(246)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

CASE NUMBER LON/LVT/1631/03

IN THE MATTER OF THE LEASEHOLD REFORM ACT 1967

RE: 40 CHELSEA SQUARE LONDON SW3

Parties: **The R.H. Charles Gerald John Earl Cadogan – Applicant**

James Ashley Arbib **Respondent**

Representatives:

Applicant	**:**	**Mr K Munro**	**– Counsel**
		Mr R Cullum	**– Surveyor**
		Mr D Greenish	**– Solicitor**
		Mr Myers	**– Trainee Solicitor**
Respondent	**:**	**Mr J A Arbib**	
		Mr J Brock Q.C.	**- Counsel**
		Lord Francis Russell	**- Surveyor**
		Mr T Maxwell	**- Solicitor**

Application Date : **13 August 2003**

Hearing Date : **6/7 January 2004**
Inspection 22 January 2004

Tribunal	**:**	**Mr A A Dutton**	**Chairman**
		Mr R Potter	**FRICS**
		Miss S J Dowell	**BA(Hons)**

Decision Date : **16th February 2004**

DECISION

A BACKGROUND:

1. This is an application by the Right Honourable Charles Gerald John Earl Cadogan ("the Applicant") for a determination of the price payable for the subject premises at 40 Chelsea Square London SW3 6LH ("the Property") under s9(1C) of the Leasehold Reform Act 1967 ("the Act") and the provisions that need to be contained in a conveyance in accordance with s10 of the Act. The application is dated 13 August 2003. In the application the price considered appropriate by the Applicant at that time was £4,516,000.00.

2. The Respondent to the application is Mr James Ashley Arbib who acquired the Leasehold interest in the Property in 1997 registration of that purchase being dated, in the Office Copies provided, the 23 October 1997. The Property is held under two leases respectively the 28 March 1933 for a period of 99 years from the 25 December 1928 and the 23 May 1935 for a period of 93 years from the 25 December 1934. The price payable by Mr Arbib in 1997 was £4,762,531.00. There were two other bids above the market guide price of £4,250,000.00. Mr Arbib made his claim under the Act on the 1 April 2003.

B AGREED MATTERS:

3. The valuer for the Applicant, Mr Roland Cullum FRICS FIRPM and Lord Francis Russell BSc MRICS on behalf of the Respondent had agreed an number of matters and a Statement of agreed facts was presented to us. Those agreed facts are as follows:

The Leases: It is agreed that the Leases expire on 24 December 2027 and that the rent was fixed at £50.00 per annum throughout the term. The fact that there are two leases did not affect the valuation and there are no other valuation issues arising from the leases.

Valuation date: The date of valuation is 1 April 2003 being the date of Mr Arbib's application and there is accordingly some 24¾ years unexpired.

Gross internal floor area: The gross internal floor area is agreed at 5655 square feet including garages but excluding outbuildings. There was some debate as to the square footage attributable for valuing purposes which we will deal with later in this Decision.

Improvements: Initially there was some uncertainty as to the improvement position but as we will cover in the evidence given by Mr Cullum this appeared no longer to be an issue between the parties although the effect that the improvements had on the valuation evidence was not agreed.

Comparables: It was confirmed that both parties relied on comparable properties at 33, 41 and 43 Chelsea Square and details relating to the tenure, price paid and date of sale were also agreed and again we will refer to those later. There was no agreement with regard to other comparables outside the immediate location.

Original purchase: The circumstances relating to the purchase by Mr Arbib in 1997 are largely agreed and in particular that the guide price at the time of marketing was £4,250,000.00 and that three bids were received because of the level of interest by way of informal tender process of which Mr Arbib's bid was £4,762,531.00. The next closest bid was £4,650,000.00 and the next £4,265,000.00.

Certain indices and statistics were agreed. In particular Savills Prime Central London SW House Index was appropriate and relatively of leasehold to freehold values was agreed as follows:

24.75 years	50.25%
25 years	51%
30 years	56.65%
75 years	87.5%
77 years	88.75%

It is accepted that the Property is Grade II*.

Affect of the Act on Leasehold Prices: The valuers agree the Act has resulted in the prices for Leasehold properties exceeding those which would be paid without the Act in place but there is no agreement as to the financial impact.

The terms of the Transfer: These were agreed prior to the hearing.

C ISSUES FOR THE TRIBUNAL TO DETERMINE:

4. The following matters fell to be determined by the Tribunal:

- The freehold vacant possession value;
- The leasehold vacant possession value;
- The yield appropriate in this case;
- The impact of the Grade II* listing on the value of the property;
- The value to be attributable to any improvements;
- The method of valuing and the choice of comparables and adjustments to be made;
- Any adjustments to be made for rights under the Act;

D EVIDENCE:

5. The evidence on behalf of the applicant came from Mr Cullum and on behalf of the Respondent from Lord Russell together also with some evidence we received from Mr Arbib. it is important to note that in this case we were presented with evidence on behalf of the Applicant indicating that the appropriate price to be paid for the freehold by the Respondent was £5,214,265.00. The Respondent's contention was that the price to be paid for the freehold was £2,622,946.00. A difference of over £2,500,000.00.

E EVIDENCE FOR THE APPLICANT:

6. Prior to the evidence of Mr Cullum being received, a submission was lodged by Mr Munroe, Counsel for the Applicant, confirming matters that were in agreement and the issues, and containing a fairly detailed response to Lord Russell's Report. With respect to Mr Munroe, we hope he will forgive us if we do not refer to this document in any detail but we can of course confirm that the document was read by us and the contents noted.

7. Mr Cullum had provided a Report of some 17 pages together with a bundle of some 20 appendices. He read through the Report which contained details of his

qualifications and the background leading to his instruction, outlined the terms of the leases, described the property and the improvements thereto. He then gave a detailed opinion on the freehold and leasehold vacant possession value for the Property. Finally he spent sometime on the question of the appropriate yield to be applied in this case. We do not believe that is necessary for us to recount in great detail the substance of his report. The following should be noted.

8. He felt that that the Property was a "Trophy House". This was a non-technical definition but was associated with large houses having certain characteristics, including imposing architectural style, exceptional grounds, particular historical association, location or grandeur. His view was that the property being a "trophy house" was not therefore price sensitive and that the assessment of the value was an art more than a science.

9. As to comparables he felt that that the following where of assistance being either "trophy houses" or very fine properties.

- 41 Chelsea Square, sold in March 2000 at a price of £7.8million with a 77 year lease;
- 43 Chelsea Square, sold in March 2002 with a 25 year lease and with a price of just over £7.011million;
- 33 Chelsea Square, sold in January 2002 with a 74.5 year lease and a figure of £7million paid.

These details were not in contention.

10. To the sale figures referred to above he applied mathematical exercises to reflect the passage of time, the impact that rights under the Act have on values and to remove that impact to achieve a "no Act world" valuation and to reflect the agreed relativities between freehold and leasehold values.

11. This led him to the initial conclusion that the value for the Property on a freehold vacant possession basis was in the region of £13.75m. However, he rejected that

figure as being "less than compelling". To review the figure he looked at comparables further afield in London, and whilst not accepting the valuation on a square footage basis, he did use the pound per square foot valuation as a method of comparison. This led to a figure of £2,052 per square foot for the Property which he initially felt was "startling" but which after reflection sat with the values for the other properties in Chelsea Square used as comparables. Subjectively, standing back and bearing in mind that he felt the Property was superior to the other Chelsea Square comparables, he came to the conclusion that the freehold value for the Property should be £11.9m.

12. He then went on to consider the leasehold vacant possession value. As he had indicated, by method of mathematical calculation the current leasehold value uplifted for the passage of time and subject to the other various calculations gave rise to a present leasehold interest figure, assuming still a lease of 30 years, of £8,654,934.00. The lease has of course further reduced and is now 24¾ years and using the agreed relativities, this suggested an open market value for the leasehold interest of £7.67million. From that should be deducted the affect of the Act, which as he had previously outlined, for a 25 year lease, or thereabouts, would be 11.3% and he concluded that the leasehold figure was £6.8 million. However he was concerned that this figure of £6.8 million was derived solely from "mathematical extrapolations". He reviewed this against the freehold value of £11.9 million to which he applied the agreed relativity of 50.25% producing a leasehold valuation figure of £5.98 million. That of course was a no-Act-figure and is therefore the equivalent, allowing for the 11.3% of enfranchisement rights to a £6.65 million on the open market. Although he accepted this would indicate a disappointing rate of growth, he was nonetheless of the view that the value for the leasehold of £5.98 million for the purposes of the Act was acceptable.

13. He then went on to discuss the question of yield, and in some detail. He was of the view that yield rates had become stuck as a minimum level of 6%. He took into account the fact that the property was Grade II* listed and that this would, in

his view, affect the yield. He drew an analogy between the impact on market rents following the Curtis and Spath Holme cases which reasserted the primacy of market evidence. He felt there was a serious and significant residential investment market so that the principles of those cases, namely Curtis and Spath Holme, could be applied in enfranchisement cases. He relied upon data from the Investment Property Databank as well as indices by Savills and some market evidence in respect of sales of Head Leases by public auction at 3, Ennismore Gardens and 33-34 Onslow Gardens. With the published data and market evidence he was able to glean that the average Central London net residential investment yield was between 3-4%. His view was that the subject property was in a prime location and that with the lease term decreasing and the fact that there virtually no forms of expenses relating to this investment, the lease being on a full repairing and insuring basis and without voids, a correct yield to be applied would be 4%. He also felt that "hope value" should be taken into account and this would be a further reason to undermine the figures of 6% that have been taken as being the norm.

14. His final valuation was a figure of £5,214,000.00 to be the price payable for the freehold interest. This was based upon the freehold vacant possession value figure of £11.9 million, the leasehold vacant possession value figure of £5.98 million and a yield figure at 4%.

15. When questioned by Mr Munro he added to his written report. He felt that this part of London commanded extremely high prices and that the market value of the property at the time of the purchase in 1997, was between £4.6 million and £4.7million. He felt the residential development of the site in the immediate vicinity of the Property would increase the value as it had previously been a college. His use of the property Elmfield House in Neville Terrace was to reflect the increase in price over a period of time. That property had been sold for £13 million in July 2003 and had been sold at the same time as the Property, in 1997 at £5.75 million. He also felt that by convention, if one was using a rate per square foot, the rate would increase the smaller the property.

16. Under cross-examination by Mr Brock on behalf of the Respondent he was asked questions initially concerning the question of yield. When asked if he believed that the valuers who had agreed yield rates at 6% in the past had been wrong, he said that they were. He believed that there had been inertia which had crept in over a period of time. He was asked whether his views in this case were his own, which he confirmed they were, and denied that there was any suggestion that he was putting forward this case to somehow improve his position with the Cadogan Estate in the hope that further work would come his way. His view was that the market trends were the important guide to the yield rates and not just precedent. He accepted that in some cases a 6% figure would be right but that there was a range of yields, depending upon the quality of the investment. When pressed about the agreements reached between valuers, his view was that the settlements were taken in the round. When a particular point in negotiations was reached, and a good deal had been struck on behalf of both the freeholder and the leaseholder, the question of the settlement of the yield would be taken as one of the factors involved.

17. On the question of improvements, he conceded that a list of improvements that had been prepared on behalf of the Respondent showing works to the security system, basement, kitchen, first and upper floors, were all improvements and not repairs. In addition, he accepted, as was evidenced by a letter from Timms Eida and Associates of the 1 May 2001 to Mr Arbib, that a sum excluding VAT and professional fees, of over £1 million had been spent on the Property. He did however point out that one should look to the value of the improvements and not the costs. He told us in any event that he was valuing the premises as they were in 1997 and that he was not surprised that an expenditure of £1 million would have arisen in respect of the Property. He was of the view that an allowance would be made between an unrefurbished house and a fully modernised property but only up to a point and he would expect purchasers of properties of this value to apply their own styles and tastes, irrespective of the condition when acquired, noteably to the

kitchen and bathrooms. He did concede that the central heating system and other items of plant, would not be changed and that the security system had some value. He reaffirmed however that he had not sought to value the house with improvements.

18. So far as the Grade II* listing was concerned he felt that was neutral in value although did concede that if it related to the exterior it was perhaps more beneficial than if there was an interior listing. On the question of comparables he conceded that the use of number 43 Chelsea Square might be unreliable. It was put to him that the final purchaser had bid some £650,000.00 more than the next and he accepted that there should be some amendments to his figures to reflect that. He conceded that if the evidence in relation to number 43 Chelsea Square was correct he would reduce the value of the freehold interest in the subject property to a round £11 million. Discussions followed concerning the square footage valuation approach and the comparisons of the prices that would be achieved for the Property on a square footage basis compared with others. He confirmed that he knew of no property sold at over £1,500.00 per square foot which was unimproved and of no development potential. He did however believe that the subject property was the most valuable property on a square footage basis but he declined to accept that the square footage valuation was the appropriate way of dealing with the matter. He accepted that a square footage calculation is readily useable if there are lots of comparisons but in this instance you could not just use square footage calculation but instead should stand back and ask is the valuation right. He referred to a valuation that had been obtained by Mr Arbib before he purchased the property from a Mr David Radford of Boston, Carrington, Pritchard on the 16 May 1997. This had valued the unimproved leasehold interest of the property at the time of Mr Arbib's purchase at £3.335 million. This was of course considerably below the price eventually paid by Mr Arbib and in Mr Cullum's view this showed that the use of square footage valuations was unreliable.

19. In questions from the Committee he conceded that so far as the improvements were concerned, a figure of around £150,000.00 would be reasonable but that would be "lost in the wash". In his view the modernisation, no matter how good, would be changed by an incoming purchaser, to their own taste. He did however believe that disrepair would have an effect on the value of the Property.

F EVIDENCE FOR THE RESPONDENT:

20. Lord Francis Russell gave evidence on behalf of the Respondent and as Mr Cullum had done, presented a Report to the Tribunal which we had had the opportunity of considering. On the question of gross internal floor area, an essential element of his valuing evidence, he confirmed that it had been agreed at 5655 square feet but Lord Russell sought to reduce this by reference to floor areas on the second floor of the property which he felt were not as usable and an adjusted area was therefore put forward of 5387 square feet. He felt the starting point was to value on a square footage basis and to then stand back and ask "does this value feel right for the house". His contention was that the unimproved freehold value with vacant possession was £7.4 million; that the leasehold interest would be determined by reference to graphs and agreed relativities; that the yield rate should be 6.5%.

21. A Schedule of Leasehold Valuation Tribunal Decisions had been produced which showed, with little or no exception, that figures of 6% had been agreed between valuers in respect of properties of a similar nature in London and this was relied upon by Lord Russell as showing the relative levels at which the yield should be fixed.

22. He went on to consider the factual evidence available. He outlined the position of the Property and the accommodation and dealt with the improvements that had been undertaken, the tenure, outlining the terms of the leases which presently existed. Enquiries of the Royal Borough of Kensington and Chelsea had shown that the Property formed part of the Chelsea Park/Carlyle conservation area and that

the house itself was listed Grade II*. This he considered was a significant factor to be taken into account with regard to the valuation of the Property.

23. He then gave his opinion on the Property. He felt that the exterior of the Property did not match the interior which he was of the view was disappointing particularly in respect of room sizes. He then drew to our attention the deficiencies that he thought affected the value of the Property. Those were noted but we do not believe need be listed in detail in this Decision. He then set out the calculations he had used with regard to the prime floor space, of which some 669 square feet he had discounted as representing part of the second floor.

24. He then turned to the comparable evidence and listed a number of properties. The first was 38 Chelsea Square, which we discovered during the course of the hearing had exchanged contracts in December 2003 at a price of £6.96million with a term of 112 years left to run. This was a new property built approximately seven years ago. 43 Chelsea Square, which is dissimilar in external appearance and on a smaller site that the Property had a greater internal floor area and had apparently been used as an Ambassador's residence and it was, so we were told be Lord Russell, internally "rather dull". This property had however been the subject of an inflated bid of £7.11million as against the next highest bid of £6.306million.

25. The property at 33 Chelsea Square was undergoing refurbishment works and had apparently been fully refurbished in the not too distant past. Lord Russell then turned his attention to 41 Chelsea Square. This property had been designed by the same architect as the Property but was larger and in the opinion of Lord Russell, had considerably more market appeal than 40 Chelsea Square. It was, he said, "a house well suited to a wealthy couple for whom entertaining is a priority". The property had sold at the beginning of March 2000 for £7.8million. Applying various discounts and adjustments he initially came up with a figure of £8.4 million. However it is right to say that certain errors were pointed out with regard to square footage calculations which reduced the figure to £8,177,466.00.

26. Lord Russell then considered the value of the Property applying the same mathematical techniques that he had to 41 Chelsea Square. However he dismissed this as being of little assistance. His view was that at the date of sale in May 1997 it was too remote from the date of valuation which would be the 1 April 2003. His opinion was that the FPD Savill's Index was useful but in the longer term found it less reliable. He also felt that the market conditions were entirely different at the two dates. He commented on the lack of understanding of Mr Arbib of the GradeII* listing provisions and the pressure under which he was required to purchase. Advice had been obtained, as we have mentioned previously, from an independent valuer but Mr Arbib had not chosen to accept that advice although Lord Russell indicated that this showed that there was then current opinion that he was proposing to pay too much for the house. It was his view that it would be inequitable for the Tribunal to deduce an enfranchisement valuation from that 1997 transaction.

27. Lord Russell then dealt with a number of what he called secondary comparable evidence which included properties at The Boltons, Gilston Road, Neville Terrace and The Manresa Road development. Insofar as additional information for Grade II* listing was concerned he referred to properties at 15 & 20 Cheney Walk. He told us that 15 Cheney Walk had been on the market for some time and remained unsold floundering because of the Grade II* listing which did not afford potential purchasers the facilities to create the home they wanted. He told us at the time of preparation of his submission he believed that 20 Cheney Walk, a Grade II only property had been sold in December 2003 at a price of £5,250,000.00.

28. His conclusion with regard to the freehold unimproved vacant possession value of the property was that the best evidence was to be found in the comparable at 41 Chelsea Square. The reasons for this were that the properties were built by the same architect and in a similar style; the gardens were of a similar proportion; the interest sold was approximately 77 years requiring less adjustment; the property

was in repair but tired at the time of the last sale and it was Grade II listed. He believed that a discount of 10% to the square foot rate should be applied to take account of the difference of size between the properties, the inflexibility imposed by the Grade II* listing, the poor layout of number 40 and the difference in market conditions at the date of the sales. He concluded therefore that a figure of £7.4million was the correct amount. So far as the short leasehold value was concerned, as the relativities had been agreed it would be 50.25% of the unimproved freehold interest.

29. His Report then moved on to the question of yield and capitalisation of ground rent. He put forward a figure of 6.5 percent. He relied upon the earlier Decisions of the Leasehold Valuation Tribunal and Land Tribunals where agreements had been reached between valuers at figures of not less that 6%. A Schedule of the Decisions had been prepared by his instructing solicitors and contained some 22 properties mostly owned by large estates, Cadogan, Grosvenor or Howard De Walden and all indicating save for a couple of exceptions and one under appeal, that a figure of 6% appeared to have been agreed by the valuers. His own view however was that the subject property should attract a higher rate than 6% by virtue of its Grade II* listing. He went on to also consider the impact of liquidity, political interference, costs of realisation and non-homogeneity on the yield rates and concluded that the appropriate rate for the subject property was 6.5%.

30. In further questioning whilst giving his evidence in chief he confirmed that he had considerable doubt about building up from the leasehold value to freehold because it was subject to too many adjustments and that the better way was to take the sale of freehold transactions. His view was that the square footage method was the appropriate way forward and that the figures proposed by Mr Cullum would show a square footage value out of line with other properties which were put forward as comparables in the case.

31. In cross-examination he was challenged as to whether the square footage method was correct. He was of the view it was. He preferred to use it because as he said he could adjust the figures mentally whereas someone who had been in the business longer may look to value on a whole house basis. He favoured the gross internal floor area method but accepted that both could be used. He was challenged as to where in his Report he had exercised his stated method of standing back to consider the value and believed that he had done so, particularly with regard to number 41 Chelsea Square. He confirmed however that his views on the valuation were not reached in isolation of other properties. When asked as to what valuation he might attribute to the garden he was hesitant to give a percentage figure but thought that it might be about 10%. He again affirmed his view that the internal layout was not satisfactory in particular the exit from the kitchen from the garden although that had now been done, did not afford views over the garden, the entertaining space he believed was not good and that generally it did not suit today's market. He confirmed that he had valued the Property as an unimproved house and that he had not given any great consideration to the repairs and the improvements.

32. He was questioned about the use of the square footage measurement in respect of the subject property of 5, 655 square feet and the reduced amount that he had put forward. He accepted that garages and pavement vaults would ordinarily be used as one would take the rough with the smooth but he felt the roof-layout was unique and therefore should be afforded a lower value.

33. On the question of the Grade II *, he felt this was significant and although he believed it depressed the value he had not applied a specific percentage to that but included it within the 10% figure that he felt should be deducted as an overall adjustment. He was of the view that all bedrooms, save for the master bedroom were cramped and disappointing as was the w.c. on the ground floor. There was also, he believe, a shortage of bathrooms at first floor level.

34. So far as the properties in Cheney Walk were concerned he believed that the difference between the ability to sell number 15 Cheney Walk which had a Grade II star and number 20 which was Grade II only, was solely down to that and he had calculated there was a difference in price of some 29% in favour of the Grade II number 20 Cheney Walk. He told us that the property that had now sold had reasonable period features and it was suggested that one of the difficulties was the inability to install a lift. On the question of yield his view was that it was right to look at the agreed settlements between professionals who were better equipped than he was to research matters. The indices he felt were a useful guide and was content to rely on those for a three year period but would not be happy to do so over a period of six years. He indicated that he had found the valuation difficult to grapple with which was one reason why he had sought properties outside Chelsea Square to act as comparables.

35. Mr Arbib was called to give some brief evidence. He told us that he had initially been confused about the listing and did not realise that is was Grade II*. He had however retained somebody with experience, who had worked, it seemed previously, with English Heritage and as a result of that had been able to achieve a number of changes. He had been advised to limit his requests in order to achieve success but did indicate that he had been required to replace and restore matters which had undoubtedly added to the cost. For example he had been told that some sinks and taps needed to be retained, the chain-mail covers to some radiators had to be recreated and that he should recreate the style of the kitchen cupboards which he could not do without them being especially made. He told us that he had fallen in love with the house and that he had no idea what conditions, if any, may have been put on the other bids that were made at the time he purchased.

Counsel's submissions

36. Mr Brock had prepared a written closing submission which he took us through, adding to as necessary. On the question of yield, his view was that 6.5% was justified on the basis of Lord Russell's Report. It was not suggested that we were

bound by the Decision of previous Leasehold Valuation Tribunals or Land Tribunals. What was being said was that the valuers had agreed the yield rates in almost all cases at not below 6% and that this was compelling and indeed overwhelming evidence of the perception of the market. He told us there was no evidence that Mr Cullen's professional colleagues or Landlords ever having agreed yields at a figure below 6% and that in those circumstances his figure of 4% was undoubtedly wrong.

37. Mr Brock then turned to the question of improvements. He reminded us that all the improvements listed in Lord Russell's appendix had been accepted as such and the extent to which they added value was a matter of judgment for the Tribunal.

38. He confirmed that both valuers had proceeded on the basis that the property was not improved and he submitted that in the market internal fittings are changed frequently but it does not mean that they are to be disregarded. On the question of measurement he confirmed that the parties agreed that the subject premises were 5,655 sq. feet and that Mr. Cullum's insistence on using the measurement of 5,798 sq. feet being the published gross internal floor area was wrong. He asked us to consider the layout of the premises which was inflexible and was not in the words of Mr. Cullum a trophy house.

39. The question of listing was raised by reference to the premises in Cheney Walk. The submission to us was that an allowance must be made for the serious restriction on internal layout created by the listing thus the allowance made by Lord Russell. On the question of comparables Mr. Brock reminded us that the use of the purchase price paid some six years ago was dangerous and that the properties at 41, 43 and 33 were appropriate. Mr. Brock went into a detailed consideration as to the allowances made in this regard by reference to square footage figures and comparing those between the respective properties. Attention was drawn to the sale recently at 38 Chelsea Square, a new property, where a figure of less than £1,000 per sq. foot had been achieved. Mr. Brock indicated that Mr. Cullum, in not

utilising the square footage calculation basis to any great degree, whilst not necessarily a wrong method of assessing the value could be badly wrong, particularly if his assessment of the revised freehold value for the subject premises of £11 million is too high. He was of the view that Lord Russell's figure of £2,622.946.00 was about right.

40. Mr. Munro made a verbal submission to us and started firstly with the question of yield. He referred to the schedule prepared by the Respondent's instructing solicitors and pointed out one or two anomalies and the fact that one property at Shawfield Street was subject to appeal. There was, in Mr. Munro's submission, no evidence to support of the figure of 6.5% for the yield from Lord Russell. The only evidence had come from Mr. Cullum who he submitted, had put forward a cogent case as to why yields are less than 6%.

41. On the question of square footage calculations he accepted that they were a reasonable method of valuing if you were talking about near identical flats but of limited assistance with houses of this value. As he pointed out Lord Russell had accepted it was fair to stand back once the gross internal floor area calculations had been done but he submitted that in fact Lord Russell had not done that. Accordingly, his approach was flawed on two fronts.

42. He rejected that the Grade II* listing was an impediment to producing a family home in this case. He accepted that the involvement of English Heritage may delay and cost more but there was no evidence that if Mr. Arbib wanted to go back for further re-modelling it would not be open to him to do so.

43. He reminded us of the values being obtained for the new flats in Manresa Road where square footage figures of some £1,600 were being achieved with a deposit payable now on the properties not being built for up to two years. The valuation of 38 Chelsea Square failed to take into account the extensive gardens available at numbers 40 and 41 to which had been attributed a value of up to 10%. Mr. Munro

told us that whilst the experts had not relied on the 1997 purchase figure it should not be ignored and we were entitled to ask "what is going on". Whilst it was some six years ago, as part of the standing back exercise, he indicated that there must be something wrong with the figures if that were the case. In so far as the property at 43 Chelsea Square was concerned it was accepted that there would need to be adjustment to reflect the over eager purchaser but it was pointed out that the bid to acquire was not much more than 10% over the next bid and therefore not such an outrageous figure to pay. As far as number 41 Chelsea Square was concerned he reminded us that Lord Russell had said it was preferable to number 40 but his submission was that it was just different and would appeal to a different market. He commended to us the valuation put forward by Mr. Cullum as being realistic and having taken matters into account.

G INSPECTION OF THE SUBJECT PROPERTY

44. Photographs of the exterior and the interior before amendments and improvements together also with floor plans were made available to us at the hearing. Our internal inspection of the subject property was conducted on the 22nd January 2004. Externally the property is as described in the expert's reports being an impressive and substantial house sitting at the corner of Chelsea Square with a large and well maintained garden to the rear offering considerable privacy.

45. Internal inspection confirmed the improvements carried out by Mr. Arbib. At the top floor we noted that a bathroom had been installed and nanny accommodation created. Another living room was to be found at that floor level and the number of cupboards were put to various uses, for example, a dark room, a cupboard for microwave and fridge and various other matters. There was no specific kitchen facility however at this floor level. On the first floor we noted that there was an archway, effectively dividing the principal family accommodation from what was servants accommodation, and in the "servants part" a reasonable sized double bedroom which would be used presumably for guests affording double aspect view to the side and rear garden and a bathroom. The principal accommodation included

two bedrooms to the front were relatively small and it is to be doubted whether a double bed could be easily accommodated in either. The main bedroom area was however a large suite comprising a bedroom, dressing room off, a bathroom and a further dressing room beyond that. On the ground floor there was an impressive entrance hall leading to the various living rooms and toilet facilities. The rooms were of good size, the main living room containing original wooden panelling and doors to the rear terrace. The dining room comfortably accommodated a table that would seat at least 12 people. A passageway lead to a very pleasant playroom used by the children and also to the newly extended kitchen which has the benefit of a door to the rear garden and another entrance to the dining room. We noted that there were no windows overlooking the rear garden. There was a good sized cellar housing the central heating and services to the property. To one side was a garage area and garden rooms together with outside storage.

46. Thanks to the assistance of Lord Russell we were able to internally inspect numbers 41 and 38 Chelsea Square. We will not go into detail but will give an impression of those two properties.

47. Number 41 Chelsea Square designed by the same architect was in some ways similar but in others not. In essence it was a luxurious one bed roomed house with an annexe containing three further bedrooms, bathroom and shower room. The main bedroom suite was impressive with separate bathrooms for the owners together with separate dressing rooms and a sauna. The living accommodation was likewise impressive with a large living room and a music room with circular stairs descending to a dining area and then to kitchen and office facilities. The entrance hall was not as grand as the subject premises.

48. Internal inspection of number 38 Chelsea Square confirmed that this was a substantial modern property with good-sized accommodation, a number of bedrooms with en suite facilities and a large swimming pool and shower/sauna area. The garden was much smaller than either number 40 or 41 Chelsea Square.

49. We then externally inspected the properties in Gilston Road, The Boltons, Neville Terrace and Chester Square. They afforded some assistance but they were in different localities and were architecturally very different from the subject premises.

H. DECISION:

50. Before we deal in any detail with our findings we would first wish to comment on the evidence put to us by the experts in this case. We have been presented with a divergence of opinion on the values for this property. Mr. Cullum has put forward a figure of £5.214million. Lord Russell has put forward a figure of £2,622,946.00. This is a difference of over two and a half million pounds. We heard from Lord Russell that a difference of some 10% or so was not unreasonable but as can be seen we are facing a much greater difference in the respective values put forward by two experienced experts.

51. It is also clear from the evidence that we have received and the submissions made to us, that to take the figure paid by Mr. Arbib in 1997 and merely build up from that would provide an unreliable result. It seems to us, therefore, that the way to deal with this valuation is to consider the figure for the freehold value, apply the various relativities and discounts to that figure and stand back to see if that sits with the valuation evidence we have received, our inspection and our own knowledge and experience. Notwithstanding the experts views on the original purchase by Mr Arbib in 1997, we agree with Mr Munro that whilst it is not primary evidence we must have some regard to the price paid in 1997. Three bids were made, all fairly closely aligned with each other and there is no suggestion that this was not a normal willing purchaser who has paid an unreasonable price for some extraneous reason.

52. As to the issues between the parties we will deal firstly with the question of yield and we believe that we can take this reasonably shortly. Mr. Cullum in his submission to us had relied upon a number of statistical pieces of evidence to put

forward a submission that the 4% was the correct yield figure. We heard all that was said. He told us in evidence that the longer a rate of 6% had been adopted the greater the inertia and the more difficult it becomes to move away from that rate. This he told us applied to both practitioners and to tribunals. He also said that the yield somehow became lost in the overall settlement and that if you felt you had done particularly well on one element of the equation, the question of yield may not be pursued. We could understand that as being an argument if the matter were not to come before a tribunal. However, evidence was produced to us in the form of a schedule of the number of transactions that had been dealt with by tribunals where in the vast majority of cases a yield rate of 6% had been agreed between the valuers instructed for the freeholder and the leaseholder. It seems to us that if you have reached the stage where the matter is going before a tribunal there is no particular incentive on you to agree matters if a number of items are in dispute. It does, however, seem to us to point to an acceptance by valuers that a figure of around 6% is a reasonable sum to utilise as the yield for properties of this nature. It was suggested that the decisions of these tribunals were not binding upon us and we accept that that is the case. However, as we understand it, it is not so much a question of a tribunal ruling on the yield rate as being presented with an agreed statement of facts, one of which confirmed that the yield rates had been agreed. That is, therefore, in our mind compelling evidence that we can rely upon. Mr. Cullum with respect to him is not an economist and we were not persuaded by his arguments to depart from the figure of 6% that has been used by a number of valuers from 1999 to date. Equally we can see no justification for accepting Lord Russell's view that a figure of 6.5% is appropriate. For the reasons that we shall refer to later in this decision concerning listing and other matters it seems to us that a 6% figure is an appropriate one to utilise for the yield applicable in this particular matter.

53. We turn now to the valuation of the freehold and leasehold. The comparable properties in Chelsea Square that we were asked to consider were of assistance but we find that number 41 was the most comparable and gave most help. That is to

be said, however, we do not reject the evidence that we received with regard to the properties at 43, 33 and 38 Chelsea Square. We did not find great assistance in the various comparables outside the immediate vicinity because the locality and style of property were substantially different from the subject premises.

54. Before we turn to the specifics of the valuations we will deal firstly with our views of the differences between the comparable properties in Chelsea Square. It is our finding that the Property is the most impressive house. 41 Chelsea Square does not have an impressive entrance hall and we did not consider that the living accommodation was substantially superior to the Property 40 Chelsea Square. The layout of the bedrooms and other accommodation was in our view inferior to the Property which we found to be an impressive family home quite capable of use for extensive entertainment, if so required. The kitchen had been improved by the alterations made by Mr. Arbib although we accepted that having no window overlooking the garden was a drawback. The family room adjacent to the kitchen which is now used as a child's playroom is obviously of great benefit and all in all we could not accept the apparent playing down of the benefits of the property as put forward by Lord Russell reflected our findings on inspection. We found that number 38 Chelsea Square was a much inferior property to either number 40 or 41 Chelsea Square. It was a modern red brick house with large living accommodation and practical bedrooms with en suite facilities. It could not however be described as grand, and even though it had a large swimming pool with leisure area it was not to use the description of Mr. Cullum in any way, shape or form a Trophy House. The garden was small in comparison to the gardens at 40 and 41 Chelsea Square which in our finding had a significant impact on the values. Number 33 Chelsea Square was at the time of our inspection under going further building works and it was difficult to tell how useful that could be as a comparable but we have borne in mind the evidence produced in regard to that property and the calculations with regard to value that have been made.

55. As far as number 43 was concerned we have borne in mind that this appears to have been the subject of an overbid. However if one excluded the overbid you were left with an average offer of around £6.2million. In a no act world that would equate to £5.63 million with an equivalent freehold figure of £11.1million. That sits uneasily with the suggested freehold figure put forward by Lord Russell for the Property. Further, although we are urged not to put much weight by the price paid in 1997 we find it difficult to accept the evidence that in 2003 the value of the leasehold interest, even allowing for the reduced number of years to run on the lease is so much less than the price paid by Mr. Arbib in 1997. That difference forms part of our standing back and reviewing exercise which we believe we are required to do. Furthermore when one considers the potential value of number 43 with only 25 years left to run on the Lease with the leasehold figure suggested by Lord Russell for the Property there is a disparity which is difficult to accept.

56. If we look at the figures achieved in respect of 41 Chelsea Square we find that in March 2000 a figure of £7.8million was paid for the property. Uplifting that for the passage of time, allowing for a no act world and allowing for the adjustment in the length of the Lease which is, of course, considerably longer than the Property, we calculate a figure of some £9.7million for the freehold value. This compares to the similarly worked figure by Mr. Cullum for the subject property of £13.7million. There is in our finding too great a difference between those two and although we would say that number 41 Chelsea Square is of less value than the subject property the difference is not that great. If one then compares freehold adjusted figure for number 43 Chelsea Square which comes out at around £11.1 million we are drawn to the conclusion that the freehold value for the subject premises must be more than £11million pounds. The indices support the suggestion that £13.7million is too high and indeed is a figure argued against by the Applicant's own valuer. Standing back and taking a subjective view, bearing in mind the conflicting valuations that we have received in this matter, we find that the starting point for the freehold value of the subject premises before we make any allowances for

listing and improvements is £12million. As Mr. Cullum said in evidence, the assessment of the valuation is an art and not a science.

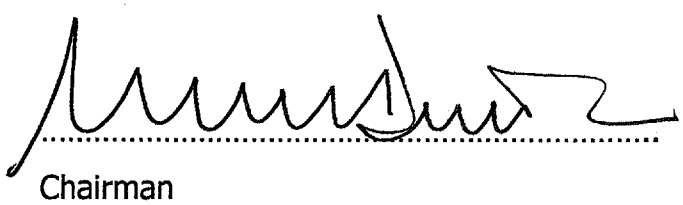
57. We then must consider the allowance for improvements and listing. Mr. Cullum, in evidence, said he would value the improvements at some £150,000.00 whereas Lord Russell did not give a figure, contenting himself that the 10% allowance that he had made reflected improvements, listing and other matters. We accept that the value attributable to the improvements is not the cost but the impact that it has on the value of the property. We were helped by Mr Cullum's concessions on the question of improvements/repairs. We have no doubt that one man's improvements are another's eye sore. However, in this case we find that the new central heating and hot water system, the structural alterations and the security system certainly have value as may other changes made. In so far as the listing is concerned we did not find the comparables at Cheyne Walk of any great assistance. As we understood it the properties date from the 18th century and we suggest that the apparent inability to install a lift is as much a reason for the property not selling as any other particular listing difficulties. In addition, to compare properties of that age with architecturally built 1930's accommodation seems to us to be wrong. We do, however, accept that the listing does affect the owner's ability to freely change the internal layout and fixtures. The evidence before us on listing was also that if a reasonable approach was made success could be had and there is no indication that if Mr. Arib wished to make any further changes to the property those changes would not be met with some if not complete success. Taking the matter in the round we make a deduction of £0.5m for the improvements and the listing difficulties.

58. That gives a vacant possession freehold value of £11.5million. If we then apply the agreed ratio of 50.25% to that it gives a figure of £5,778.000.00 or say £5.8million for the leasehold interest.

59. We are not persuaded to follow Lord Russell's adherence to square footage figures. We believe that insufficient allowance has been made in matters such as the garden and the uniqueness of this family property in this part of London. In addition we find that he did not appear to stand back and review the figures he had achieved using this square footage method. We do not accept that the leasehold value of the Property, notwithstanding the shorter lease is at the time of valuation less than the price paid in 1997. That flies in the face of the increase in property values in Central London and makes no sense when compared, for example, with the value for 43 Chelsea Square, disregarding the apparent overbid.

60. There was no real argument about the impact of the Act on values. We have accepted the percentages put forward by Mr Cullum in the absence of any real challenge to same.

61. Our finding therefore is that the appropriate figure for the price payable for the freehold of this property by Mr. Arbib is £4.21million and the details of the calculations are set out on the attached schedule.



Chairman

16th February 2004

Date

Residential Property Tribunal Service

Leasehold Valuation Tribunal for the London Rent Assessment Committee

Valuation for the freehold interest in 40 Chelsea Square, London, SW3 6LH as at 1st April 2003

	£	£	£
Freehold value with vacant possession			11,500,000.00
Rent	50.00		
YP for 24 ¾ years @ 6%	12.725	636	
Reversion to	11,500,000.00		
PV of £1 in 24 ¾ years @6%	0.2365	2,719,750.00	
Freeholder's interest		2,720,386.00	
Leaseholder's value with vacant possession		5,800,000.00	
Sum of freeholder's and leaseholder's interests			8,520,386.00
Marriage Value			2,979,614.00
Half share of marriage value		1,489,807.00	
Add freeholder's interest		2,720,386.00	
Price payable			4,210,193.00

Say £4,210.000.00