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Ref LON/LVT/570

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr P J M Williams

Respondent: The Trustees of the Portman Family Settled Estates.

RE: 15 UPPER BERKELEY STREET, LONDON W1.

RV at date when Tenant's Notice was given: £1430 Ground and Upper Floors. £338 Basement.

Date of Tenant's Notice: 6 May 1994.

Application to Tribunal dated: 8 February 1995.

Heard: 20 September 1995.

Appearances: Mr P J M Williams ARICS, - The Tenant
Mr C S R Marr-Johnson FRICS,
of Marr Johnson and Stevens
Chartered Surveyors

for the Tenant.

Mr E Cole, Counsel instructed by D. Thorpe,
Wilde Sapte Solicitors

Mr J E C Briant BA FRICS,
Daniel Smith, Chartered Surveyors

- for the Landlord.

Members of the Leasehold Valuation Tribunal:

Lady Fox QC MA (Chairman)
Mr J A Pickard FRICS IRRV
Mr P S Roberts DipArch RIBA

Date of Tribunal's decision 27 February 1996.

1. This is a decision on an application by Mr P J M Williams, the tenant, for the determination pursuant to section 9(1)(C) of The Leasehold Reform Housing and Urban Development Act 1993 (The Act) of the price for the freehold interest in the house and premises known as 15 Upper Berkeley Street, London W1, (the subject premises). The tenant holds from the Trustees of Portman Family Settled Estates, the landlord, the said premises on a lease for 75 years commencing on 25th March 1980 at a ground rent of £420 per annum with rent reviews at 2001, 2022, and 2043. By Consent Order dated 9th January 1995 made in the Central London County Court, the parties agreed that the tenant had the right to acquire the freehold in the subject premises. At the date of the tenant's notice, which is the date of the valuation, the unexpired term of the lease was 61 years.

2. Valuation of the freehold interest made on behalf of the tenant by Mr C S R Marr-Johnson FRICS.

| <u>Freehold Valuation as at</u> | 1994 claim | 2055 expiry AD | |
|---|-----------------|-------------------|-----------------|
| Ground rent per annum: | | | £420 |
| Years' purchase for: 61 years at | 10.0% | | <u>9.97014</u> |
| | | | £4.187 |
| Extra rent on review at Ladyday | 2001 to approx: | | £630 pa* |
| | (years) (rate) | | |
| Years' purchase for: | 61 10.0% | | 9.97014 |
| less ditto for: | 7 10.0% | | <u>4.868419</u> |
| | | <u>5.10172</u> | £3,214 |
| Reversion to unimproved value, freehold with vacant possession | | | £150,000 |
| Present value of £1 after: 61 years at | 10.0% | | <u>0.002986</u> |
| | | | <u>£448</u> |
| Open market value of landlords' interest | | | £7,849 |
| Marriage Calculation | | | |
| Freehold as above | | | £150,000 |
| less landlords' interest | | £7,849 | |
| and lessee's interest @ 85% (ignoring the right to claim) | | <u>£127,500</u> | <u>£135,349</u> |
| Total marriage value | | | £14,651 |
| Landlords' share @ 50% | | | <u>0.5</u> |
| | | | <u>£7,325</u> |
| Total enfranchisement price | | | <u>£15,175</u> |

*Reviewed rent £350,000 @ 90% @ 1/2% = £1,050 pa
so extra rent is £1,050 - £420 pa = £630 pa

3. Valuation of the freehold interest made on behalf of the landlord by
Mr J E C Briant, BA ARICS.

VALUE OF FREEHOLD PRESENT INTEREST

| | | | | | |
|----------------------|-----------------|---------------|-------|--------------|---------------------------|
| <u>TERM 1</u> | GROUND RENT | | | £420 | |
| | x YP | 6.89 years @ | 6.00% | 5.51 | |
| | | | | <hr/> | |
| | | | | | £2,315 |
| <u>TERM 2</u> | GROUND RENT | | | £1,402 | |
| | x YP | 54.03 years @ | 6.00% | 15.95 | |
| | x PV | 6.89 years @ | 6.00% | 0.6693335 | £14,969 |
| | | | | <hr/> | |
| <u>REVERSION</u> | FHVP | | | £460,000 | |
| | x PV | 60.92 years @ | | 0.0287321 | |
| | | | | <hr/> | |
| | | | | | £13,217 |
| | | | | | |
| | | | | | Lessor's present interest |
| | | | | | <u>£30,501</u> |

MARRIAGE VALUE

| | | | | | |
|------|---------------------------|-----------------------------|----------|--------------|-----------------|
| | FHVP | | | £460,000 | |
| Less | | | | | |
| | Lessor's Present Interest | | £30,501 | | |
| | Lessee's Interest | | £310,000 | £340,501 | |
| | | | <hr/> | <hr/> | |
| | Marriage Value | | | £119,499 | |
| | Take | 65% Marriage Value | | | <u>£77,674</u> |
| | | | | TOTAL | <u>£108,175</u> |
| | | Total Enfranchisement price | | | £108,000 |

4.

THE FOLLOWING COMPARABLES WERE RELIED UPON BY THE PARTIES:-

Tenant's Comparables

| ADDRESS | DATE | LENGTH OF LEASE | PRICE | ACCOMMODATION | SIZE |
|---|--------------------------------------|--|----------|--|------------------------|
| Subject premises | 1980 | 75 Years | £120,000 | House unimproved as shell | 'A' area 2091 sq ft |
| " " | 31 July 1986 | 69 Years £420 pa. | £330,000 | 8 rooms, 3 B/WCs, S/C Basement Flat | |
| 13 Upper Berkeley Street, W1 Upper Maisonette | 4 August 1995 Contracts exchanged | 60½ Years £200 pa. | £290,000 | 7 rooms, 2 B/WCs, Shower room, WC, Kitchen, Gas central heating. | GFA 2044 sq ft |
| 31 Upper Berkeley Street, W1 House | September 1995 | 137 Years £100 pa. doubling every 25 Years | £385,000 | House on 4 floors and basement | |
| 32 Upper Berkeley Street, W1 House | 31 August 1995 | 144 Years £100 pa. | £325,000 | House on 4 floors and basement | |
| <u>Landlord's Comparables</u> 7 Connaught Square W1 House | June 1995 | 47 Years £250 pa. subject to review 1994 to 1% Capital value | £500,000 | House on 4 floors and basement | 'A' Area 2235 sq ft |
| 13 Connaught Square W1 House | July 1995 | 114 Years | £655,000 | House on 4 floors and basement | 'A' area 2339 sq ft |
| 43 Upper Montagu Street, W1 House | July 1995 | Freehold | £470,000 | 5 storey Grade II terrace house | 'A' area 1373 sq ft |
| 27 Upper Montagu Street W1 House | August 1995 | Freehold | £430,000 | 5 storey Grade II terrace house | 'A' area 1904 sq ft |

5. The tenant, Mr P J M Williams ARICS gave evidence in accordance with a written proof. He stated that he had been trained as a general practice Commercial Surveyor, and had a degree of expert understanding and knowledge of the residential property market in the area of the subject premises where he lived with his wife and family. The landlord, after rebuilding the front and back walls of the subject premises and providing a new roof, had sold the house for £120,000 on a 75 years lease as a shell for development in March 1980 to Messrs Cochrane. Either Messrs Cochrane or the assignee, Mr Brian McGee, had carried out improvements to put the house in its present condition. He himself had taken over the assignment of the lease on 31 July 1986 at a price of £330,000.

Mr Williams said that the subject premises, a 5 storey mid terrace house was located on Upper Berkeley Street which was a link road between Gloucester Place and Edgware Road and had the characteristics of a commercial thoroughfare with two international hotels, the Portman and the Churchill, commercial offices, smaller hotels and bedsitting accommodation in close proximity. Only 28% of the street was in use as residential flats/houses. Traffic flows east/west and north/south were constant throughout the 24 hours of the day with consequent noise, dirt and traffic jams. Traffic diversions in 1991 and 1993 had sent eastbound buses, coaches and H G vehicles past the subject premises. The ban subsequently imposed by Westminster City Council on coaches and HGVs passing along the section of Upper Berkeley Street was consistently ignored and traffic volumes were increasing. Mr Williams said that the area was suffering from weak estate management with many vacant shops and unoccupied flats. Adjoining the subject premises was a 4-storey block of bedsits which in 1990 and 1993/4 gave rise to considerable water damage to the subject premises. He produced photographs and evidence in support of the transactions at 13, 31 and 32 Upper Berkeley Street as comparables for the valuation made by Mr Marr-Johnson. In support of the figure for cost of improvements he produced an estimate totalling £181,550 inclusive of fees but exclusive of VAT for the cost of fitting out the house in its present layout, made by Mr M H Yeadon BSc ARICS. In support of the 10% figure used as yield, he drew the tribunal's attention to the length of the lease, the relatively low rent, the secondary location with many vacant properties and the inferior condition of adjoining property; he also relied on a schedule yields achieved at ground rent auction sales. In support of a 50% share for the landlord of the marriage value, he included in his appendix a copy of an opinion given by Alan Stanfield. He requested the tribunal to accept Mr Marr-Johnson's valuation taking into account the situation and character of Upper Berkeley Street, the diminution of the price by reason of the improvements carried out by the tenant's predecessors, and the higher yields now obtaining due to increased awareness of risks involved in the property market.

6. In answer to questions from members of the Tribunal, Mr Williams said he thought Mr Yeadon's estimate of the cost of improvements was reasonable, although it worked out at £58 per sq foot. No schedule of works to be done had been agreed with the landlord at the time. He considered present day cost of improvements represented their value.

7. Mr C S R Marr-Johnson FRICS, partner in Marr-Johnson and Stevens, Chartered Surveyors gave evidence in accordance with a written proof. He had been in practice 37 years, in his own firm since 1979 and had made a special study of valuations under the Leasehold Reform Act as amended, acting for both landlord and tenant. Major landlord clients included the Campden Charities, Church Commissioners, Henry Smith Charity, Howard de Walden and St John's College Cambridge and he had acted for individual clients and major Residents Associations, including Belgravia, Eaton Square, Oakwood Court, Eyre Estate. He described the subject house as "a very pleasant but quite ordinary house", only two windows wide and slightly narrower than nearby properties, with a small patio and suffering from noise, dirt and vibration from constant and heavy traffic. In making his valuation he followed the assumptions set out in section 118 of the Housing Act 1974 as amended by Schedule 15 of the 1993 Act: no amount for compensation for loss to other property was claimed.
8. Rent review. The ground rent of £420 per annum under the lease is reviewable in 2001, 2022 and 2043 to a third of 1% of the capital value of the house as improved, on an 80 years lease at the review date. Mr Marr-Johnson put the longer lease at 90% of his freehold value of £350,000 giving a rent of £1050 per annum ie an increase of £630. In the other two stages of the valuation he took the house as unimproved.

Rate of Capitalization and Deferment - He adopted 10%, 1% higher than the rate used in Leasehold Valuation Tribunal decisions relating to houses at Nos 9, 39 and 22 St Mary Abbots Terrace and 65 Abbotsbury Road under the 1967 Act; 10% had been adopted in a tribunal decision relating to the collective enfranchisement of two flats at 23 The Little Boltons. Although it was standard practice to use a rate for leaseholds 1% higher than for freeholds, he considered 10% appropriate by reason of the secondary location of the subject premises where many occupants were transitory or commercial. He was aware that many settlements in the Grosvenor and Cadogan estates revealed 6%, but he considered such a rate resulted in a large element of double counting where a share of the marriage value was also given to the landlord. A valuation with 6% or 7% rate of interest already provided for marriage value when compared to the rate of 10% or over achieved in the open market for ground rents, both at auction and by private treaty.

In support of a 10% rate Mr Marr-Johnson produced a schedule of bank valuations carried out for Cliveden Land Limited specialising in purchase of long dated ground rents, the brochure of BESSA Income Trust relating to their property based ground rent investment scheme, and particulars of a sale of ground rents of £1000 at a price of £10,000 in May 1994 for 8 Eccleston Square SW1. He challenged the landlord's reliance on evidence derived from settlements; negotiations were often prolonged for years to the disadvantage of the tenant and tenants lacked the money, advisers and mutual support which the trustees of larger London estates enjoyed.

9. Comparables. Mr Marr-Johnson considered a ratio of 85% leasehold to freehold about right for a 61 year lease. He used transactions in Nos 13, 31 and 32 Upper Berkeley Street, which when adjusted for size,

length of lease, difference in date, produced figures of freehold value of £415,000, £360,000 and £325,000 respectively. (He included a value of £125,000 for the lower maisonette in No 13).

10. Improvements. On the basis of a gross area of 3000 sq feet he estimated the present cost of conversion and modernisation at £50 per sq foot, giving a figure of £150,000 (adjusted to £180,000 in the light of Mr Yeadon's estimate). He added a sum to cover risk, finance and fees involved in carrying out refurbishment, to give a total of £200,000, making the net value £150,000 equivalent to 43% of the improved value of £350,000.
11. Marriage Value. He considered 50% to be the appropriate share of the marriage value which was in line with LVT and Lands Tribunal decisions in several cases, and reflected the statutory requirement of a willing purchaser as well as a willing seller.
12. In answer to questions from Mr Cole on behalf of the landlord, Mr Marr-Johnson rejected any deduction in the figure for improvements by reason that they related to items of repair or renewal required by the terms of the lease or outmoded refurbishment. He accepted that the yield adopted might reflect potential of the property to produce capital from restructuring of leaseholds or selling of freeholds. In answer to questions from the tribunal, Mr Marr-Johnson did not accept that his figure of £150/£180,000 for improvements looked too high, taking into account that the tenant was prepared to pay £330,000 in 1986 for the subject premises in improved condition.

He did not accept that the value of a 15 year old conversion might be less than the cost of carrying it out at today's prices.
13. Mr E Cole, Counsel appeared on behalf of the landlord. He explained that the rateable value limits on enfranchisable houses had been removed by the 1993 Act. The subject premises, with a RV of £1,430, for the ground to third floors and £338 for the basement flat determined in 1984, qualified for enfranchisement by reason of the lease exceeding 21 years at a low ground rent, and the valuation of the enfranchisement price was to be made in accordance with section 9(1C), as introduced into the 1967 Act by the 1993 Act. The valuation was to be made on the same assumptions as under section 9(1A) save that the tenant at the end of the lease had no right to remain in possession; it was expressly stated that the tenant's share of the marriage value was not to exceed one half of it; and compensation was payable (though in the present case none was claimed).
14. Mr Cole called Mr J E C Briant BA ARICS, partner in Daniel Smith Chartered Surveyors, to give evidence in support of his valuation on behalf of the landlord. Mr Briant said he acted as surveyor and gave advice to many landlords, including the Eyre Estate, John Lyon's Charity and the Corporation of Trinity House Norington Estate. He described the subject property, noting that despite problems with traffic, it was a high value area, centrally located with excellent transport.

Ground Rent Review. Assuming the property to be in good repair and with vacant possession, and disregarding all repairs carried out by

the tenant, he estimated the rent following review would be £1402 per annum, derived from a capital value of £425,000 for the hypothetical 80 year lease.

Yield. He adopted 6% by reason of the good central location, high value of the property, the unexpired term of 61 years, and presence of rent reviews in the lease. He based this rate on that applied in settlements achieved for the Eyre Estate, of 5/6 Northwick Close NW8 for the John Lyon's Charity Estate (particulars of which he attached in an Appendix); and as a rate in line with Lands Tribunal and LVT decisions, citing Lloyd Jones v Church Commissioners of England 1981 261 EG471, 74 Maida Vale (LON/LVT/508) and Queensmead (LON/LVT/541).

15. Marriage Value. Mr Briant said there had been no sales of freeholds subject to long leases on the landlord's estate to provide evidence relating to the split of marriage value. He relied on transactions which he had negotiated for the John Lyon's Charity at Flat 2/35 Hamilton Terrace and 126A Hamilton Terrace involving surrender of 13 and 34 year leases respectively and a grant of 99 year non-enfranchisable leases, where a share of 100% and 85% of the marriage value to the landlord had been agreed. It was his view that a tenant would be prepared to offer over 50% as the landlord's share where the profit on a high value house would make it financially worthwhile for him to do so. The tenant would "gain", free from taxation, £42,000, if a 65% share of the marriage value was given to the landlord.
16. Comparables. Mr Briant gave particulars of the sale in 1995 at No7 Connaught Square in support of his leasehold value for the subject premises and maintained no adjustment for difference in date was necessary as prices had remained static since the date of valuation. Making deductions of £125,000 for superior location and £75,000 for larger size, and an addition of £50,000 for longer lease, he arrived at a figure of £350,000 which supported his leasehold value. In support of his freehold value he adjusted the purchase price achieved for No.13 Connaught Square by deducting £150,000 for superior location, and the purchase price of No.43 Upper Montagu Street (deducting £30,000 for recent redecoration, and adding £20,000, and £10,000 for increased repairing liability and inferior location respectively), to arrive at a value of £500,000 for the freehold of the subject premises. A similar analysis in respect of No.27 Upper Montagu Street with a further allowance for a structural problem of £40,000 supported this valuation. As to the tenant's comparables, Mr Briant thought it unreliable to use transactions relating to leases to support freehold values; he queried whether Mr Marr-Johnson's figure of £125,000 for the basement and ground floor maisonette at No.13 Upper Berkeley Street was sufficient; the location of No.31 Upper Berkeley Street close to the Synagogue was inferior and the terms of the conveyance of No.32 had not been agreed.
17. Improvements. He considered that only the additional bathrooms and installation of central heating constituted improvements, which he valued at £40,000, all other work amounting to repair or renewal. It was important to note that the subject house had all its floors and room layout when it was sold unimproved.

18. In answer to questions from the tenant, Mr Briant said that he did not rely on the transactions relating to other properties in Upper Berkeley Street as they were differently located, and in the case of No.13 omitted the basement maisonette, making the adjustment of values a subjective exercise. In answer to questions from the Tribunal, Mr Briant said that he explained the high price paid by the tenant in 1986 for the subject premises in improved condition by reason of the market peaking up to 1988. He considered values since 1986 had fluctuated but had changed little overall. He would value the unimproved leasehold at £240/275,000 in 1986. Mr Briant explained the disparity in his deductions for location in relation to No.7 Connaught Square and No.43 Upper Montagu Street as attributable to the difference in leasehold and freehold. He justified his reliance on evidence of settlements in that the landlord and his advisers were also under pressures to reach a settlement and that the tenant, free of the requirements of a statutory valuation, was in a stronger position in a negotiated settlement. It was his view that the parties by agreeing the freehold and extended lease values also implicitly agreed the yield and share of marriage values.
19. In closing the landlord's case, Mr Cole said that the burden of proof was upon the tenant to establish that improvements, not repair, or renewal or outmoded fittings, existed in the subject premises and that they added value (not represented by their cost either in 1980 or at present day prices).

20. Inspection

We inspected the subject premises on 9th October 1995. It is a Georgian terraced house on 5 floors, situated on the North side of the street close to the busy junction with Great Cumberland Place. Upper Berkeley Street is a busy thoroughfare and mainly consists of 5 storey Georgian terraced properties given over to mixed uses including: residential flats/houses, commercial offices, hotel/bed and breakfast premises, bedsitters. The street runs from East to West between Gloucester Place and the Edgware Road; at the junction with Gloucester Place and Portman Square there are two large international hotels, the Churchill and the Portman. Towards the Edgware Road end there is the West London Synagogue.

The subject property is on 5 floors and consists of:

| | |
|--------------|--|
| Basement | living room (with kitchen area), 2 bedrooms, bath/wc, wc; |
| Ground floor | dining room, playroom, kitchen, cloakroom; |
| 1st floor | reception room, rear room, cloakroom on half landing below and access to roof terrace; |
| 2nd floor | master bedroom, ensuite dressing room and bathroom, boiler room/utility on half landing below; |
| 3rd floor | 3 bedrooms, 2 bathrooms (1 ensuite). |

Externally the subject premises appears in good structural and decorative condition with two window openings across the frontage; the outlook to the rear is reasonable for an inner city location and is not directly overlooked.

Evidence of the substantial refurbishment works carried out subsequent to the grant of the lease was visible on inspection and appeared to include:

- i) erection of a small 2 storey extension to the rear lightwell at lower ground floor and ground floor levels with roof terrace over;
- ii) creation of a self-contained unit on the basement level, including new bathroom, kitchen area, and damp proofing works;
- iii) refitting of main ground floor kitchen;
- iv) formation of master bedroom suite;
- v) formation of upper floor bedrooms and bathrooms;
- vi) installation of new services, electrical wiring and fittings, gas central heating and hot water system, new bathroom fittings;
- vii) new plaster finishes/cornices, panelled doors, timber skirtings/architraves, fitted wardrobes etc.

The interior fittings and finishes are of a good to high standard; the accommodation is spacious and well laid out for family living with the advantage of a self-contained unit on the basement level with independent street access.

The following properties were viewed externally from the street on 9 October 1995.

Comparables put forward by Mr Marr-Johnson for the Tenant:

13 Upper Berkeley Street W1

Upper maisonette in Georgian Grade II listed terraced house.

A similar style property on the same side of the street and one door removed from the subject. The front elevation is approx 600mm (2 feet) wider with 3 window openings as opposed to 2 in the subject. It appeared to be in sound condition. The accommodation, as shown in the agents particulars, is broadly similar on the upper floors but with 5 bedrooms, 2 bathrooms, 1 cloakroom as opposed to 4 bedrooms, dressing room, 3 bathrooms and utility in the subject house. At the 1st floor level the drawing room although wider (18ft to 16ft) is smaller in area; the kitchen of compact size is at the half landing below with the maisonettes front door directly off the ground floor common entrance hall. It was noted that the maisonette required updating and redecoration.

31 and 32 Upper Berkeley Street W1

Two adjacent houses on 5 floors including basement, situated towards the Edgware Road end of the street and backing onto the West London Synagogue. Similar to the subject house, with a wider frontage than the subject with three window openings and with taller upper floor windows; No 32 has reduced height upper floor windows, the centre one being blanked off. The properties have been recently refurbished and the accommodation appears to be broadly similar to the subject property. Access to the basement from the pavement is by new timber steps. It was noted that the agent's description included extensive fittings i.e kitchen appliances, fitted wardrobes, video entry phone, jacuzzi bath.

It was noted that No.33 next door had suffered extensive fire damage to the upper floors and that reinstatement works were pending.

Comparables put forward by Mr Briant of Daniel Smith for the Landlord

7 Connaught Square W2

No.7, a Georgian period house on 5 floors with stuccoed elevation up to the first floor level, is on the East side of the square overlooking private central gardens, and appeared to be in good overall external condition. Connaught Square lies just to the West of the Edgware Road and North of the Bayswater Road, with Hyde Park within a few minutes walk.

13 Connaught Square W2

This Georgian period house on 5 floors with stuccoed elevation up to the first floor level, similar to No.7 and on the East side of the square, appeared in good condition with brickwork to front elevation recently cleaned; kitchen and dining room on the lower ground floor and with separate street access.

43 Upper Montagu Street W1

Situated towards Marylebone Road and in a quieter and more residential location than the subject property, this Georgian Grade II listed terrace house on 5 floors is in good order and retaining its original character. It is smaller than the subject property in size and scale and with a slightly narrower frontage.

27 Upper Montagu Street W1

This is a Georgian Grade II listed terraced house on 5 floors with stuccoed elevation up to first floor. It has a wider frontage with 3 window openings, in good decorative condition, but apparently sold with a structural problem (replacement of load bearing wall required, removed by previous owner). It is similar in overall size to the subject but in a quieter location.

21. Decision and Reasons

The present case relates to a house with a rateable value in excess of £1500. Both parties accepted that pursuant to the 1993 Act the tribunal had jurisdiction to determine the price of the freehold and that the method of valuation was set out in section 9(1C) of the Act which required no deduction for the tenant at the end of the term staying on, expressly limited the tenant's share of the marriage value to 50% and allowed for compensation (which, however, was not claimed in this case).

The matters at issue between the parties were:-

| | Landlord | Tenant |
|--|------------------|------------------|
| Estimated Ground Rent after first review in 2001 | £1,402 per annum | £1,050 per annum |
| Capitalization and deferment Rate | 6% | 10% |
| Rate | | |
| Value of Freehold Interest | £500,000 | £350,000 |
| Value of Improvements | £ 40,000 | £200,000 |
| Value of leasehold interest unimproved | £310,000 | £127,500 |
| Landlord's share of marriage value | 65% | 50% |

22. The Tribunal derived considerable assistance from both the landlord's and the tenant's comparables although none was directly comparable with the subject property. On balance we considered the location of 31 and 32 Upper Berkeley Street to be inferior because of the close confines of the West London Synagogue and the general ambience of property in that immediate locality. The sale of 32 Upper Berkeley Street for £325,000 on 31 August 1995, with an unexpired term of 120 years (though the particulars of sale showed 137 years), which persuaded Mr Marr-Johnson to reduce his freehold value of the subject property from £400,000 to £350,000, appeared to us to be somewhat depressed, perhaps by reason of the fire damaged property adjacent, which was still boarded up at our inspection date, and by reference to No.31, said to be under offer subject to contract at £385,000. A useful ceiling was provided by the sale of 43 Upper Montagu Street, a five storey Grade II terraced house which sold freehold for £470,000 in July 1995. Smaller than the subject property it was near the Marylebone Road end of the street, but less affected by traffic and more residential in character. The Connaught Square properties were better situated and in appearance identical to each other; No.7 had 47 years unexpired term and No.13 had 114 years unexpired. Mr Briant's analyses of these transactions was complicated by the need to adjust for location, length of lease and size.

The Tribunal concluded that the freehold value of the subject property was £450,000.

23. With regard to the value of the tenant's leasehold interest with 61 years unexpired, Mr Marr-Johnson took 85% of the freehold value which on his adjusted freehold value of £350,000, had he made a calculation at that stage of his valuation, would have given him £297,500, a sum less than the tenant paid for the property in 1986. This does not sit easily alongside the sale of the leasehold interest at 13 Upper Berkeley Street in April 1995 for £290,000 with 60½ years unexpired. This was in respect of the upper maisonette comprising entrance hall, kitchen on the upper ground floor and the first, second and third floors. To make a valid comparison, the value of the basement and the main ground floor accommodation must be added. Mr Briant's figure of £350,000 for the leasehold interest represents 70% of his freehold value. However, in the sales in June/July 1995 of 7 and 13 Connaught Square, the relationship in price in two ostensibly similar properties with different lengths of unexpired terms equated to 76.34%. Taking Mr Briant's adjustment of £50,000 to reflect the differences between a 47 year term and the 61 year term and rent review clauses, the figure becomes 83.97%.

The Tribunal decided upon £375,000 as the value of the tenant's leasehold interest as improved.

This may be contrasted with the price paid by Mr Williams in July 1986 of £330,000 when the unexpired term was 69 years. It was common ground that property prices were increasing rapidly at that time and continued to do so. A sustained period of falling prices resulting from the recession followed. It was Mr Marr-Johnson's view that prices had levelled out and that overall there was a slight increase over 1986 values. The sale of part only of the property at 13 Upper Berkeley Street at £290,000 in April 1995 one year after the material date for valuation suggests that this was understating the situation.

24. We turned next to the determination of the unimproved value of the freehold and leasehold. Ideally comparables drawn from unimproved property would provide the best or most direct evidence but there is none apart from the sale of the subject property itself in its unimproved state in 1980 for £120,000. For this transaction we had the particulars of the original sale which indicated that the whole of the front wall and much of the rear wall had recently been rebuilt and an entirely new roof constructed. The whole property required complete internal refurbishment and the renewal of the services, and the Estate required a lessee to refurbish the interior of the property to provide two or more residential units. The existing accommodation was stated simply as providing 14 rooms. We were provided with floor plans from April 1980 showing proposed works, including a small new rear extension at basement and ground floor levels. Regrettably, and perhaps surprisingly, the landlord was unable to provide any first hand evidence of the layout or condition of the interior at the time of the original sale to Cochrane or how much repair work was required as distinct from improvements.

Even if this had provided a firm base for the establishment of the unimproved value, inflation rates between 1980 and 1986 when Mr Williams purchased the refurbished and much improved property, might well have been different for unimproved and improved properties and indeed for the cost of such improvements. Mr Briant indicated that

refurbishment invariably includes elements of repair as well as improvement and suggested that rewiring the house was a repair, an additional bathroom installed was an improvement, and a new fitted kitchen, following the removal of old kitchen units, was a renewal. He found it difficult to quantify the value of such improvements (as distinct from repairs and renewals). However he valued the tenant's improvements at £40,000 based, not on cost, but on the additional value of the property which he considered was attributable to the improvements.

Mr Marr-Johnson put the cost of improvements at £150,000 based on present cost of conversion estimated by him at £50 per square foot and to this added for risk, finance, fees etc to give a total of £225,000 revised to £200,000 in his adjusted valuation. This he supported by the development appraisal subsequently prepared by the tenant's building surveyor Mr Yeadon, who estimated the current cost of fitting out the property in the sum of £181,550, inclusive of fees, but exclusive of VAT. The date of that appraisal was 18 September 1995. It is abundantly clear from Section 9(1A) of the 1967 Act that it is the value and not the cost of improvements which is to be ascertained.

Cost does not equate with value although it could conceivably do so in some cases. The Tribunal found it difficult to reconcile the opposing parties' approach to arrive at the unimproved value of the property. Mr Briant applied the same deduction of £40,000 to both the freehold and leasehold values, notwithstanding that the leasehold interest was a wasting asset. He also raised the question of obsolescence with the passage of time. Mr Marr-Johnson deducted £200,000 from his improved freehold value; and took 85% of that value for his leasehold value, effectively making the same percentage deduction for improvements in each case.

Whilst the cost of improvements would be the same whether the interest was freehold or leasehold, both the value of the leasehold and the value of such improvements will decline as the term reduces. Mindful that the improvements to the subject property changed its character from a shell to a high quality residence, and, in the absence of evidence of unimproved property to support a different view, the Tribunal adopted the same percentage deduction for tenant's improvements in the freehold and the leasehold valuations.

It was clear that the improvements were of a substantial character and the Tribunal decided therefore on a 30% deduction, which in relation to our freehold value of £450,000 amounted to £135,000 and to our leasehold value of £375,000 was £112,500.

The Tribunal accepts that the same percentage is applicable at each stage of the valuation, vide Section 9(1A)(d), notwithstanding that ordinarily, at the expiry of the term, the value of the improvements would enure to the benefit of the landlord. However in estimating the ground rent payable at the review date the capital value of the house was taken as improved in accordance with the terms of the lease.

25. Finally the Tribunal considered the rate per cent for capitalising the ground rent and in deferring the capital value. Mr Briant adopted 6% for the reasons set down in paragraph 14 above. He put forward settlements on the Eyre Estate and at 5/6 Northwick Close NW8 where this rate was adopted. Whilst it is clear that the tenants and their professional advisers agreed the final figure in these settlements, namely the agreed price, it seems to us that the elements in the calculation can be rearranged to support different rates of return, so we find little assistance in the evidence of settlements. Whilst the Tribunal recognised Mr Briant's reasoning as regards the Central London location and the relatively high value property, the location was mixed residential and commercial, the unexpired term of 61 years was medium term and the review rent at 21 year intervals was to a comparatively low one third of one per cent of the capital value. Indeed the initial ground rent of £420, relative to the £120,000 unimproved value, represented a similar proportion.

In the Leasehold Valuation Tribunal determination on 74 Maida Vale 6% yield was adopted with a 10 month unexpired term. In the case of Lloyd Jones v Church Commissioners for England the yield rate was 5½% with an unexpired term of 12 years. Finally, in the Trustees of the Eyre Estate case relating to 7 Queensmead NW8, 7% was adopted with 68¾ years unexpired, and a fixed ground rent for the duration of the term.

Mr Marr-Johnson adopted 10% for the reasons set down in paragraph 8 above. In the Leasehold Valuation Tribunal decisions referred to in Kensington the reversions were all in excess of 71 years on houses in good locations where a 9% yield was used. He accepted that there had been many settlements on the Grosvenor and Cadogan Estates around 6%, but believed that there must be a large element of double counting if a low remunerative rate is added to by a share of the marriage value. The Tribunal understood his argument but there was little evidence to support that view. As to the sale of ground rents at 8 Ecclestone Square, from the supporting documentation it would appear that the transaction also related to sums in a maintenance fund which may have affected the consideration. The Tribunal considered the BESSA Income Trust, an unauthorised unit trust which invested in ground rents, to be unhelpful. The investment criteria concentrated on long leases where the rent multiplier was low with the Property Manager seeking to maximise opportunities for capital gain. On the evidence adduced on both sides the Tribunal concluded that 7% was the appropriate yield in the particular circumstances of this case.

26. With regard to the share of the marriage value the Tribunal was not persuaded by Mr Briant's evidence that a figure greater than the one half share indicated in Section 9(1C) should be adopted; once again the marriage share is but one element in the calculation which can be adjusted without affecting the final price which the tenant pays. Accordingly, accepting Mr Cole's argument that both landlord and

tenant must be willing parties to the transaction, we determined the landlord's share of the marriage value as 50%.

27. In determining the ground rent on review the lease provides that the rent should be one third of one per cent of the capital value assuming an 80 year term at the review date. The Tribunal have already decided that the unencumbered freehold value is £450,000 and the tenants existing leasehold interest in its present improved state with 61 years unexpired is £375,000. For the purpose of the first rent review, for the remainder of the term, we have used a capital value of £420,000. The calculation for the review rent would therefore be:-
 $£420,000 \times \frac{1}{3}\% = £1400$.
28. Accordingly taking all the evidence and the above matters into account and applying our own knowledge and experience we make the following valuation:-

VALUATION

Price payable by tenant on enfranchisement under Section 9(1C) of the Leasehold Reform Act 1967.

| | | | |
|--|-------------------------|-----------------|-------------------------|
| <u>Ground Rent</u> | | £420 | |
| YP for 7 years @ 7% | | <u>5.389</u> | £2,263 |
| Reversion to | | £1,400 | |
| YP for 54 years @ 7% | 13.916 | | |
| PV of £1 in 7 years @ 7% | 0.6227 | <u>8.665</u> | £12,131 |
| Reversion to freehold value (net of tenants improvements) | | £315,000 | |
| PV of £1 in 61 years @ 7% | | <u>0.01613</u> | £5,081 |
| | | | <hr/> |
| | | | £19,475 |
| Value of freeholder's present interest | | say | £19,500 |
| <u>Marriage Value</u> | | | |
| Freehold value | £450,000 | | |
| Less for tenant's improvements | 135,000 | £315,000 | |
| | 30% | <hr/> | |
| Deduct Aggregate of:- | | | |
| (a) Lessee's Present Interest | £375,000 | | |
| Less for tenant's improvements | 112,500 | | |
| | 30% | <hr/> | |
| | | | £262,500 |
| (b) Freeholder's Present Interest | | | |
| as above | <u>£19,500</u> | <u>£282,000</u> | |
| | Difference | | £33,000 |
| | Share of Marriage Value | <u>50%</u> | <u>£16,500</u> |
| Price payable by tenant on enfranchisement | | | <u>£36,000</u> ===== |

29. The Tribunal, therefore determines the sum to be paid for the freehold interest in 15 Upper Berkeley Street W1 to be £36,000 (Thirty Six Thousand pounds).

CHAIRMAN..... *Hazel Fox*

DATE..... 27 February 1996.