub-standard in this room).
- (vi) Wash-hand basin installed in cupboard in second floor front bedroom.
- (vii) New french window opening in back room on west side of first floor, opening on to balcony which had not had previous access.
- (viii) Large walk-in closet created for front bedroom on first floor by cutting off insufficiently-lit rear section of back room and cutting doorway from front room into this new area.
- (ix) New kitchen provided on site of previous conservatory at back of house.
- (x) Burglar alarm and security system installed.
- (xi) Basement made into self-contained flat involving substantial improvement works.

Solid floors throughout.

Building of bathroom in space where stairs had been.

Enlarged window in bathroom from previous slit opening

New french windows with skylight over in front room, opening on to front area

Previously open arch between present kitchen and coal cellars closed up and dresser formed in new recess

Previous doorway from back room on west side closed up

Extensive areas of borrowed light provided

General concealing of previously exposed pipe-work.

- (xii) Damp course installed 1984: there had been no damp course previously.
- (xiii) The strip of garden surrounding the front and side of the house landscaped via construction works by Whitelegg Ltd of Knockholt in 1967.
- (xiv) Previous garden store converted into laundry and boiler room with separate entrance solid floor laid to replace previous earth floor.



Address	Date	Type	Area	Tenure	Accom etc	Price	Remarks
20, Upper Phillimore Gdns	Feb. 92	S.det 5 flrs	6,000	72 yrs	6 bed 4 bath 4rr s.c flat	£1.125m	Partly modernized
" " " " " "	July 95	" " "	" "	69 yrs	" " " " " "	£2.25m	Fully refurbished.
14, Upper Phillimore Gdns	Nov.92	S.det 5 flrs	?	92 yrs	18 rooms in 5 flats, with c.htg	£830,000	Split between f.hldr / lhldr
24 Upper Phillimore Gdns.	Oct. '94	S.det. 4 flrs ?	5,389	40 yrs	6 bed 3 bath 4 rr. Adjoins subject	£1.4m	Highly mod. New lease for 99yrs for £380,000 at the same time
9, Upper Phillimore Gdns.	Mar.'95	S.det ? 5flrs	?	69 yrs	6/7 bed 4 bath 3rr garage	£2.85m	Fully modernised.
10 Upper Phillimore Gdns	July'96	S.det 4flrs	6,130	F.h subj 20 yr lease	6 bed 4rr attic play etc 4 bath	£670,000	Fully improved.
12, Upper Phillimore Gdns.	April '97	S.det 5 flrs	6,523	67 yrs	7 bed 5 bath 5rr Lift	£2.55m	Immaculate. Includes fittings etc
15 Upper Phillimore Gdns.	July '97	S.det 4 flrs	7,250	F.hold subj to 67 yr lse	No details. garage	£440,000	V.p f.hold est at £5.0m Large garden
19, Phillimore Gdns	Mar. 92	Tce 6 flrs	7,000	72 yrs	6 bed 4 bath 2 rr	£1.25m	
" " " " " "	April 94	" " "	" "	70 yrs	" " " " " "	£1.36m	
31 Phillimore Gdns.	? 93	Det 3 flrs ?	10,000	F.hold	No details. 80 ft front Gge etc	£1.45m	Unmod. sketchy information
44 Phillimore Gdns.	Nov 93	Det 4 flrs	?	71 yrs	5/6 bed 4 bath 3rr s.c flat	£2.15m	F.hold purch later £160,000
32 Phillimore Gds.	Dec.'94	Corner 5 flrs	5,470	70 yrs	6 bed 4 bath 2 rr s.c. flat	£1.81m	R/o subj. Different style. Modernised
24, Phillimore Gdns.	April '95	Corner 4 flrs	4,300	21 yrs	5 bed 4 bath 4 rr	£1.465m	F.hold purch £485,000. Modernised
45, Phillimore Gdns.	Nov. 95	Det. 4 flrs	5,625	69 yrs	6 bed 4 bath 3 rr	£3.65m	Enfranch. premium £185,000. Modernised
46, Phillimore Gdns.	Feb.'96	Det. 4 flrs	5,750	38 yrs.	No details.	£2.4m	F.hold purch £800,000 needed refurb?
11 Phillimore Gdns.	Sept.'96	S.det 5 flrs	4,965	F.hold	17 rooms, wholly unmod.	£2.231m	Good garden. Sale by tender
28 Phillimore Gdns	Feb '98	S. det 4 flrs	4,700	F.hold	6 bed 3 bath 3 rr	£2.65m	Modernised
19/21 Phillimore Place	Dec. '93	Site	-	F.hold	Site of 2 houses. p.p. 1 house	£1.2m	See also below
16, Phillimore Place	Oct. '95	S.det. 5 flrs	4,884	69 yrs	No details	£1.6m	F.hold purch £250,000. Modernised.
19, Phillimore Place	June '97	Det. 4 flrs	7,000	F.hold	8 bed 6 bath 4 rr staff fl. gge	£4.15m	Newly built

**Note: This is not an agreed schedule. Some details extracted from agents particulars and not the subject of comment by the parties.**



The following replaces Section 8.8 (page 22) of original report.

**8.8 ANALYSIS OF COMPARABLES**

Address	Type of Transaction	Date	Tenure	Price	GIA sq.ft.	Rate /sq ft	Adjust for date	Other adjustments	Final rate /sq ft
* 11 Phillimore Gardens	Sale	Sept 1996	Freehold	£2.231 m	4,965	£449	+15%	(location etc.) +10%	£561
45 Phillimore Gardens	Sale	Nov 1995	Freehold	£3.0 m	5,625	£533	+ 25%	(location etc.) - 15%	£586
46 Phillimore Gardens	Sale	Feb 1996	Freehold	£3.2 m	5,750	£557	+ 25%	(location etc.) - 15%	£613
19/21 Phillimore Place	Sale	Jun 1997	Freehold	£4.15 m	7,000	£593	-	(new build) - £50/sqft (location etc.) + 5%	£570
15 Upper Phillimore Gardens	Enf Sale	Jul 1997	Agreed FHVP Valuation	£5 m	7,250	£690	-	(location etc.) - 15%	£586