

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967****Re 41 Boscobel Place, London SW1**Applicant: Grosvenor Estate Belgravia (landlord)Respondents: Mr and Mrs R W Bulfield (tenants)Dates of hearing: 23 July, 30 September and 3 October 2002

(Inspection 24 July 2002)

Appearances:

Mr G Cowan (counsel)
Mr W Baars (Boodle Hatfield, solicitors)
Mr I Macpherson MA FRICS (Gerald Eve, chartered surveyors)
Mr G M Pope FRICS
Mr T Reade (Grosvenor Estate)

for the applicant

Mr E Johnson (counsel)
Mr J Stephenson (Bircham & Co, solicitors)
Mr C L Manton FRICS (Best Gapp & Cassells, chartered surveyors)

for the respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D Levene OBE MRICS
Mr D J Wills ACIB

Date of the tribunal's decision: 6 November 2002

Background

1. 41 Boscobel Place is a three storey mews house, on ground, first and second floor, built in the 1960s. On the ground floor there is an entrance hall/study, two bedrooms, bathroom and sauna, on the first floor a drawing room, dining room and kitchen, and on the second floor two bedrooms, two bathrooms and a dressing area. The gross internal area of the house is 1651 square feet. There is an attached small double garage at the front of the property with an internal area of 274 square feet, and a terrace at first floor level, on the roof of the garage, with an area of 265 square feet. It is agreed that the freehold and head leasehold of the property shall be treated as a single interest vested in Grosvenor. The tenants hold an underlease dated 10 June 1968 for a term of 51 years from 24 June 1964, at a fixed ground rent of £160 per annum, which had 13.65 years unexpired at the valuation date, which is 29 October 2001.

2. It is agreed that the ground rent is to be capitalised at 5.5% and that the reversion is to be deferred at 6%, and that the price for the freehold will include 50% of the marriage value. The issues are the value of the freehold and leasehold interests, and the landlord's reasonable valuation fees.

3. Mr Cowan appeared for the landlord and called Mr Ian Macpherson MA FRICS of Gerald Eve, chartered surveyors, and Mr George Pope FRICS, to give expert evidence. Mr Johnson appeared for the tenants and called Mr Courtney Manton FRICS of Best Gapp & Cassells to give expert evidence. On 23 July 2002 we heard argument in relation to the disclosure of a report which the landlord had commissioned from Savills relating to relativity of leasehold and freehold values and directed that the report should be produced forthwith. Our written decision on that matter is dated 24 July 2002. The landlord asked for time to consider its position and, at the request of both parties, we adjourned part of the hearing until 30 September. On 23 July, in order to make use of the time available and to save costs, we had heard evidence from Mr

Pope, for the landlord, as to the freehold value. On 24 July, in the presence of Mr Pope and Mr Manton we inspected the property internally. Unaccompanied, we externally inspected all the comparables in Boscobel Place and Eaton Mews, North and South, relied on by the valuers as evidence of the freehold and leasehold values. On or about 30 August 2002 the landlord produced to the tribunal and to the tenants' advisers the Savills reports on relativity the production of which we had directed. The hearing resumed on 30 September and was concluded on 3 October, when Mr Pope, Mr Macpherson and Mr Manton gave evidence. We were invited by Mr Manton to inspect the interior of 42 Boscobel Place, agreed by both valuers to be the most helpful comparable, and we did so on 28 October, in the presence of Mr Manton and Mr Pope.

The issues

1. The value of the freehold

The landlord's case

4. Mr Pope proposed a freehold value of £1,370,000. He said that he considered the property to be well arranged, although with the drawback that only half the frontage at ground floor level had natural light, and that it was well situated in the mews, in that it was at the quieter end and with a better outlook than properties at its Elizabeth Street end. He considered the roof terrace over the garage to be a valuable asset. Although he accepted that the property was without period features and presented a poor overall appearance, it could, he considered, present much better, without much expenditure, if the exterior was painted and tidied up. Although it was the only 1960s house in the Mews, some people preferred modern houses. He considered that the layout and the proportions of the rooms, compared favourably with the adjacent property, 42 Boscobel Mews, which Mr Manton considered to be superior to the subject by 10%. If

refurbished to the standard of 42, he considered that the subject would be superior. He did not greatly disagree with Mr Manton's allowance of £60 per square foot to bring the subject property to the standard of 42, but he considered that the average buyer of 42 would wish to replace the kitchen and bathroom fittings.

5. To adjust his comparables for passage of time, Mr Pope, like Mr Manton, used FPD Savills Prime Central London Residential Capital Values Index: PCL Houses ("the Savills Index"). He did not accept Mr Manton's view that the events of 11 September 2001 had resulted in an immediate and sudden fall in the market so that it was inappropriate to extrapolate between the September and December figures in the Index, or to adopt the December Index figure as appropriate to the valuation date.

6. Mr Pope relied on the following comparables:

(i) the subject property

a. A previous notice to enfranchise had been served by the present claimants on 15 February 1999. Terms had been agreed but the transaction was not completed. He had valued the freehold at that time in the sum of £850,000, which, updated to the valuation date of the present claim, was £1,325,000, and the valuer then instructed by the claimants, Mr Buchanan, had suggested £900,000 as the freehold value during the course of negotiations.

b. Best Gapp had marketed the freehold of the property in 2001, and Mr Pope understood that in mid 2001 an offer of £1,475,000 was made for the freehold interest.

(ii) 42 Boscobel Place

This property was the subject of a claim, dated May 2001, for a new lease under the Leasehold Reform, Housing and Urban Development Act 1993, with an agreed valuation date of 15 May 2002. Mr Pope and Mr Macpherson advised the landlord and Mr Manton the claimant. At the valuation date the lease had some 48.5 years unexpired at an annual rent of £1100 subject to review in September 2008 to the greater of 15% of the open market rental value and 0.4% of the capital value. The gross internal area was agreed at 1550 square feet. He considered the accommodation of the subject property to be superior to that of 42, in particular in that only part of the ground floor of 42 was being enfranchised, the other part being a garage, separately let, and part of the ground floor was a converted garage, with no window, used as a living accommodation. The premium for the new lease of 42 was agreed at £224,000, although completion had not yet taken place. Mr Macpherson's analysis of the agreed premium (Appendix 7 to Mr Pope's proof), which Mr Pope adopted, showed a freehold value of £1,100,000, equivalent to £710 per square foot.

(iii) 43 Boscobel Place

The landlord had granted a new lease of this property outside the 1993 Act. Mr Reade of Grosvenor had valued the freehold interest in December 2000 at £875,000, equivalent, when updated to October 2001, to £601 per square foot, but it was considered that he had been too generous to the tenant in relation to improvements.

(iv) 45 Boscobel Place

The unenfranchiseable 50 year lease of this property, with a gross internal floor area of 2560 square feet, was sold by FPD Savills in April 2000 for £890,000. The lease was subject to an

annual ground rent of £2250 with a review in 2007 to 15% of the open market value. Mr Pope adjusted the figure to £915,000 with a nominal ground rent, fixed for the term, and upgraded to freehold via the John D Wood & Co (1996)/Gerald Eve Graph of Relativities ("the Graph") at 74%, and for passage of time, to arrive at an adjusted freehold value of £1,386,000, equivalent to £541 per square foot. He regarded this as extraordinary evidence for a property which appeared to be superior to 41 and 42, and accounted for it by the facts that it was unmodernised and that an unenfranchiseable mid-term lease was difficult to sell.

(v) 46 Boscobel Place

This property was the subject of a claim under the 1993 Act, with a valuation date, according to Mr Macpherson's valuation, of 10 November 1997. The lease had 15.75 years unexpired and there was an issue between the parties about whether the second floor should be disregarded as a tenant's improvement. An agreed premium of £431,500 was paid for the new lease, which was half way between the two valuations, one with and one without the second floor. The agreed valuation of the freehold including the second floor was £920,000, which, updated to the valuation date of the present claim, was £1,535,000, equivalent to £824 per square foot.

(vi) 47 Boscobel Place

This was a recent voluntary freehold transfer, negotiated between Mr Reade of Grosvenor and Mr Minting of George Trollope, in which, Mr Pope said, Mr Reade said that he considered that he was valuing the freehold at £750 per square foot. Mr Macpherson had, however, analysed the agreed premium and, having taken into account the improvements and the inclusion in the transfer of the garage, analysed the price at £622 per square foot, which Mr Reade agreed to

have involved an error on his part, in that he had not reflected the benefit of the garage. Backdated to the present valuation date, the price equated to £622 per square foot.

(vii) 48 Boscobel Place

The 21.75 year lease of this property, with a low fixed ground rent, was sold by Best Gapp in September 2001 for £825,000. Mr Pope upgraded to freehold by taking ten percentage points above the Graph to allow for the fact that the lease was enfranchiseable, giving a relativity of 55.4% and a freehold value of £1,490,000, equivalent to £739 per square foot, for a house which was described in the sales particulars as in need of "some redecoration". He considered this property to be in the least favoured position within the mews, overlooking the flank wall of a block of flats. In August 2001 Grosvenor had valued the freehold at the equivalent of £695 per square foot.

(viii) 33 Eaton Mews South

The 70 year unenfranchiseable lease was sold in March 2001 for £985,000. The gross internal area, including the garage, was 1571 square feet and the ground rent £1600 per annum, reviewable every fifth year in accordance with the Retail Prices Index. Adjusted by reference to the Graph at 87%, the freehold value was £1,132,000, which, adjusted for passage of time, provided a freehold value of £1,130,000, or £827 per square foot.

(ix) 34 Eaton Mews South

The 49 year lease was sold in July 2001 for £985,000. The ground rent was £1500 per annum with a review in 2004 to 15% of open market rental value. Mr Pope estimated that the reviewed rent would be £7350 per annum. He adjusted the price upwards by £30,000 to allow for the substantial rent, and thus arrived at £1,015,000 for the lease at a nominal rent. He upgraded at 78.5% to freehold (5% above the Graph), and updated for passage of time to arrive at the equivalent of £778 per square foot.

(x) 12 Eaton Mews North

The freehold value was agreed between Mr Pope and Mr Justin Shingles for the purpose of proceedings before a leasehold valuation tribunal to equate to £742 per square foot in May 2000, which updated to £824 per square foot at the present valuation date.

(xi) 47 Eaton Mews North

The freehold value as at May 2000 was agreed for the purpose of proceedings before a leasehold valuation tribunal to equate to £730 per square foot, which updated to £811 per square foot.

7. Mr Pope concluded that the recent evidence within Boscobel Place was inconsistent. He considered the settlement relating to 42 to be particularly important because all the relevant comparables in the present case had been considered, and Mr Manton apparently valued the freehold in May 2002 at the equivalent of £710 per square foot. Eaton Mews South, though in very close proximity to Boscobel Place, was a superior location, and in his opinion both Eaton Mews South and Eaton Mews North were up to 10% superior to Boscobel Place. Backdating £710 per square foot, derived from the settlement relating to 42, to the present valuation date he

arrived at £698 per square foot, which he rounded to £700 per square foot, or £1,155,700. He considered that the roof terrace, which, he said, had been accurately described in Best Gapp's sale particulars as a "rare benefit", added about 5% to the value, or £57,820, which he rounded down to £50,000. He agreed, in cross-examination, that the roof terrace would be more valuable if it were not so overlooked. He then valued the garage, based on comparables in Chesham Mews, Eaton Mews South and Pavilion Road, which showed rates per square foot for the freeholds which varied between £593 and £1033. By adopting the lowest of these figures he calculated £162,500 for the subject garage. He did not agree with Mr Manton's valuation of the garage at £100,000, which was unsupported by comparable evidence. This gave an aggregate for the house and garage of £1,368,200, which he rounded to £1,370,000.

The tenants' case

8. Mr Manton valued the freehold at £1,020,000 (a revised valuation using the Savills Index for June 2002 to adjust some of the comparables which was not available to him when his first valuation was prepared). Boscobel Place was not a particularly attractive mews and prices were not as high as for other more desirable mews properties in the area. He said that he had practised in the immediate locality for 22 years and was aware of the layout and level of amenity of the traditional mews houses in Boscobel Place. He said that the subject house was of poor appearance and was largely unaltered since it was built in the 1960s. It had aluminum framed windows, more modest ceiling heights than the more traditional mews houses, and an unattractive garage shielding the front elevation.

9. He relied on the following comparables to arrive at the freehold value:

(i) 42 Boscobel Place

He said that this property had been subject to extensive alteration and improvement in 1987 and 1988 to create en-suite bathrooms, but that they had been carried out under an earlier lease so that the present lessee could not claim the benefit of the improvements when she applied for a new lease. As now arranged it had comfortable, spacious accommodation, which was what purchasers wanted. He did not agree with Mr Macpherson's analysis of the agreed freehold value at £710 per square foot. He considered that the freehold value of 42 was £725 per square foot at 15 May 2002, and that, adjusted to the valuation date in the present case by taking the Savills Index for December 2001 rather than October 2001, which he considered a fairer approach, equated to a freehold value of about £679 per square foot. He considered that, in order to provide the same level of amenity as 42, the subject property required expenditure of about £60 per square foot, and that the adjusted value of 42, disregarding improvements but not its period features and appearance, would thus be £619 per square foot.

(ii) 43 Boscobel Place

Mr Manton said that Mr Macpherson had confirmed to him in writing that Grosvenor had worked to a valuation date of 3 October 2000, but the transaction did not take place until 8 August 2001, and it was not accepted that the October 2000 date was genuine. Having negotiated with Grosvenor many times, it was in his view most unlikely that they would settle for an earlier valuation date than was absolutely necessary. A four year lease of the property was sold in early 2001, and, although its price was unknown, on a rental valuation based on 4 years' purchase at £49,200 per annum, the value would have been £170,000. The relativity between the 4 year lease and the freehold value would be 15%, 30% or between 20 and 25%, depending on which graph of relativity was used (see paragraph 6(iii) below). The premium paid for the short lease was £675,000 and, adding his estimate of the purchase price of the long lease, he arrived at a total price of £845,000, which he uplifted to freehold and adjusted for time to arrive at the equivalent of £529.42 per square foot.

(iii) 45 Boscobel Place

Mr Manton said that this was a larger than average three storey house with some lower ground floor accommodation. It had many period features and good natural daylight at the rear. Details of the tenasaction are given at 3(iv) aboe. To upgrade the 50 year lease to freehold, he took an average between the Graph (75%), the John D Wood & Co (12/04/00) Graph (80%) and an Index produced by FPD Savills (73%) and deduced that the freehold value in April 2000 would have been £1,186,666. Updated to October 2001 he arrived at £1,301,298, or £508.32 per square foot. Although it was a low figure, it was part of the market and could not be ignored.

(iv) 46 Boscobel Place

Mr Manton analysed the settlement of the lease extension claim outlined at paragraph 3(v) above by adding to the premium of £431,500 the cost of the short lease, which gave £796,500, upgraded to £1,112,630 in accordance with the Savills Index for December 2001. He then adjusted from 103 years to freehold by adding 1%, arriving at £1,123,756, or £603.19 per square foot.

(v) 47 Boscobel Place

Mr Manton said that the property was held on a lease which expired on 25 December 2030 at a ground rent of £6500 per annum. Grosvenor had agreed to demise the additional ground floor garage which was vacant, to extend the lease to 2083, and to reduce the rent to a peppercorn on the payment of a premium of £430,000. Mr Minting for the tenant had informed him that the freehold market value was agreed at £1,200,000, or £631.57, and that the garage was added for

nil value. He understood that it was throughout intended that the claimant should have the garage, and that it was only as a direct result of the present case that a letter was written by Grosvenor asserting that the inclusion of the garage at no cost was an error. The inclusion of the garage depressed the value of the house by at least £50,000 or, on Mr Pope's evidence, between £70,000 and £80,000.

(vi) 48 Boscobel Place

Mr Manton said that this property was sold by his firm in October 2001 (not September as Mr Pope had said). He analysed the sale by taking an average relativity (50%) from the Graph (43%), from the John D Wood Graph (60%) and from the FPD Savills table (47%). He calculated the freehold value by deducting 10% to reflect rights under the 1993 Act and upgrading to freehold at 50%, giving a freehold value of £736.97 per square foot (close to Mr Pope's value of £739). He said that the property was significantly better than the subject, better located with open views, period features and in good modernised condition. He considered that the analysis of this transaction was an unreliable guide to freehold value because the lease was so short. Alternatively, he approached the analysis by adding to the price paid for the short lease what he considered to be the likely price for the freehold. This gave him a total cost of £1,350,000, which he upgraded to freehold at £1,451,612, which analysed to £720 per square foot.

10. Mr Manton, like Mr Pope, concluded that the most compelling comparable was 42 Boscobel Place. In fact he said, he had in the end relied only on 42 because of its location and the fact that the transaction was recent. From his adjusted value of £619 per square foot (see above) he deducted a further 10% for the poor external appearance and lack of period features of the subject, to arrive at a value of £557 per square foot, which, he said, took account of the roof

terrace. He, like Mr Pope, valued the garage separately, but he considered it to be worth £100,000. He therefore concluded that the freehold value of the house and garage was £1,020,000.

11. Cross-examined about the settlement of the previous claim for enfranchisement of the subject house, Mr Manton said that in his opinion the price agreed was too high. Of the previous marketing of the property by his firm he said that it had first been offered in 1999, as a freehold, at £1,500,000. A colleague in his firm, who was a personal friend of Mr Bulfield, one of the claimants, had advised him that the price was much too high. In fact, as a letter from Mr Bulfield to Mr Macpherson dated 12 February 2002 showed, Mr Bulfield had received an offer of £950,000 on 2 October 1999, of £1,025,000 on 10 November 1999, of £1,100,000 on 3 December 1999, of £1,000,000 on 25 May 2000, and of £1,200,000 in the summer of 2001. Mr Manton said he had been aware of these offers, all of which were from developers. None of them proceeded because they were all subject to the sale being of the freehold and because they were all subject to the landlord and the planning authority's approval of major schemes of works to convert the garage to habitable accommodation and, in some cases, to extend the garage accommodation upwards, and all the developers appeared eventually to have formed the view that such enlargement of the property would not be permitted. Updated via the Savills Index, the first four offers equated to £1,185,885, £1,234,510, £1,324,840 and £1,082,000 respectively. He was also aware that the owner of 32 Chester Square, the garage of the mews house attached to which backed on to the garage of the subject house, had in the past shown interest in acquiring it in order to incorporate it into his own property, but was no longer interested because he had completed the very major refurbishment of his property. In any event he would have been a special purchaser, whose bid, he considered, should be ignored. He said that the "kerb appeal" of the property was very limited; it would appeal only to a developer. He had not himself mentioned these offers in his proof because they were not, he considered, sufficiently relevant.

12. Mr Manton agreed with Mr Pope that Eaton Mews, North and South, were significantly better locations than Boscobel Place. He considered that the differential was at least 10%, and could be as much as 20%.

The tribunal's determination

13. We have concluded that the value of the freehold of the house and garage on 29 October 2001 was £1,235,000 .

14. In reaching that conclusion we have had regard to all the comparables, but have concentrated mainly on the comparables in Boscobel Place. In our opinion, Eaton Mews North and South are much better locations, and the allowance to reflect the difference would be subjective and unreliable. In reviewing the evidence in Boscobel Place, we were very conscious that there was no true market evidence for a freehold or for a long lease. Most of the evidence was derived from settlements for lease extensions; actual market evidence was limited to medium or short leases (45: 50.5 years; 46: 15.3 years; and 48: 21 years). To arrive at a freehold value on the basis of this evidence required an analysis of settlements and extensive adjustments for date and to freehold, as well as for condition, and led to led to different conclusions being drawn by the respective valuers from the same evidence.

15. The evidence, when adjusted, showed inconsistent values, and both valuers drew attention to this. They agreed that the adjoining property, 42, was the best comparable. In addition, 48, where the analysis of the parties' valuers were at a similar level, we found particularly helpful.

16. As to 42, the difference between the analysis of the two valuers stems from a number of factors. Mr Pope's starting point is £710 per square foot, taken from Mr Macpherson's analysis

of the transaction, and Mr Manton's is £725, which is what he considered to have been agreed at the time. Mr Manton has adjusted differently from Mr Pope for passage of time in that he has taken December 2001 (the low point on the Savills Index), on the basis that the effect of 11 September applied throughout the period from October to December 2001. This gave him a figure of £679. Mr Pope, by contrast, extrapolates between the September and December indices, but using the March index, which was the last available to him at the date of his report, giving a rise of 1.69% to £698, which he rounds up to £700. We considered that it would be unsafe to adopt the December index figure. With the benefit of hindsight it is clear that the underlying strength of the market was unaffected by the events of 11 September, as is shown by the recovery recorded in March and again in June. The December index figure is likely to have been very much opinion based. A much publicised weakness in the rental market followed the events of 11 September, but the indications are that the capital market has not been similarly affected and we do not consider that it would be correct to base an adjustment on a single, unsupported, index figure. We adopt the September 2001 Index as a starting point and the May 2002 figure as found by Mr Manton. This gives an increase of 1.94%, and, taking Mr Pope's starting figure of £710, this gives an adjusted figure of £693.3 which we round down to £695.

17. Mr Manton adjusts 42 by £60 per square foot to allow for the cost of modernisation. Mr Pope accepts that that is reasonable, but says that it should be offset by the better layout of the subject. After our inspection of 42 we concluded that the subject property does have some edge in terms of layout. It can be presented as a four bedroomed house whereas there are only two at 42, albeit that the two ground floor bedrooms at 41 are rather poor. There is a good sized entrance area at 41 compared with a passage-type entrance at 42. The dining room at 42 is a converted single garage with no window. The kitchen is small. We consider that some uplift should be applied to 41 to reflect the better layout. Thus, deducting £60 per square foot from £695 we arrive at £635, which we then increase by just under 5%, to £665.

18. Mr Manton makes a further downward adjustment of 10% for the poor appearance and lack of period features of the subject as compared with 42. Mr Pope makes no such allowance. He considers that some people would prefer a modern property. To us, the subject property does stand out as a modern house, out of character with the remainder of the Mews. It has not weathered well, and, leaving out of account the lack of recent redecoration, the concrete cills and window boxes and aluminium window frames, which are unattractive, it remains the case that the property is somewhat "tucked away", and very much enclosed by its garage which is built across the end of the Mews and covers about half the frontage of the house. In a mews setting, we consider that the lack of period features is some disadvantage. For these factors we make an allowance of about 5% and arrive back at a figure of £635.

19. With 48, Mr Manton carried out two exercises. He uplifted the sale of the lease by the average of three graphs to give £736.97 per square foot. He then did a second calculation based on what the freehold might cost and arrived at £720. Mr Pope's figure was £739, arrived at by applying the relativity produced by the Graph, taking into account that the lease was enfranchiseable. Mr Manton's second method is conjectural, and his first, which is in our view to be preferred, produces a result which is very close to that of Mr Pope. We regard the analysis as reasonably consistent with that of 42, for a better looking house, although marginally less well located within the Mews, and in need of some modernisation, although evidence was given that the kitchen and bathroom had been re-fitted following the purchase. Allowing £30 per square foot for modernisation brings the evidence broadly into line. In terms of location, we felt there was little difference between 42 and 48. 48 had a more open aspect but the view to the rear of a block of flats was not very attractive and it might suffer more from passing traffic, both in the Mews and from Elizabeth Street.

20. We are satisfied that the terrace at the subject property, though overlooked, could, if it was put into reasonable condition and properly planted, be a valuable asset, particularly since it has

direct access from the main reception room. Mr Manton said that he had reflected the terrace in the price he had adopted, but we found it difficult to see how this was the case when the comparables he had used did not have this feature. The £50,000 suggested by Mr Pope, based on 5% rounded down, is in our view too high, but we consider that an uplift of around £35,000 should be made to the value of the house to reflect it.

21. The garage, too, is a valuable asset, although it is somewhat cramped as a double garage. Mr Pope added £162,500 derived from comparable evidence. Mr Manton added £100,000 and at a late stage put in evidence the sale of a commercial garage for six cars, which we did not consider to be a good comparable. In our view, based on Mr Pope's comparables, the value of the freehold garage is £150,000.

22. We thus arrive at a figure of £1,048,385 for the house (based on £635 per square foot), to which we add £35,000 for the terrace and £150,000 for the garage, giving a total of £1,233,385, which we round up to £1,235,000.

23. In reaching this conclusion we have disregarded the offers made for the freehold, since they all came to nothing. In the case of the bid from the owner of 32 Chester Square, we had no evidence that it remained available at the valuation date.

2. The value of the existing lease

The landlord's case

24. Mr Pope proposed a value of £442,500 for the 13.65 year lease. This he based on the Graph, which, he said, was supported by the comparable evidence. Both the Graph and the

comparables, he maintained, supported a relativity of 32.3% to the freehold value.

25. He relied on the following comparables:

(i) 45 Boscobel Place

He analysed this open market sale, which he had also used as a freehold comparable, as providing £357, updated to £400, per square foot for the 50 year lease.

(ii) 46 Boscobel Place

He said that Mr Marr Johnson for the tenants had in 1998 agreed a relativity of 33.7% for an unexpired term of 15.75 years without 1993 Act rights.

(iii) 48 Boscobel Place

The enfranchiseable lease of 20.75 years was sold for the equivalent of £409 per square foot. In his opinion enfranchiseable leases of this length should be valued at 10 percentage points higher than shown by the Graph, which provided, by reference to the Graph, £335 per square foot for an unenfranchiseable 20.75 year lease.

(iv) Flat 1 at 16 Eaton Place and Lower Ground and Ground Floors at 21 Eaton Place

These two maisonettes, both arranged on ground and lower ground floors, were sold within a

month of one another, one on a 106 year lease at a peppercorn and the other on an 11 year enfranchiseable lease. After adjusting the 106 year lease to freehold at 98%, and allowing £100,000 for improvements, Mr Pope calculated a relativity of the short lease to the freehold of 37.1%, and, he said, assuming the value of the enfranchiseable short lease to be about 10 points higher on the Graph than an unenfranchiseable lease, this transaction supported the Graph which showed a 27% relativity for an 11 year lease.

(v) First and Second Floor Maisonette, 110 Eaton Square

An unenfranchiseable 20.5 year lease and an unenfranchiseable 75 year lease were sold in December 1997 and May 1998 respectively. Upgrading the first sale for time, upgrading the long lease to freehold at 90%, and allowing for the value of improvements which he estimated at £250,000, he said that the two transactions showed a relativity of 39.4% between the short lease and the freehold, significantly below the Graph, which showed a relativity of 43%.

(vi) Tryon House and Vale Court, Mallord Street

Mr Pope compared sales of a 77.5 year enfranchiseable lease in one block with the sale of a 12.25 unenfranchiseable lease in another, and after adjusting them, found a relativity of 31% compared with the 29.5% shown by the Graph. He also considered the sale of an enfranchiseable 14.5 year lease in one of the blocks which he adjusted and considered to demonstrate a relativity to freehold of 42.2%, which, he said, supported his conclusion that enfranchiseable leases showed a relativity 10 percentage points above the Graph.

(vii) Flat 6 at 10/12 Hyde Park Gardens W2

Mr Pope compared an agreed apportionment for a 14 year unenfranchiseable lease under which no service charge was payable with the sale of a new 99 year lease of the same property at a ground rent, and, after upgrading the long lease to freehold at 98% he said that the valuation showed a relativity of 34.3%, against 33% according to the Graph.

(viii) Flat 4 at 6 Hyde Park Gardens

This was an agreement outside the 1993 Act, the agreed values for an 11 year lease and the new 101 year lease, which he upgraded to freehold at 98%, showing a relativity of 33.2% for an enfranchiseable lease, compared to 27% on the Graph for an unenfranchiseable lease.

(ix) 1 Wilton Crescent

A leasehold valuation tribunal had determined a relativity of 36.7% between a 15.5 year lease and a freehold.

(x) 33, 31, 21 and 36 Chapel Street

Mr Pope also considered open market sales of 33, 31, 21 and 36 Chapel Street SW1, four houses in Belgravia, which in his view supported the Graph. He regarded as a particularly good indicator of relativity the comparison of a sale in July 2001 of the freehold of 31 Chapel Street for £2,300,000 (£788 per square foot) with the sale in April 2001 of a non-enfranchiseable 39.5

year lease of the very similar 36 Chapel Street for £1,400,000. He updated that price to July 2001 and adjusted it by £100,000 to reflect the effect of a rent review in June 2004 to 15% of the open market rental value, to arrive at a value of £495 per square foot. These two sales suggested a relativity of 62.8% between a non-enfranchiseable 39.5 year lease and a freehold.

26. Mr Pope concluded that the comparable evidence provided support for the Graph, and even showed that the Graph was a little high on relativity in some cases.

27. Asked about the effect on his conclusions of the Savills reports produced at the direction of the tribunal, Mr Pope said that he agreed with Mr Manton that, as the market improved, the value of a short lease relative to the freehold tended to rise, but he thought such an effect was marginal. He was satisfied that the Graph was "about right". He disagreed with Mr Manton's approach to valuing the short lease, which was based on a rental valuation. He had not previously seen such a method used in the case of a lease of the present length, although it might be reasonable to adopt it for leases of less than 5, or perhaps 10, years. He agreed with Mr Manton that £49,600 was a reasonable assessment of the open market rent achievable and he did not quarrel with Mr Manton's yield of 6%.

28. Mr Macpherson said that he did not suggest that much reliance should be placed on the earlier agreement of the enfranchisement price of the property, which was quite a long time ago. When considering the relativity of leasehold to freehold values he considered that it was important to place considerable reliance on settlement evidence, which he produced as IM3. On the whole, settlements were reached when the market was strong. As for the Graph, it had been produced to provide a means of general guidance and was based on conclusions drawn from all the settlement evidence on the Grosvenor and Cadogan Estates. The Graph had not been altered since 1966, but it was kept continuously under review and in his opinion it should not be altered, because there was less and less evidence available of the value of unenfranchiseable leases. The Graph was the most reliable guidance he knew for valuing leases in the area. He did not regard

as reliable the John D Wood & Co Graph produced by Mr Hollamby on which Mr Manton had, in part, relied. He understood Mr Hollamby to have relatively little experience in valuing properties in the area. He did not know the provenance of the Savills table of relativities on which Mr Manton also relied, but understood it to match information contained in their 1992 report which the landlord had produced.

29. Mr Macpherson said that the Savills research was unreliable because it did not distinguish between enfranchisable and unenfranchisable leases, and because it was based only on hypothetical valuations by a small number of agents. Although the Savills research tended to show a higher relativity of leasehold to freehold values than the Graph for leases of less than 30 years, for leases of over 30 years it showed a lower relativity than the Graph. The reason the landlord had never relied on it was that it was unreliable, and not that it was unhelpful to the landlord.

30. While he did not wish to quarrel with Mr Pope's approach, Mr Macpherson said he found it strange that at a time of recession the cheaper product - a short lease - would be less attractive to purchasers than a longer lease which had more growth potential.

31. Mr Macpherson said that he did not consider Mr Manton's rental approach to valuing the short lease to be valid, the likelihood being that it would produce a higher value than the lease would attract in the market. That view was supported by the Savills research of 1992 and 1996 which the landlord had produced, although he did not approve of their researchers' methodology, in that they had adopted a higher yield at a time when yields were falling. He was not convinced that the market rent adopted by Mr Manton was right, in that the letting market shrank hugely when the property was not in first class condition. To present the property to the letting market, money would have to be spent on it, which ought to be reflected in the valuation. Nor did he accept that 6% was the appropriate yield. He considered that 8.5% plus an allowance for a

sinking fund of 3% and tax at 25% was appropriate for an investment of this type. This would give 6.07 years' purchase rather than Mr Manton's 9.07 years.

The tenants' case

32. Mr Manton concluded that the existing lease had a value of £450,000. He said that he believed the appropriate method of valuation in order to disregard the tenants' rights to enfranchise was to consider the open market rental value and apply a yield of 6%. He considered that the market rent for the house, allowing for the poor appearance and lack of period features, was £44,577 per annum, plus £5000 per annum for the double garage. Allowing 13.5 years at 6% gave a value of approximately £450,000. This resulted in a relatively to his freehold value of 44.11%, close to the John D Wood Graph of 12 April 2000.

33. Mr Manton said that he regarded the Savills research as a thorough and balanced consideration of the subject, and he drew attention to its conclusion that at times when the market was booming, short leaseholds will attract relatively increased values. The Graph was based on transactions which occurred during a period of economic recession, and the landlord's evidence ignored the fact that the market had boomed since it was prepared. He said that the Savills table of relativities, on which he had in part relied, had been provided in 1998. He did not agree with Mr Macpherson's conclusion that his method of valuation exaggerated the value of the short lease. His method capitalised the net rental value after costs, and his yield rate reflected lower yields and interest rates. He did not agree that allowance required to be made for a sinking fund. If the property was bought purely as an income stream, it would still be open to the purchaser to sell on after 5 years or so. He said in cross-examination that he had considered the comparable evidence, but the short lease comparables had the benefit of rights under the legislation, and his method of valuation avoided such difficulties.

The tribunal's determination

34. The valuations of Mr Pope and Mr Manton, though arrived at by completely different routes, are each within less than 1.7% of the other, which is negligible in valuation terms. Mr Johnson submitted that the ambit of the tribunal's discretion was limited to deciding between these two values. We consider that that misrepresented the landlord's position, which was firmly based on relativity. Nevertheless, we would expect valuers to stand back from their valuation, by whatever method it has been made, and consider whether it "feels right". Thus, although we do not regard ourselves as strictly bound to choose between the parties' valuers' final figure on this part of the valuation, we nevertheless take into account how very close the two figures are.

35. Our view is that, in the end, Mr Manton was not able to undermine the validity of the Graph. We do not regard the Savills research as soundly based or persuasive, and no evidence was put forward that the John D Wood Graph of April 2000 was more accurate than the Graph. Mr Pope was able to point to market evidence which suggested that the Graph was reasonably reliable, at least as a check upon market evidence, although in some instances the adjustments he made in respect of improvements would, if incorrect, have made a material difference to the relativities shown in those instances.

36. Mr Manton did not rely on relativity at all, but capitalised the rental value over the term of the lease. He adopted a single rate, whereas a dual rate, which might be more appropriate, would give a much lower figure. He produced no evidence to support the yield which he adopted, which is only 0.5% more than was applied by agreement to the ground rent of £160. Our view is that this approach was not supported by evidence.

37. We were referred to leasehold transactions in Boscobel Place, and while we appreciate the

difficulties facing valuers in drawing conclusions from transactions showing different lease lengths and in making adjustments for the “No Act” world, we were disappointed that neither valuer sought to make any use of this evidence in arriving at his value, since market evidence, if available, is in our view to be preferred to reliance on graphs or on rental valuations. (We accept that there were particular difficulties in dealing with 46, and that the evidence of 45 was out of line with other evidence, but we think that a valuation based on 48 could have been made.) In all the circumstances, we conclude that the value of the existing lease is that which is, in effect, agreed. On balance we accept Mr Pope’s figure of £442,500, which gives a relativity to the freehold value of 35.83%, which is not inconsistent with the Graph.

3. The landlord’s reasonable valuation fees

38. Mr Macpherson asked the tribunal to determine that the landlord’s costs of the valuation, recoverable under section 9(4) of the Leasehold Reform Act, were £3221.75 plus VAT, making a total of £3785.56. He said that these costs equated to the ad valorem scale agreed for his firm’s advice, but excluding work on preparation and presentation of evidence at the hearing before the tribunal. The same scale was agreed by Grosvenor for advice from his firm and others relating to voluntary sales of freeholds. The landlord was not claiming reimbursement of Mr Pope’s fee, and their claim for fees followed the practice which had been accepted by hundreds of claimants for new leases.

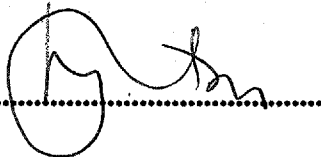
39. Mr Manton maintained that there was an element of duplication because the necessary valuation had been prepared for the previous enfranchisement claim which had not been completed. Without that duplication, he considered that the landlord’s reasonable valuation fee equated to 0.25% of the freehold vacant possession value, but he said that the duplication justified a 25% reduction.

40. We do not accept that there was significant duplication of work previously done. Had we considered that the scale fee claimed produced an unreasonably high result we would have reduced it, notwithstanding that the tenants did not object to the principle of a scale fee. However, in our view the fee is reasonable.

Decision

41. Accordingly, we determine that the price to be paid for the freehold is £675,495, in accordance with our valuation which is attached to this decision, and that the tenants must pay £3785.56, including VAT, towards the landlord's valuation fees.

CHAIRMAN.....



6 November 2002

41 BOSCOBEL PLACE LONDON SW1

LEASEHOLD REFORM ACT 1967 (as amended)

VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL

valuation date 29 Oct 2001

A Value of existing Freehold Interest

Term			
Ground Rent		£160	
YP 13.65 yrs @ 5.5% (agreed)		<u>9.427</u>	£1,508
Reversion			
Freehold Value		£1,235,000	
PV £1 in 13.65yrs @6% (agreed)		<u>0.451</u>	<u>£556.985</u> £558,493

B Marriage Value

Freehold Value		£1,235,000	
Existing lease value	£442,500		
Existing freehold value	<u>£558,493</u>	<u>£1,000,993</u>	
Marriage Value		£234,007	
Landlord share at 50%		£117,004	<u>£117,004</u>

C Purchase Price Payable

		£675,497
	say	£675,495