

144

Ref: LON/LVT/1443/01

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: The Eyre Estate

Respondent: S F Holdings Inc

RE: 64 Avenue Road, St John's Wood, London, NW8

Date of Tenant's Notice: 28 March 2001

Application to the Tribunal dated: 24 September 2001

Heard: Tuesday 12 March 2002

Appearances:

Ms L Wood of Counsel
Mr J E C Briant BA MRICS, Messrs Cluttons, Chartered
Surveyors
for the Applicant

Mr E Johnson of Counsel
Mr D Conway, Solicitor, Messrs David Conway & Co
Mr K G Buchanan BSc (EstMan) ARICS, Messrs Colliers
Conrad Ritblat Erdman, Chartered Surveyors
Mr A Lee
for the Respondent

Members of the Leasehold Valuation Tribunal:

Mrs J S L Goulden JP (Chairman)
Mr P A Copland BSc FRICS
Lady Auld LLB

Date of Tribunal's decision 1 MAY 2002

THE FACTS

1. 64 Avenue Road London NW8 (hereinafter referred to as "the subject property") is a detached 1930s three storey brick built house occupying a plot of approximately 1,756 square metres on the east side of Avenue Road and adjacent to a large site comprising three schools. The total EFA of the existing accommodation is 443 square metres and the GIA is 740 square metres (the total EFA of the unimproved accommodation was 360 square metres and the GIA was 600 square metres).

2. The subject property is held on a lease dated 19 July 1938 for a term of 92.5 years from 25 December 1936 at a rent of £225 per annum.

3. The subject property was inspected internally and externally at the end of the Hearing on 13 March 2002.

4. The Tribunal also inspected the exteriors of Nos 46, 47, 50, 53, 56, 57, 83 and 85 Avenue Road, NW8, 98 Hamilton Terrace NW8, 39 Circus Road, NW8, 29 Cavendish Close NW8 and 11 Loudoun Road NW8.

5. The following matters were agreed between the parties before the Hearing:-

- (a) The areas of accommodation as referred to in paragraph 1 above.
- (b) The marriage value should be shared equally
- (c) The comparables (to which detailed reference is made below).
- (d) The valuation date is 28 March 2001

6. The points in issue are as follows:-

The unimproved freehold value
The unimproved leasehold value
The value of the tenant's improvements
Yield

EVIDENCE AND DETERMINATIONS

The unimproved freehold value

7. Mr JEC Briant, giving expert evidence on behalf of the Applicant, contended that the unimproved freehold value was £7,000,000. Mr K G Buchanan, giving expert evidence on behalf of the Respondent, contended for £5,000,000.

8. The valuers had adopted different approaches. Mr Briant had analysed the comparables in order to go straight to the unimproved value, whereas Mr Buchanan had valued the subject property as improved, and then made adjustments for the works which had to be disregarded. Although both methods are valid, the Tribunal's task in a complex case was made more difficult by the use of these different approaches.

9. Although he referred to other comparables, Mr Briant said that the best evidence of freehold value was derived from the sale of 46 Avenue Road in November 2001 at £7,000,000. He made no adjustment for market movement since he considered that there was parity in the market between March 2001 and November 2001 as a result of the drop back in values following September 11. In addition he did not think that significant adjustment was required on the grounds of condition, since he had been advised that 46 Avenue Road was sold in a slightly tired condition but considered a deduction of £250,000 "*entirely adequate*". In addition, Mr Briant deducted £250,000 for style and £500,000 for locational disadvantages of the subject, since location of the comparable was "*slightly preferable*". No deduction was made for accommodation since the houses were virtually of identical size. A deduction of £150,000 was made for the benefit of a valid planning permission on the comparable. Mr Briant added £1,150,000 for the larger site occupied by the subject property to reach his unimproved freehold value of £7,000,000.

10. Mr Buchanan agreed that the best evidence of freehold value was derived from the sale of 46 Avenue Road. To the sale price of £7,000,000, he added for size (£1,000,000) and larger site (£800,000), but deducted for market movement (£500,000), style (£800,000) position and location (£1,500,000). He said that this indicated a freehold value for the subject property of approximately £6,000,000. From this figure he deducted his valuation of the tenant's improvements at £1,000,000 to reach his unimproved freehold value of £5,000,000.

11. Mr Johnson, in closing submissions, said that with regard to the style adjustment made by the two valuers from 46 Avenue Road to reach the subject property, he suggested that the Tribunal should prefer Mr Buchanan's figure. He said that 46 Avenue Road was not the same animal. In Mr Johnson's opinion, Mr Briant's adjustment in respect of location was "*undercooking this badly*", and location made a considerable difference in Avenue Road. 46 Avenue Road had no school, no risk of redevelopment and "*nothing which remotely resembles the sort of overlooking you have in 64*". Mr Johnson did not accept Mr Briant's contention that the market had fallen back to its March position in November 2001.

12. Ms Wood, in closing submissions, said that the sale of 46 Avenue Road "*has to be the best comparable and the best starting point*". Mr Buchanan had said that it was one of the best houses in St John's Wood, and therefore this comparable was not the same animal as the subject property. Huge adjustments have had to be made to arrive at a comparable value.

13. The Tribunal agrees that the sale of 46 Avenue Road for £7,000,000 in November 2001 is the best comparable for this case, but notes that a large number of subjective adjustments have had to be made in order to relate this transaction to the subject property. Such adjustments inevitably reduce the reliance that can be placed on the comparable. The Tribunal considered the evidence of the prices achieved on sales of 29 Cavendish Close and 39 Circus Road, and agreed that these provided confirmation of the general level of values for large houses in this locality. In both cases, however, there were unique or unusual features about the property or the transaction such that it would be unsafe to place any reliance on mathematical adjustments to utilise these transactions as comparables in the present case. The Tribunal also had regard to determinations or settlements relative to 47, 83 and 85 Avenue Road, and concluded, for similar reasons, that these were useful only as a general indication of values. The Tribunal therefore proceeded on the basis adopted by both the expert valuers, and makes adjustments to the price achieved of £7,000,000 for 46 Avenue Road as follows:-

(a) Condition. Evidence was given that both properties were in a tired condition. Provided that a house is in a reasonable state of repair, the Tribunal considers that degrees of tiredness are not relevant. A purchaser in this locality would want to redecorate regardless of condition. The same principle applies where kitchens and bathrooms may be slightly dated or thoroughly outmoded. The Tribunal therefore makes no adjustment for any difference there may have been in respect of condition.

(b) Style. 46 Avenue Road is a more modern house behind a Palladian facade built to an integrated design concept which puts it into a different league to the subject property. The Tribunal prefers Mr Buchanan's view on this element and accepts his adjustment of £800,000

(c) Location. In the view of the Tribunal, 46 Avenue Road is in a far more desirable location. The subject property is the very first house in Avenue Road, as one approaches from the north, and its location, adjacent to the schools, has a severe effect on value. It is impossible to be precise, but it is felt that whilst Mr Buchanan's adjustment was too high, Mr Briant's adjustment was on the low side. The Tribunal applies an adjustment of £1,000,000.

(d) Size. Mr Briant made no adjustment for size as the floor area of 46 Avenue Road (601 square metres) was almost identical to that of the subject property (600 square metres) before improvements. Mr Buchanan made an adjustment of £1,000,000, which he said was 50% pro rata. The Tribunal prefers Mr Buchanan's approach of applying a specific deduction for the increased space that had been created by way of improvements. As the quality and layout of the accommodation in the subject property is not of the highest class, the Tribunal adopts a 40% factor, and allows £800,000 for size.

(e) Site size. Both valuers made an adjustment for site size as the area of the subject property is some 50% larger than 46 Avenue Road, although both were agreed that it should be less than the pro rata rate. The Tribunal considers that this adjustment should be somewhat less than the downward adjustment that it had made for position/location, and prefers Mr Buchanan's figure of £800,000.

(f) Planning permission. The Tribunal notes Mr Briant's view that the existence of planning permission to make extensions to 46 Avenue Road *"is quite likely to have no impact on the purchase price"*, but considers that a purchaser in this location may well attach some value to an existing planning consent. The Tribunal makes a small adjustment of £100,000 in this respect.

(g) Market movement. Mr Buchanan said that 46 Avenue Road had been on the market for well over twelve months and that the original asking price, presumably in the third quarter of 2000, had been £7,750,000. This was later reduced to £7,250,000, and the property was eventually sold in November 2001 for £7,000,000. The effects of the events of 11 September 2001 on markets of all kinds is well known, and it is the Tribunal's view that it was on the high value properties where the impact was greatest. The Tribunal was not provided with any specific evidence to show the trend of such values in the fourth quarter of 2001, but Mr Buchanan asked the Tribunal to accept that the comparable would have increased in value by £500,000, i.e. about 7%, between March and November 2001. It appears to the Tribunal that this is tantamount to saying that in March 2001, the vendor of 46 Avenue Road would have been prepared to sell for £6,500,000. The Tribunal does not accept this. Given the state of the market in November 2001, the Tribunal

considers that the vendor of 46 Avenue Road would have been relieved to be able to sell at the same price as he might have obtained in March. Accordingly, the Tribunal accepts Mr Briant's view and makes no adjustment in this respect.

14. Accordingly, the Tribunal's adjustments to 46 Avenue Road to establish an unimproved freehold value for the subject property are as follows:-

| | |
|---|---------------|
| Sale price | £7,000,000 |
| | |
| <u>Adjustments</u> | |
| Condition | Nil |
| Style | - £ 800,000 |
| Location | - £ 1,000,000 |
| Size | + £ 800,000 |
| Site size | + £ 800,000 |
| Planning permission | - £ 100,000 |
| Market movement | Nil |
| <hr/> | |
| Adjusted value (before allowance for improvements) | £6,700,000 |

The unimproved leasehold value

15. Mr Briant contended for £3,750,000 and Mr Buchanan contended for £3,034,000.

16. Mr Briant based his figure on the comparable evidence of 56 Avenue Road, which was sold for £4,000,000 in August 1999, with a lease of approximately 30 years unexpired at the time of sale. Mr Briant considered that the market had increased by approximately 27% between the valuation date and the transaction date, leading to a revised leasehold value of £5,080,000. To this figure he made a deduction of £1,270,000 (nearly 26%) for the "no Act world", £550,000 for size, £150,000 for unexpired term, and £100,000 for location. He added £750,000 for condition since the comparable was sold in poor order requiring a total refurbishment. He supported his contention for a value of £3,750,000 by referring to the Eyre Estate graph, (details of which are referred to in paragraph 22 below), which he said indicated that the value of a 28 year lease should be around 53.50% of the freehold value.

17. Mr Buchanan also used 56 Avenue Road as a comparable and agreed that it was in poor condition at the date of sale. Mr Buchanan added £900,000 for market movement and £500,000 for condition. He deducted £460,000 for size and £800,000 for rights under the Act. He further deducted £500,000 for location since, although the comparable was not next to school buildings, as was the subject, in Mr Buchanan's view *"the corner location of 56 Avenue Road would also be regarded as a disadvantage"*. In addition, Mr Buchanan deducted £606,000 in respect of tenant's improvements.

18. Mr Johnson, in closing submissions, said that the Tribunal should not need to consider the reliability of the Eyre Estate graph, because there was *"perfectly good market evidence"*. The graph should only be used as a backup, as suggested by Mr Buchanan.

19. Ms Wood, in closing submissions, said that the valuers were not far apart, but she challenged Mr Buchanan's adjustment for size which she said showed *"unexplained inconsistency"*.

20. As with the freehold comparable, 46 Avenue Road, the number of adjustments which have to be made are such that it inevitably reduces the reliance that can be placed on the resultant figure. Nevertheless, in the absence of any other evidence, the Tribunal is obliged to adopt the same approach, and determines as follows:-

(a) Condition. Both valuers agreed that 56 Avenue Road was in poor condition at the time of the sale, although no evidence was produced as to its extent. In the absence of such evidence, the Tribunal adopts the average of the two contended figures i.e. £625,000.

(b) Location. 56 Avenue Road is much closer to the desirable central section of Avenue Road, and although on a busy corner and the junction with Elsworthy Road, it is far removed from the site of the schools adjacent to the subject. The Tribunal does not consider that Mr Briant has allowed a sufficient discount for the effect of the schools and its proximity to Swiss Cottage. The Tribunal prefers Mr Buchanan's approach, and applies an adjustment of £500,000.

(c) Size. The respective valuers were quite close in their adjustment for size (Mr Briant: £550,000 and Mr Buchanan: £460,000). Whilst accepting that there should be an adjustment for size, the Tribunal has difficulty in arriving at a precise figure, based on the evidence presented. The Tribunal adopts a figure of £500,000.

(d) Market movement. Both valuers referred to Savills' index of capital values for prime Central London houses (which was appended to Mr Buchanan's proof of evidence), but were agreed that movements in the value of large houses such as those in Avenue Road did not always follow the index very closely. Given that this index rose from approximately 350 (interpolated figure) in August 1999 to 468.1 in March 2001 - an increase of 33.7% - and in the absence of any other evidence, the Tribunal prefers the higher percentage of 27% adopted by Mr Briant, rather than the 22.5% contended for by Mr Buchanan.

(e) Discount for benefit of notice. Mr Briant contended for 25% and Mr Buchanan for 20%. The Tribunal has some sympathy with Mr Briant's contention that a higher than usual discount would be required because the purchaser of a house in poor condition (as this was) will naturally be apprehensive about the cost of putting the property into repair, and will therefore be cautious

about the price he would be prepared to pay for the leasehold interest. However, given the "normal" range stated in evidence, of 15% to 20%, the Tribunal considers that 22.5% would be a fair allowance.

(f)Unexpired term. The lease of 56 Avenue Road was due to expire on 24 June 2029, and therefore, in August 1999 it had some 29 years and 10 months unexpired. The lease of the subject property expires on the same date, and therefore had some 28 years and 3 months unexpired as at the valuation date. Given the significantly larger adjustments which have had to be made to other elements of this analysis, this adjustment is not particularly significant and the Tribunal adopts a figure of £100,000.

21. Applying these adjustments to the leasehold comparable, the Tribunal assesses the relevant value as follows:-

| | |
|--|-------------|
| Sale price of 56 Avenue Road (August 1999) | £ 4,000,000 |
| Condition | + £625,000 |
| Location | - £500,000 |
| Size | - £500,000 |
| Market movement | +£1,080,000 |
| LRA notice | - £900,000 |
| Unexpired term | - £100,000 |
| | <hr/> |
| | £3,705,000 |

£3,705,000 = approximately 55.30% of the adjusted freehold value of £6,700,000.

22. Reference was made during the Hearing to a graph which indicated the percentage of unimproved freehold value which had been agreed or determined for houses of various lease lengths on the Eyre Estate and the John Lyon's Charity Estate. Mr Briant had claimed that this lent support to his relativity figure of about 53.5%. Mr Johnson pointed to the paucity of evidence where the unexpired term was around thirty years, and questioned the accuracy of the graph. In the view of this Tribunal, the graph has drawbacks in that it is accepted that the transaction data had not always been agreed between the parties and, because of the incentive for tenants to settle cases where the value at stake was not high, the resultant percentages may be on the low side

23. However, in cases such as this, where there is a shortage of truly comparable evidence (and the evidence which does exist has had to be extensively adjusted), the graph, and similar indicators within the Tribunal's experience, provide a helpful background against which to assess the results that emerge. In the view of the Tribunal, the resultant figure of approximately 55.30% for a 28.25 year lease which has been established by these

computations, sits comfortably with the other transactions represented on the graph and should therefore be adopted. The same percentage should be applied to the improvements when assessing the unimproved value of the leasehold interest.

The value of the tenant's improvements

24. As Mr Briant had analysed comparables in order to go straight to the unimproved value, no adjustment to his end value was required. However, he said under cross examination that his building surveyor had estimated the present day cost of the works at about £320,000 (excluding the work in the roofspace) and he agreed £400,000 to £500,000 might have been an appropriate adjustment in value if he had taken the same approach as Mr Buchanan. Mr Buchanan had adopted £1,000,000.

25. Mr Briant valued the property by reference to the unimproved accommodation, but reflecting the general state of repair as at the valuation date. He said that a considerable amount of new space already existed within the property, and the only new building was the orangery and in the context of referring to accommodation formed in the roof space, he said "*it is only the value of the improvements which fall to be disregarded....it is a lower improvement to utilise size*". His estimate was £400,000 to £500,000 and "*it could be less.....I don't get near £1,000,000*".

26. Mr Buchanan's view was that the tenant's improvements were substantial and in the order of £1,000,000 in relation to the freehold value and , on a pro rata basis, £606,000 in respect of the leasehold value. He said that he had treated the improvements in two sections, firstly the additional space and secondly the improvements to the existing accommodation. He had taken into account (a) the construction of the orangery (which he assessed at £300,000), (b) the additional space on the second floor (which he assessed at £450,000) (c) the improvements to the ground and first floor accommodation (which he assessed at £150,000) and (d) other general improvements (which he assessed at £100,000). With regard to (a) and (b) , in broad terms he considered that a pro rata increase for these would have produced too high a figure, and he accepted that there was some potential to increase the original space. In the case of (a) and (b) he said that he had adopted a less than two thirds pro rata value. On (c) and (d) he had taken a subjective view.

27. Evidence was also given in this respect by Mr A Lee, the occupier of the property, who accepted that there was some element of renewal and repair to the electrical works and plumbing, but the improvement works were much more than decoration. He produced a plan showing the extent of those parts of the house which had been significantly altered by improvements.

28. Mr Johnson, in closing submissions, said that the two valuers had adopted different approaches. It was a feature of this case that because the subject property had such a high value, substantial adjustments had to be made "*with a fairly broad brush*" as Mr Buchanan had done. Mr Johnson said that the GIA had increased by 23% and the improvements were not confined to an increase in size, but to other works as well. Those items of improvement where Mr Buchanan was challenged formed a fairly small part of his valuation - the bulk related to increases in size and improvements in layout.

29. Ms Wood, in closing submissions, said that Mr Buchanan's figure was a high proportion of the value of the house and every purchaser of this type of property "*guts it to his taste*". The works

carried out to the subject property were undertaken more than ten years ago and the subject property was now tired. She accepted that the GIA had increased, but only by the development of the roof space. Mr Buchanan's evidence had pushed the figure for improvements "*as high as possible*". Ms Wood said that the Tribunal should prefer Mr Briant's method of trying to value the subject property in its original condition. Mr Buchanan's broad brush approach was "*so broad so as to be not useful*".

30. The Tribunal noted from the plans and on inspection that the property had consisted originally of a main house in a style typical of Avenue Road, and comprised a main building which was virtually square, and arranged on ground and first floors with attic space. This had contained all the principal rooms, comprising entrance hall, drawing room, dining room study and morning room on the ground floor; a master bedroom with dressing room and bathroom en suite, three further bedrooms and a bathroom on the first floor with two additional bedrooms and a wc in the roof space. There was also a structurally separate, but physically attached, north wing, which had contained the kitchen, garage, cloakroom and extensive staff accommodation. (The plan reveals five bedrooms for maids as well as a chauffeur's flat).

31. The subject property had been significantly altered by the leaseholder (and its predecessor) and integrated as well as possible so that the first floor rooms in the north wing had become usable as an adjunct to the main house. At ground floor level, the kitchen had been much enlarged by the removal of several partitions and corridors. At the rear of the ground floor, a large single storey conservatory/orangery had been constructed.

32. In the Tribunal's view, Mr Buchanan has adopted a more considered approach. Mr Briant's £400,000 to £500,000 (which he had effectively discounted in reaching his end value of £7,000,000 unimproved), was derived from an analysis of a rough estimate of cost which excluded the works in the roof space. The Tribunal must consider value rather than cost.

33. Although the Tribunal considers Mr Briant's assessment as too low, it has reservations about Mr Buchanan's total of £1,000,000, and has considered his figures in detail.

(a) Construction of conservatory/orangery. Mr Buchanan had assessed this at £300,000. Whilst the creation of additional useful space clearly adds value, the fact that the drawing room and dining room are now denied direct access to the garden and consequent loss of ventilation counterbalances this and could detract, in the view of the Tribunal. The Tribunal considers an adjustment of £150,000 is appropriate.

(b) Additional space at second floor level. This was assessed by Mr Buchanan at £450,000. The Tribunal considers that the creation of extra circulation space, one extra bedroom and a bathroom is only of limited benefit, and Mr Buchanan's adjustment is therefore too high. The Tribunal considers an adjustment of £200,000 is appropriate.

(c) Improvements to the ground and first floor. This was assessed by Mr Buchanan at £150,000. The Tribunal considers Mr Buchanan's adjustment to be modest for what is, in effect, an integration of the former servants' quarters on the first floor into the main house, and the radical re-arrangement of the kitchen and associated accommodation on the ground floor. The improvements have substantially altered the way in which the house can be occupied. The Tribunal considers an adjustment of £200,000 to be appropriate in this respect.

(d) General improvements. This was assessed by Mr Buchanan at £100,000. The Tribunal considers that these were substantial, and included, but were not limited to, marble flooring, substantial rewiring, installation of central heating, installation of mahogany doors, garden landscaping and automatic gates. The Tribunal accepts Mr Buchanan's figure of £100,000.

34. The total adjustments by the Tribunal in respect of improvements is £650,000. This is approximately 10% of the freehold value and probably a fair reflection of the major changes to the pattern of occupation which have been achieved. The unimproved freehold value is therefore £6,700,000 less £650,000, i.e. £6,050,000; application of the established relativity factor of 55.30% indicates an unimproved leasehold value of £3,345,650.

Yield

35. Mr Briant said that this should be 6% and Mr Buchanan 6.5%

36. Mr Briant said that he had given considerable thought to the question of yield. He said that it all depended what weight was put on the presence of the next door schools and the amount of overlooking. He said that the subject was a high value property. Mr Briant was *"not significantly at odds"* with Mr Buchanan's view that *"the most relevant evidence came from LVT decisions in St John's Wood and other settlement evidence in St John's Wood"*. Mr Briant said that *"Lands Tribunal decisions are probably to be preferred"*.

37. Mr Buchanan said that the subject property had the disadvantages of overlooking an adjoining school and playground, which also presented a risk of potential redevelopment by a high rise residential scheme, and was also *"badly overlooked"* at the rear on the southern boundary by an *"ugly and daunting rear extension"* at the rear of the adjoining house at 62 Avenue Road. He also thought that the presence of the Israeli Embassy at 58 Avenue Road might create a security risk, although he confirmed that he did not rely on this to any great extent. The subject property, being a high value property with a long unexpired term and low fixed ground rent was likely to attract a higher yield.

38. Mr Johnson said in closing submissions that the established range in St John's Wood was between 6 and 7%, and as you get to 6%, *"this is the floor"*. He said *I cannot understand why we are having this argument between 6 and 6.5%.....6.25% was determined by the Lands Tribunal. With a school bang next door, one would expect the rate to be 6.25%...the real issue is whether Br Buchanan is right in pushing the yield another .25%.....Mr Buchanan relied on the overlooking and the risk of redevelopment...the overlooking depends on inspection. The risk of development speaks for itself...when considering yield one must consider investment quality...I find Mr Briant's view inexplicable"*. He said *"it is that stance that has led to my attack on Mr Briant's independence"*

39. Ms Wood said in closing submissions that the attack on Mr Briant's independence was unwarranted, and there was no general rule that 6% is accepted. It was Mr Briant's professional view that it must be done on a case by case basis. Mr Briant relied on the Lands Tribunal decision on 85 Avenue Road to justify his lower yield. She said that the Tribunal should disregard the effect of possible development of the school which she considered was *"so remote so as to be negligible"*. Ms Wood pointed out that in the case of 47 Avenue Road, Mr Buchanan had agreed a

yield of 6% with no explanation given. She suggested that he therefore thought that 6% was the right figure.

40. Both valuers agreed that the factors which affect yield are location, value and lease terms. The Tribunal notes that Mr Briant has relied on the decision on 85 Avenue Road. The Leasehold Valuation Tribunal determined that the yield in that case was 6.5%. This was reduced to 6.25% by the Lands Tribunal, and this Tribunal cannot understand Mr Briant's insistence of a yield of 6% for the subject.

41. The Tribunal considers that both 85 Avenue Road and the subject property are in the same less prestigious part of Avenue Road and neither valuer considered that one side of the road was preferable to another. The Tribunal notes that 85 Avenue Road was overlooked to a very great extent by high rise blocks, and it did not feel that the overlooking at the subject property was in the same league in this respect. Although the rear extension was very evident, it only affected some rooms in the subject property, although it is conceded that those rooms which were affected were considerably affected.

42. The Tribunal's attention was drawn to the Lands Tribunal Decision in *John Lyon's Charity v. Peter Shalson*, relating to 98 Hamilton Terrace NW8 and dated 26 March 2001. In that case, expert evidence was given for the Applicant by Mr Briant. Although in that case, Mr Briant agreed that close proximity to a school would be a justification for increasing the yield from 6 to 6.25%, he was unwilling even to concede a yield rate in this case of 6.25%. It is noted that the Lands Tribunal Member was critical of Mr Briant. He said *"in my opinion, these ... cases demonstrate an abnormal zeal on the part of the appellant to substantiate a yield of 6%"*.

43. This Tribunal shares the Lands Tribunal view, and finds it difficult to understand how Mr Briant, acting as an independent expert, could maintain his stance of a yield of 6% in view of previous Leasehold Valuation and Lands Tribunal Decisions of similar properties in St John's Wood.

44. The Tribunal is mindful of the previous decisions in relation to 85 Avenue Road, but it attaches importance to the school playground on the adjoining site and the noise and activity which this must generate. The fact that plans for the redevelopment of the Swiss Cottage library site have recently been approved, may well turn attention to the relatively low density development constituting the school site on the opposite corner, either for intensification of the educational use or for redevelopment for some other purpose. It is the fear of the unknown in the minds of prospective purchasers which undermines the value of property or its growth potential.

45. The Tribunal is well aware that 6% has been agreed or determined for other houses further down Avenue Road, but considers it realistic for there to be a "buffer zone" where slightly higher yields are adopted on the fringe of such a sought after area.

46. Accordingly, the Tribunal determines a yield of 6.5%

PREMIUM PAYABLE

47. Mr Briant, for the Applicant proposed a premium of £2,300,000 and Mr Buchanan, for the Respondent, proposed a premium of £1,412,933. Their valuations are attached to this Decision

as Appendices B and C respectively.

48. The Tribunal determines the sum to be paid for the freehold interest is £1,864,250.

49. The Tribunal's valuation is attached as Appendix A.

CHAIRMAN.....

DATE..... 1 MAY 2002

APPENDIX A

The Leasehold Reform Act 1967 as amended by The Leasehold Reform, Housing and Urban Development Act 1993

The Tribunal's Valuation under Section 9(1c)

64 Avenue Road London NW 8

Valuation date 28th March 2001

LEASE DETAILS

Date 19th July 1938
 Term 92.5 years from 25th December 1936
 Expiry date 24th June 2029
 Unexpired term 28.25 years
 Ground rent £225 pa (fixed)

| VALUES | AS EXISTING | UNIMPROVED |
|--------------|-------------|------------|
| Freehold VP | £6,700,000 | £6,050,000 |
| Leasehold VP | £3,705,000 | £3,345,650 |

VALUE OF FREEHOLD PRESENT INTEREST

| | | | |
|-----------|-----------------------|---------------|------------------|
| TERM | GROUND RENT | £225 PA | |
| | X YP 28.25 yrs @ 6.5% | <u>12.78</u> | |
| | | | 2,875 |
| REVERSION | FHVP (unimproved) | £6,050,000 | |
| | X PV 28.25 yrs @ 6.5% | <u>0.1688</u> | |
| | | | <u>1,021,240</u> |

Freeholder's interest 1,024,115

MARRIAGE VALUE

| | | | |
|---------------------------|-------------------|-------------------|-------------------|
| | FHVP (unimproved) | £6,050,000 | |
| LESS Freeholder's present | £1,024,115 | | |
| | Tenant's present | <u>£3,345,650</u> | |
| | | | <u>£4,369,765</u> |
| | Marriage Value | £1,680,235 | |
| | 50% thereof | | <u>840,117</u> |
| | TOTAL | | £1,864,232 |

PRICE PAYABLE SAY £1,864,250

8 March 2002

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

64 Avenue Road

S 9(1c)

Valuation Date: 28/03/01

LEASE TERMS:

Lease commenced: 25/12/36

Lease to expire: 24/06/29

Unexpired Term: 28.26

Ground rent (pa): £225

Unimproved FHVP Value £7,000,000

Unimproved LHVP Value £3,750,000 53.57%

LANDLORDS INTEREST:

Term:

Ground Rent: £225

YP 28.26 @ 6.00% 13.4552

£3,027

Reversion:

Unimproved FHVP £7,000,000

PV £1 28.26 @ 6.00% 0.1927

£1,348,799

£1,351,827

MARRIAGE VALUE:

FHVP: £7,000,000

Less

Landlords Interest: £1,351,827

Leasehold Interest: £3,750,000

Total Marriage Value: £1,898,173

Take 50% MV £949,087

Freeholders interest: £2,300,913**SAY £2,300,000**

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE: 12th March 2002
PROPERTY: 64 Avenue Road, London NW8
VALUATION DATE: 28th March 2001

LEASE DETAILS

DATE 19th July 1938
TERM 92½ years from 25th December 1936
EXPIRY DATE 24th June 2029
UNEXPIRED TERM 28¼ years
GROUND RENT £225 per annum (fixed)

VALUES

FHVP
UNEXPIRED TERM
LESSEE'S
IMPROVEMENTS

UNIMPROVED

£5,000,000
£3,034,000

VALUE OF FREEHOLD PRESENT INTEREST

| <u>TERM</u> | GROUND RENT | £225p.a. | |
|------------------|--------------------------|------------------|----------|
| | x YP 28 years 6½% 12.74 | | £2,866 |
| <u>REVERSION</u> | FHVP (less improvements) | £5,000,000 | |
| | x PV 28 years 6½% .1714 | | £857,000 |
| | | Lessors interest | £859,866 |

MARRIAGE VALUE

| | | | |
|----------------|---------------------------------------|------------|------------|
| | FHVP (less improvements) | £5,000,000 | |
| Less | Lessor's Present Interest | £859,866 | |
| | Lessee's Interest (less improvements) | £3,034,000 | |
| Marriage Value | | £1,106,134 | |
| | 50% Marriage Value | | £553,067 |
| | TOTAL | | £1,412,933 |