

248

**LON/LVT/1632/03**  
**The Leasehold Valuation Tribunal for the Residential**  
**Property Tribunal Service.**

**Decision of the Leasehold Valuation Tribunal on an Application under 21**  
**of the Leasehold Reform Act 1967.**

**36 Cadogan Place, London SW1X 9RX**

**Date of Hearing, 16, 18 December 2003 and 9 January 2004.**

<b>Applicant</b>	<b>The Earl Cadogan</b>	represented by Pemberton Greenish, Solicitors
<b>Respondent</b>	<b>Alexandra Heiremans De Massu</b>	represented by Batley Maxwell Solicitors

**Members of the Tribunal**

Mrs T J Gordon Chairman  
Mrs J McGrandle B Sc (Est Man) MRICS MRTPI  
Mrs L Walter MA (Hons)

1. This was an Application by the Earl Cadogan, under s.9(1C) and s.10 of the Leasehold Reform Act 1967, to determine the purchase price and the terms of the Conveyance of the freehold property known as 36 Cadogan Place, London SW1X 9RX. The Respondent's Notice of Claim is dated 12 May 2003, and the Landlord's Notice in Reply is dated 18 August 2003.
2. The Respondent holds the property under a Lease dated 17 January 1984 for a term of 65 years from the 24 June 1983 at a ground rent of £2750 p.a. ((subject to the provisions for revision every tenth year of the term under Clause 4 (E)(1) to (8) of the said Lease. The Lease is held with Title Absolute under Title No NGL 481078. The ground rent payable at the date of valuation is £16950 per annum.

3. Present at the Hearing were:

a) For the Applicant, Mr K Munro of Counsel, Miss L Blackwell, Solicitor of Pemberton Greenish; and witnesses, Mr A J McGillivray, partner in W A Ellis, Estate Agents & Surveyors: and Mr K Gibbs FRICS of Gerald Eve, Chartered Surveyors.

b) For the Respondent, Mr G E Johnson of Counsel; and as witness, Mr J R Shingles, Valuer, of Justin Shingles Ltd.

Evidence for both sides was presented in paginated bundles.

4. The issues agreed and set out in Mr Shingles' evidence included a description of the property, lease details, and the alterations carried out to the property.

The Valuation date is agreed at 14 May 2003.

The unexpired term is agreed at 45.11 years.

Gross internal area of house is agreed at 5,207 sq. ft.

Gross internal area of garage is agreed at 151 sq ft.

At issue was:

Capitalisation of the term

Capitalisation and deferment of the reviewed rent

Deferment of reversion

Unimproved freehold vacant possession value

Unimproved leasehold vacant possession value

Mr Gibbs, for the Applicants, sought an enfranchisement price of £1,716,400 based on an unimproved freehold value of £5.1m and an unimproved leasehold value of £2.897m. Mr Shingles' figure, for the Respondent, was £1,108,100 with values respectively £4,165,600 and £2.8m. The respective valuations are attached as Appendices 1 and 2.

### **The Applicant's case.**

5. Mr Munro called Mr McGillivray first. Mr McGillivray referred to all the Respondent's improvements summarised in the Statement of Agreed Facts, saying that whilst some were of a minor nature, others were regarded as improvements and that their value should be disregarded.

6. Mr McGillivray then addressed the freehold valuation, bringing the Tribunal's attention to seven comparables, all of which were in Cadogan Place. These were sales which had taken place within 3 years of the date of claim, and details of these were set out in his Proof. He said he was not placing any particular reliance on No 38 Cadogan Place, which had been sold in April 2000 for £6.75m, and in view of its very good condition and amenities was superior to the subject. Nor was 43 Cadogan Place a suitable comparable, being fitted out to a very high and luxurious standard, with a passenger lift, swimming pool, rear mews and double garage: this had been sold in November 2000 for £10.75m. 69 Cadogan Place, sold for £3.5m in January 2003, was again of no value as a direct comparable as it lacked potential for rear additions and for the building of a mews house. Mr McGillivray also indicated that for various reasons as set out, including his opinion that it was altogether less impressive than the subject house, and arranged into four self-contained flats, with its rear garden overshadowed by No 34, No 33 was also not a good comparable.

7. He then turned to his three preferred comparables, Nos 54, 55 and 68 Cadogan Place. To avoid repetition, the Tribunal have consolidated here the evidence relating to these three comparables which are also common to Mr Shingles.

#### **54 Cadogan Place.**

An unmodernised house arranged as three maisonettes backing on to Cadogan Lane but with a garden only, no garage, and sold in November 2000 for £4.9m. freehold. At the time the house was sold a planning application for extensions, including the erection of a fifth floor, formation of a new sub-basement and a two storey mews with garage had been submitted but not determined. Permission was subsequently received in January 2001 for the scheme as marketed save for a reduced mews scheme.

#### **55 Cadogan Place**

This was sold in November 2000 for £5.125m, unmodernised and arranged as three maisonettes; it was sold with an adjoining two storey mews house at 60 Cadogan Lane. The property was sold with planning potential, and permission was subsequently obtained in June 2001 for a sub-basement swimming pool, mansard roof, roof terrace and three storey mews with garage, the two properties to form a single residence.

This property was now on the market fully modernised for £12.95m and interest had been shown at £11m.

### **68 Cadogan Place**

8. The developers of No 55 had also purchased 68 Cadogan Place which was an unmodernised house with a garden, but no garage, running through to Cadogan Lane. This was sold in June 2001 for £5.2m. Subsequently in July 2002 planning permission was obtained for a 5th storey to the main house, the construction of a sub-basement and 2 storey mews property with garage fronting Cadogan Lane. Mr McGillivray said that the planning potential exhibited by Nos 54, 55 and 68 Cadogan Place applied equally to No 36.

9. Referring to the presence of the horse-chestnut tree on the subject property (shown initially in photographs to the Tribunal, and subsequently identified on the 1954 TPO), he stated that in his opinion this would not prevent the building of a mews property: citing in support, with photographs, that at No 54 Cadogan Lane a similar development around a protected plane tree had been successfully carried out.

10. In reaching his figure for the unimproved freehold value, Mr McGillivray stated he had adopted a broad approach. All his comparables were in the same terrace and therefore had broadly the same planning potential. A prospective purchaser, even if he needed the house for his own family accommodation, would have to compete in the market with developers. Bearing in mind the figures achieved by developers for the fully modernised houses, £10.75m at No. 43 and an offer of £11 m at No. 55, and the prices achieved, adjusted to the valuation date, for unmodernised houses at Nos. 54, 55 and 68, £5.3m, £5.45m and £5.1m respectively, then in his view a purchaser would be prepared to pay £5.1m for the unmodernised No. 36. In reaching this figure, he had taken into account that the presence of the tree would have a bearing on the purchase price.

11. Mr McGillivray's amended leasehold value was £3.010m. He stated that he was unable to rely on the sale of the subject property in January 2000 to the respondent for £4.4m as he regarded this as a rogue sale. He preferred to adopt the Gerald Eve/John D. Wood 1996 graph which indicated a freehold relativity of 70% for a lease of 45 years unexpired at a nominal ground rent. On his amended freehold value this produced a figure of £3.57m which then needed to be adjusted to reflect the onerous ground rent. Adopting a tolerance of 0.05% as set out in *Carl and Another v Grosvenor Estate Belgravia* (2000) he then

discounted his leasehold value to reach £3.010m. Where appropriate, he had adopted a 6% yield rate.

12. Mr Johnson cross examined the witness. He said he was confused in that Mr McGillivray had consistently used 6% in respect of yield, whereas Mr Gibbs, the Applicant's second witness had used different rates of 3%, 5% and 5.25% respectively. Mr McGillivray explained that he was an estate agent, and his experience had been that 6% was generally used up till now; however he would follow the lead set by the Tribunal.

13. On the subject of planning potential, having inspected 55 Cadogan Place the day before the Hearing he was now quite sure that a sub-basement could be effectively created in the subject house. This would add value beyond the cost. The tree roots would not prevent the building; the wall to the garage had not been removed because of the tree - it may have been for convenience, such as for a pram or for bicycles etc. He did not agree that the condition of the property was tired and would be gutted by a purchaser. Perhaps the bathroom fittings would be replaced. A double garage could be built, but access would be by means of one car being raised. He believed the property could be extended at the rear, and two floors added, with a lift. Purchasers did buy without planning permission where they could see that other houses in the street had been developed; they would not be deterred unless a particular aspect of the development was 'critical' to their purchase. They would have to compete against the developers, in fact. The property was a Grade II listed building in a Conservation Area; the location was 'wonderful'.

14. Following detailed discussion of the floor areas of the various comparables, Mr McGillivray said he did not believe in valuing the property by reference to square footage; he preferred the broad brush approach.

15. Replying to Mr Johnson's cross-examination on the purchase price paid by the Respondent of £4.4m for the leasehold interest in January 2000, which Mr McGillivray had considered in his evidence was surprising, he said this was probably a 'rogue sale' and sometimes these anomalies happened where purchasers were very keen to acquire a property.

16. Replying to questions from the Tribunal, Mr McGillivray said he had no experience of trees; an engineer would have to design a foundation for the extensions, possibly a piled, or needle piled, or cantilever foundation, to overcome the problem of the tree roots. The horse-chestnut tree would need to be pollarded.

17. Mr Gibbs' evidence covered the planning potential of the property, capitalisation and deferment rates and the relationship between short and extended lease values. Mr McGillivray's figures were adopted subject to some minor variations in valuation methodology.

#### Planning potential

18. Mr Gibbs elaborated upon the planning background of the property, a resume of which had already been included in Mr McGillivray's evidence. It was a Grade 11 listed building and in the Hans Town conservation area. He identified by reference to planning policy and consents elsewhere in the terrace the potential as he saw it for extending the floor area of the property, including the garage, and hence the sort of potential a prospective purchaser would take into account when making his bid ie the bid which Mr McGillivray estimated at £5.1m.

a) Mansard roof. A number of roof extensions had been granted since the 1995 UDP and he thought permission for a mansard roof extension would be extremely likely.

b) Extension of full width rear extension including filling in of light well. The Tribunal's attention was drawn to numerous full width rear additions in the terrace at basement and ground floor level, in particular that at No. 37, which was deeper than that existing at the subject property.

c) Extension of rear addition. Mr Gibbs estimated that the back addition could be extended by two floors at third and fourth floor level, as had been achieved at Nos. 37 and 38.

d) Conservatory. A conservatory at first floor level, as had been provided at no. 37, was a possibility.

e) Creation of sub-basement. This had been permitted at Nos. 54, 55 and 68, in particular the swimming pool now completed at No. 55, and there was scope to provide this here. A pool might need to be fore-shortened to take account of tree roots.

f) Redevelopment of garage to provide a 2/3 storey mews. Mr Gibbs amended his evidence during the Hearing to state that it would be possible to redevelop the garage to provide a 2/3 storey mews property. The extent to which the tree

might fetter redevelopment would need to be ascertained by means of a formal planning submission. However, the tree was mature and was unlikely to remain for the whole of the unexpired term of 45 years. On questioning, Mr Gibbs accepted that he was not a tree expert.

#### Capitalisation and deferment rates

19. Mr Gibbs took a current adjusted rent of £14,000 per annum and capitalised it at 3%. He then estimated the rent at the next review at £40,800 per annum (0.8% x £5.1m) and capitalised and deferred this at 5%. He then took Mr McGillivray's unimproved freehold VP value of £5.1 m and deferred this for the length of the unexpired term at 5.25%.

20. He said that there were a number of factors which now pointed towards a fresh look at yields and sought to justify these yield rates, lower than hitherto accepted, by reference to the following:

- Continued demand for well-located residential property in central London.
- Long-term trend for low interest rates at the valuation date
- Perception of residential property as a more attractive investment than equities
- Potential for continued capital growth in residential values in central London

a) Central London was perceived as a relatively safe location and the long-term reduction in gross and net yields as revealed by Savills' PCL residential index confirmed investors' confidence.

b) Mr Gibbs produced a graph showing that at the valuation date, over a period of 27.5 years, mortgage rates, long-dated gilt yields and annual rate of inflation were at their lowest.

c) By reference to the Savills index findings, returns on inferior rented investments, the increased popularity of residential property investment and the collapse in equity markets, Mr Gibbs concluded that it would be appropriate to adopt a lower deferment rate.

d) Savills index of PCL SW houses showed capital growth had averaged 8.9% per annum over the last 16 years.

It was put to Mr Gibbs that all through the peaks and troughs of the past thirty

years the deferment rate of 6% adopted for PCL enfranchisement cases had remained resolutely unchanged and therefore there was no case now for amending that rate.

#### 21. Relativity of existing lease value to freehold value

It was Mr Gibbs' case that there was now little or no open market evidence of the sale of non-enfranchisable leases and that it was therefore necessary to use tables of relativity drawn up at a time when there was still a significant supply of non-enfranchisable leases. Such evidence was most readily available from enfranchisement prices settled for claims prior to 1990. It was that settlement evidence which formed the basis of the Gerald Eve/John D. Wood 1996 graph.

22. The risk of over-valuing enfranchisable leases had led over a period of time to "creep" ie an increase in the value of enfranchisable leases relative to long leases or freeholds. This risk of distortion had been recognised in *Norfolk v Trinity College, Cambridge*(1976). Hence the need to rely upon the earlier settlement evidence.

23. As a cross-check, Mr Gibbs produced evidence of all settlements on the Cadogan Estate, 42 cases, involving leases having 40 to 50 years unexpired. He nevertheless drew the Tribunal's attention to reservations expressed by the Lands Tribunal in recent cases concerning the inferences to be drawn from these settlements.

24. In conclusion, Mr Gibbs considered that the sample of settlement evidence on the Cadogan Estate provided sufficient justification for the relativity adopted by Mr McGillivray, 70%. Applying a slight variation from Mr McGillivray in valuation methodology he reached an unimproved leasehold value of £2.897m.

### **Respondent's case**

#### Improvements

25. To illustrate the improvements carried out since the start of the 1984 lease Mr Shingles scheduled the various licences. These are included in the statement of agreed facts.

#### Unimproved freehold value

26. In support of his figure of £4,165,600 Mr Shingles produced nine



comparables, seven of transactions in Cadogan Place and two of transactions in Chester Square. Six of these transactions, Nos, 33,38, 54, 55, 68, 69 Cadogan Place, were common to the parties. All houses, he said, were unmodernised, reflected development potential. However, whereas Mr McGillivray had taken a broad approach, Mr Shingles preferred to analyse his transactions on a £ per sq.ft. basis. In each case the purchase price had been adjusted for time on the basis of the Savills' PCL SW houses index.

**33 Cadogan Place/16 Cadogan Lane.** An unmodernised house and mews sold in November 2003 for £4.5m freehold. The house was sold with the benefit of planning consent for extensions. £676 pfs on the adjusted purchase price.

**38 Cadogan Place/26 Cadogan Lane.** A fully modernised house and mews sold in February 2000 for £6.75m by the Estate. £1318 pfs on the adjusted purchase price.

**54 Cadogan Place.** See description earlier. On the adjusted price of £5.3m this analysed out at £895 pfs.

**55 Cadogan Place/60 Cadogan Lane.** See description earlier. On the adjusted price of £5.45m this analysed out at £844 pfs.

**68 Cadogan Place** See description earlier. On the adjusted purchase price of £5.1m this analysed out at £790 pfs.

**69 Cadogan Place.** Sold modernised in November 2002 for £3.5m freehold. No frontage to Cadogan Lane. £734 pfs on the adjusted price.

27. The three comparables beyond the terrace and not common to the parties were:

79 Cadogan Place/10 Ellis Street. Fully modernised. £868 pfs.

42 Chester Square. Fully modernised. £843 pfs.

45 Chester Square. Condition fair. £751 pfs.

28. Having concluded his analysis of the comparables, which ranged from £676 pfs (33 Cadogan Place) to £1318 pfs (38 Cadogan Place) on the adjusted sales prices, Mr Shingles then dealt in some detail with the planning potential of the subject property, concluding by reference to the 2002 UDP that while there would be potential to build an extra storey on the house, and possibly extend the back addition by an extra two floors, no further potential existed. This was

because of the existing configuration of the house and the existence of the horse chestnut tree. In particular he was adamant that the existing car port had no potential for extension. He would expect the subject property to be worth less than the comparables because it had less development potential.

29. Taking a broad figure of £800 pfs and applying that to the floor area of the house (5,207 sq.ft.) but excluding the car port (151 sq.ft.), Mr Shingles reached his figure of £4,165,600 for the unimproved freehold value.

Unimproved leasehold value.

30. In support of his figure of £2.8m or £538 pfs for the value of the leasehold interest, Mr Shingles relied on:

- i. The sale of the subject property in January 2000, producing, when adjusted for time and rights, £901 pfs.
- ii. The sale of 19 Cheyne Walk in 1996 producing, when adjusted for time and rights, £917pfs.
- iii. The LVT's determination at 19 Cheyne Walk in June 2000 (LON/LVT/1309/00) which produced £523 pfs when adjusted for time and lease decay.

He concluded that his figure of £538 pfs sat comfortably with the LVT decision bearing in mind Cheyne Walk's relatively inferior location.

31. He then applied the same methodology used in that decision to take account of the excess ground rent. Applying a tolerance level of 0.055% of freehold value to calculate the impact on the leasehold value of the excess ground rent, he worked back to reach an underlying leasehold value of £3,312,067 (£636 pfs) which in turn produced a relativity to his freehold value of 79.51% ( $\frac{£2,800,000 + £512,067}{£4,165,600}$ ).

Capitalisation and deferment rates

32. Mr Shingles adopted capitalisation and deferment rates of 5%, 5.5% and 6%, contending that these were supported by countless enfranchisement settlements. He also pointed out that while interest rates might have been reducing in the short term, so had property values; yields for residential investors showed that such investments were no longer attractive.

## **Inspection**

33. The Tribunal carried out its inspections on Monday February 2, escorted by Charles Coombs from W A Ellis, and Mr Shingles' secretary, Ms Goodbody. Mr and Mrs De Massu were at the subject property. The house, within a conservation area, is within the stuccoed section of a west facing terrace of listed properties of five/six storeys plus basement, with a pleasant aspect over the communal gardens of Cadogan Place. There is meter car parking in the road. Cadogan Lane at the rear, a busy public thoroughfare with yellow lines on both sides of the road, and traffic calming humps, comprises on its west side terraces of either two or three storey mews cottages, or single storey garages. We noted the various mansard roofs and extensions to the rear of the houses, which had been permitted down the years, and in particular the rear elevation and garage at 54 Cadogan Place. We also observed the 'gap' between Nos 22 and 30 Cadogan Lane, where there were single storey garages only; and three trees referred to in the Tree Preservation Order, namely plane trees at the rear of 30 and 40 Cadogan Place, and the horse chestnut tree at the rear of the subject property, No 36. The Tribunal noted the position of the horse chestnut tree in relation to the house and garage/car port, and its proximity to the side boundary wall to No 37, which was cracked, and to the rear boundary wall to Cadogan Lane which was bulging and also cracked. The tree itself showed evidence of having been pruned at some stage, and was immensely tall, with a low-lying canopy.

34. The details of the internal layout of the subject property are well documented on file, and especially in the sale particulars of 1999 provided in evidence. The Tribunal noted in particular all the improvements described in evidence: the pleasant configuration of the rooms: the large garden: the good natural light.

35. The Tribunal inspected internally the following comparables:

### **33 Cadogan Place**

This property, with a red brick façade, was narrower than the subject, and unmodernised. It was laid out as flats and maisonettes as described in the evidence. There was a two storey mews house at the rear. We noted generally a lack of natural light in several parts of the house. Because of a 3 storey rear extension permitted in the past, the 'garden' had been reduced to little more than a light well.

## **55 Cadogan Place**

This was a fully modernised and developed property, now on the market; full particulars are on file. This house was an example of how modern technology could achieve a significant increase in floorspace on site without compromising garden space and natural light. There was, for example, a sub-basement swimming pool lit partly from garden level and a three storey mews house with a garage and ramp for two cars. The Tribunal was aware of a continuous loud hum outside the front of the property, due to the underground plant.

36. It was not possible to inspect No 68 Cadogan Place, which was still in the process of extensive building works.

37. The Tribunal inspected externally the following:

**19 Cheyne Walk.** This was an early Grade II listed Georgian property of 5 storeys (including large mansard extension) and basement, with an extensive rear garden. There was resident parking, and also some meter parking.

**42 Chester Square.** This 6 storey house also had a mews house at the rear, comprising double garage plus one storey and roof terrace, in a private cobbled street, which had no parking restrictions. **45 Chester Square** was also noted.

## **Decision**

### **Unimproved freehold value.**

38. The Tribunal considered the listed improvements, which were provided by Mr Shingles, and noted that Mr McGillivray accepted that several alterations were improvements. We were impressed by the quality of the property as a spacious, elegant family house, and considered that there would be many buyers in the market for the property in its present form. Nevertheless we were conscious of the point made by the Applicant that a private buyer would be obliged to compete with developers, and our valuation has to reflect this.

39. Both parties differed in their views of the subject property's development potential, Mr Gibbs for the Applicant, contending for a wide range of development whereas Mr Shingles for the Respondent stated that development potential was limited.

40. Mr Shingles had produced for the Tribunal a comprehensive range of

planning register extracts for properties in the terrace together with extracts from the 2002 UDP and the Hans Town conservation area statement. He had also taken the trouble to speak to the planning officer which within the scope of his instructions was as far as could be justified. For all of this the Tribunal was grateful.

41. However, the best guide to interpretation of planning policy is what has actually been permitted. Accordingly, the Tribunal on their inspection paid particular attention to any recent extensions or development under construction or permitted but not yet built while bearing in mind the site constraints of the property.

42. Dealing first with the house, the Tribunal concluded that there was a reasonable chance of obtaining planning permission for :

Mansard extension

Extension of back addition for a further two floors

Increase in depth, if required, for back addition, as had been achieved at No 37.

43. They considered that, bearing in mind current planning policy, there would be little chance of a first floor conservatory (the conservatory at No 37 having been permitted in 1982, since when policies on overlooking have hardened). They also could see little point in a limited full width rear extension at basement and ground level bearing in mind the configuration of the house.

44. The existence of the protected horse chestnut tree T1 was a material consideration. The potential for damage from tree roots is well documented and it was a matter of regret that an inspection could not be arranged at Nos 52 and 54 Cadogan Lane. However, the fact that permission for the removal of T7 had been granted (but not implemented) in the past was indicative of some kind of a problem there.

45. The Tribunal noted that the garden wall between the subject property and No 37 was cracked and that the boundary wall of the subject property with Cadogan Lane was cracked and bowed. They concluded that this damage was caused by tree roots, roots that would limit the extent of any sub-basement excavation under the garden. They also considered that the tree canopy would prevent any first floor extension of the car port at Cadogan Lane and saw that the location of the tree itself allowed for only a single garage.

46. However even if a first floor extension here were in theory feasible, there

is a strongly demarcated 'gap' of single storey garages between the southern flank of the 2 storey No 32 Cadogan Lane and the northern flank of the 2 storey No 20 Cadogan Lane, making it unlikely that planning permission for any extension would be forthcoming. The Tribunal therefore concurred with Mr Shingles that the car port had little or no planning potential.

47. Both valuers, Mr McGillivray and Mr Shingles, had concluded that their comparables, where unmodernised, contained development potential, Mr McGillivray's conclusion being that, on adjusted sales prices of £5.3m (No 54), £5.45m (No 55) and £5.1m (No 68), a spot figure of £5.1m was the appropriate price for the unimproved freehold, bearing in mind the kind of prices achieved in the terrace for fully modernized houses.

48. Mr Shingles, in putting forward his value of £4,165,600, had taken a spot figure of £800 pfs which fell within his range of £1318 pfs to £676 pfs. He had argued that he would have expected the subject property to have less development potential than other comparables in the terrace.

49. The Tribunal accepted that the subject property has less development potential than the other comparables in the terrace for two reasons: on the one hand the high quality configuration of the house limiting the scope for development and on the other hand the presence of the horse chestnut tree. The quality of the floorspace of the property and the benefit of the garden means that the house would be very attractive to a prospective family purchaser who could well outbid a developer. Mr Shingles' comparables in the terrace were all larger houses, thus serving to depress his unit price pfs. Further, not all space, just because it is in the same terrace, is comparable in quality. The age and range of additions to the rear elevations and roofs in the terrace was but one indicator of this. No 36, for example, at the lower end of Mr Shingles' range, was a typical example of the kind of extension which enhances the size of a house, but which in design terms would have no place in today's market.

50. Having considered very carefully the comparables, and in particular those common to both parties, the Tribunal concluded that No 54 Cadogan Place was the most reliable. Although, unmodernised this had offered the potential of a double garage at the rear, the subject property's floorspace was superior. Accordingly the Tribunal determined a rate of £895 pfs which was the price achieved at No 54.

51. The Tribunal applied this unit price to a floor area which included the car port, deeming the ability to park on site an asset, to reach an unimproved

freehold value of £4,795,410, say £4,795,000.

Unimproved leasehold value.

52. Mr McGillivray had gone straight to a graph to reach a relativity of 70% whereas Mr Shingles had offered the Tribunal three comparables. It was unsatisfactory that Mr McGillivray could offer no market evidence and unsatisfactory that Mr Shingles' evidence was not to be relied upon because:

- 1) The 1996 19 Cheyne Walk leasehold sale was too far back in time to be of any use
- 2) The January 2000 sale of the subject property was agreed by both valuers during the Hearing to be a rogue sale.
- 3) Even if the 2000 LVT 19 Cheyne Walk decision could be relied upon, the Tribunal noted that the relativity adopted by that tribunal for that lease accorded with the graph used by Mr McGillivray

53. Accordingly, in the absence of any reliable market evidence, the Tribunal have had no alternative but to adopt the relativity of 70%, giving an unimproved leasehold value of £3,356,500.

Yields

54. The Tribunal were asked by the Applicant to consider adopting lower yield rates than hitherto adopted because, *inter alia*, interest rates had now reached an all-time low. Since the Hearing concluded, interest rates have in fact risen. That apart, the Tribunal can see no reason for departing from the capitalisation and deferment rates used by Mr Gibbs in historic settlements which he continues to rely upon for his relativities. These rates have traditionally reflected money market and equity yields. As stated in *Sharp v Cadogan Estates Ltd* (1998):

'I cannot accept, however, that financial rates and yields should form the primary evidence of value where, as in this appeal, there is abundant and reliable evidence of prices and yields of comparable properties. In short, evidence of the land market is primary evidence, and must be given the greatest weight; evidence of the financial market is secondary evidence to be given less weight. Land market evidence is the best evidence because comparison is easier and the underlying financial factors will have been considered and assimilated into the transactions which form the land market.'

55. Accordingly the Tribunal have adopted the rates put forward by Mr Shingles.

56. The Tribunal have adjusted the ground rent currently payable to reflect the impact of improvements (*Sharp v Cadogan Estates Ltd* 1998) and have also adopted a tolerance level of 0.055% in order to capitalise the impact on the leasehold value of the excessive ground rent.

57. The Tribunal's valuation, determining a premium of £1,502,000, is attached as Appendix 3.

Chairman.....*Tessa Howard*.....Dated.....*2 March 2004*.....



KDG 1c

Based on A McGillivrays revised freehold vacant possession value

## CADOGAN HOLDINGS LIMITED

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property: 36 Cadogan Place, London SW1  
 Date of Claim: May 14, 2003  
 Unexpired term of lease: 45.11 years

## VALUATION IN ACCORDANCE WITH SECTION 9 (1C) OF THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Value of Lessor's interest excluding marriage value	£	£	£
For remainder of term -			
Rent currently payable Capitalised for 0.11 years @ 3.00%	14,000		
	<u>0.108</u>	1,515	
Ground rent payable on June 24, 2003 at review to 0.80% of FVP reviewable every 10 years	40,800		
Capitalised for 45.00 years @ 5.00%	17.77		
Deferred 0.11 years @ 5.00%	<u>0.995</u>	<u>17,681</u>	721,391
For reversion to -			
Value of freehold in possession	5,100,000		
Deferred 45.11 years @ 5.25%	<u>0.0994</u>	<u>507,032</u>	1,229,938
<b>Add Lessor's share of marriage value</b>			
Value of freehold in possession		5,100,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	1,229,938		
Value of lessee's interest exclusive of marriage value	<u>2,897,000</u>	<u>4,126,938</u>	
Gain on marriage		973,062	
Attributed to lessor at 50.0%			<u>486,531</u>
Enfranchisement price			1,716,469
		say	<u>£ 1,716,400</u>

Jan-04

**GeraldEve**  
 Chartered Surveyors  
 & Property Consultants  
 KDG/CNCP/A11810

APPENDIX 2

**VALUATION OF HOUSES IN ACCORDANCE WITH THE LEASEHOLD REFORM ACT 1967**

LON/LVT/1632/03

Property 36 Cadogan Place

Date of Claim 14-May-03

GIA	5207
FH £psf	£800

Unexpired term of lease 45.11 Yrs

**LANDLORDS INTEREST**

**1)Ground rent payable** £16,950  
 Years Purchase in 0.11 Yrs @ 5.0% 0.109  
 £1,852

**2)Reversion on review to-**

Rent Review Rental val 0.000 % @ £0 £0  
 Rent Review Cap val 0.800 % @ £4,165,600 £33,325  
 £33,325  
 Less initial rent  
 £33,325

Review rent increase in 0.11 Yrs

Years Purchase for 45.00 Yrs @ 5.50% 16.548  
 Present Value of £1 in 0.11 Yrs @ 5.50% 0.994  
 16.449

£548,151

**3)Reversion to end value-**

Freehold value with vacant possession Unimproved Value £4,165,600  
 Deferred 45.11 Yrs @ 6.00% 0.072

£300,622

Landlords value before marriage value **£850,625**

**TENANTS INTEREST**

Unexpired lease 45.11 Yrs  
 Freehold value £4,165,600  
 Underlying relativity 79.51%  
 Excess rent 0.055%  
 Excess rent £2,291  
 Underlying LH value £3,312,067 £636 LH psf  
 Deduct excess rent £512,067  
 Net leasehold value £2,800,000

Percentage of value 67.22%

Amount of value £2,800,000

Negotiated Short Lease £0

Value of short lease before marriage value **£2,800,000**

GIA	5207
LH £psf	£538

**MARRIAGE VALUE**

Freehold value £4,165,600  
 less Landlords interest (£850,625)  
 less Tenants interest (£2,800,000) **£514,975**

**PRICE FOR FREEHOLD INTEREST**

Landlords Interest £850,625  
 50% Marriage value £257,487 **£1,108,113**

**SAY £1,108,100**

Negotiated Price

Overpayment (Underpayment)

£0

£0

24/11/2003

**36, Cadogan Place, SW1****The Tribunal's Valuation****1) Landlord's interest**

	£	£	£	£	£
i) Ground rent payable			14,000		
0.11 years @ 5.0%			0.109	1,526	
ii) Reversion on review to 0.80% FVP			38,360		
YP for 45 years @ 5.5% deferred 0.11 years			16.449	630,984	
iii) Freehold vacant possession value			4,795,000		
deferred 45.11 years @ 6.00%			0.072	345,240	977,750

**2) Tenant's interest**

Freehold vacant possession value		4,795,000
Standard rent @ 0.055%		2,637
Excess rent	35,723	
YP for 45 years @ 5.5% deferred 0.11 years	16.449	587,608
Underlying leasehold value @ 70% FVP		3,356,500
Net leasehold value		2,768,892

**3) Marriage Value**

Freehold vacant possession value			4,795,000	
Value of landlord's interest excl. of marriage value		977,750		
Value of tenant's interest excl. of marriage value		2,768,892	3,746,642	
Gain on marriage			1,048,358	
Attributed to landlord @ 50%				524,179
Enfranchisement price				1,501,929

Source: LVT

Say £1,502,000