

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION

UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicants: Mr and Mrs F Etedgui

Respondent: Viscount Chelsea and Cadogan Holdings Company

Intermediate landlord: The Heagerty Family Trust

Re 3 Astell Street, London SW3 3RT

Date of tenants' notice and valuation date: 10 November 1993

Application to the tribunal dated: 13 August 1996

Heard: 6 November 1997, with inspection 11 December 1997

Appearances:

Mr T Bannister (counsel)  
Mr S Marr-Johnson FRICS (Marr-Johnson & Stevens, chartered surveyors)  
Mr A A Buchanan (John D Wood & Co)  
Mr R Grant

for the tenants

Mr A Radevsky (counsel)  
Mr D Greenish (Lee & Pembertons, solicitors)  
Mr K Gibbs FRICS (Gerald Eve, chartered surveyors)  
Mr A McGillivray (W A Ellis)  
Mr M Yardley (Cadogan Holdings Company)

for the landlord

Members of the leasehold valuation tribunal:

Lady Wilson  
Mr G I Coe BSc FRICS  
Mr D Myer-Smith

Date of the tribunal's decision: 26 JAN 1998

## The facts

1. 3 Astell Street is a three storey house with a basement cellar built about 1930 and situated in a prime residential area of central London. It has a gross internal area of about 3239 ft<sup>2</sup> excluding the cellar, and about 3507 ft<sup>2</sup> including the cellar. It is subject to an underlease for a term of 63 years from 25 March 1943 at a fixed annual ground rent of £75. At the valuation date, which is 10 November 1993, 12.33 years of the term remained unexpired. The (then approximately 9¼ year) lease of the unmodernised property was sold, with the benefit of the notice, in or about November 1996 for £630,000. The property has since been very extensively renovated, but is agreed to have been without relevant improvements at the valuation date.

2. It was agreed that the value of the lease at the valuation date was £215,000, that the marriage value should be shared equally between the landlord and the tenants, that the deferment rate should be 6%, and that the interest of the intermediate landlord should not be assessed in these proceedings, the landlord and the intermediate landlord having agreed to settle between them at a later date the value of the intermediate landlord's interest.

3. The issues were:

- (i) the value of the freehold, and
- (ii) the capitalisation rate for the ground rent.

4. A valuation prepared by Mr Marr-Johnson for the tenants proposed a premium of £415,961, and a valuation prepared by Mr Gibbs for the landlord proposed a premium of £506,400. Mr Marr-Johnson's valuation is attached to this decision as appendix A, and Mr Gibbs's as appendix B.

5. On 11 December 1997, together with Mr Buchanan of John D Wood and Mr Yardley of Cadogan Holdings Company, we internally inspected 3 Astell Street, 22 Astell Street, 31 Jubilee Place, 1 Mulberry Walk and 17 Chelsea Park Gardens, and we externally inspected 23, 34 and 35 Astell Street, 21 Jubilee Place, all in London SW3, and all of which were comparables relied on by one or both of the valuers and listed in a schedule of comparables which is attached to this decision as appendix C.

## **Decision**

### **(i) The value of the freehold**

Mr Buchanan suggested a value of £700,000 and Mr McGillivray suggested a value of £825,000.

Mr Buchanan relied on the sales of 23, 35, 22 and 34 Astell Street and 21 Jubilee Place which are listed in the schedule. He particularly emphasised the lack of a garden at the subject, which he regarded as a major disadvantage. He had himself handled the marketing of the lease in 1996, and although 77 prospective purchasers had viewed the property, only two had offered to buy it. Another drawback was, he said, the poor outlook from the kitchen, which might be made even worse if the next door neighbour raised the height of the party wall. He considered that 31 Jubilee Place, 1 Mulberry Walk and 17 Chelsea Park Gardens, relied on by Mr McGillivray, were not good comparables - 31 Jubilee Place because, principally, of its garden, and 1 Mulberry Walk and 17 Chelsea Park Gardens because of their gardens and their rather different locations. He did not agree with Mr Radevsky's suggestion to him in cross-examination that the sales of a 40<sup>3</sup>/<sub>4</sub> year lease of 23 Astell Street and of a 50 year lease of 35 Astell

Street were poor comparables for the freehold value.

Mr Marr-Johnson, for the tenants, asked about the relativity between the value of the lease and the value of the freehold, said that he believed that the better the area, the higher the ratio of leasehold to freehold value.

Mr McGillivray, for the landlord, relied on the sales of the freehold interests in 31 Jubilee Place, 1 Mulberry Walk, 17 Chelsea Park Gardens, 34 Astell Street, 21 Jubilee Place and 23 Astell Street. He agreed that 22 Astell Street was a good comparable, which he would have relied on if he had been aware of it.

Mr Gibbs, also for the landlord, said that where, as here, there was a relatively short unexpired term, and where most of the services and facilities were over 50 years old, the differential between the leasehold and freehold vacant possession value will be greater, because a prospective tenant of this class of property would not contemplate moving in without substantial repair and decoration.

Both Mr Radevsky and Mr Bannister invited us to rely on the market evidence rather than on arguments based on relativities.

We are entirely satisfied that Mr McGillivray's valuation of this freehold is correct. We have not based this conclusion on graphs or on other material relating to relativities, but on the comparable transactions relating to freeholds, all of which in our view support the landlord's figure, which we regard as modest by comparison with the other freehold transactions, for this very substantial house, albeit without a garden. We agree with Mr Radevsky that freehold comparables are likely to be a more reliable method of valuing the freehold than leasehold comparables, although we were helped by the fact that only

5 months after the valuation date, the 40<sup>3</sup>/<sub>4</sub> year lease of the significantly smaller, and externally less impressive 23 Astell Street (though with garage and garden) was sold for more than the landlord's valuation of the freehold interest of the subject.

**(ii) The capitalisation rate for the ground rent**

Mr Marr-Johnson suggests a rate of 6%, and Mr Gibbs a rate of 5½%. The resolution of this issue affects the amount of the capitalised ground rent to be paid by only £18, and the price not at all. We prefer the rate suggested by Mr Marr-Johnson which is in line with other decisions of this tribunal and is, in our view, correct in principle.

**Determination**

We therefore determine the price to be paid for the freehold to be £506,400, in accordance with our valuation which is attached to this decision as appendix D.

CHAIRMAN.....

DATE..... 25 JAN 1998

**Mr & Mrs F Ettegui**  
**Leasehold Reform Acts 1967 & 1993**  
**3 Astell Street, London SW3 3RT**

<u>Freehold Valuation as at</u>	Nov 1993 claim	Mar 2006 expiry	
Ground rent per annum:			£75
Years' purchase for:	12.3 years at	6%	<u>8,541</u>
			£641
Reversion to unimproved value, freehold with vacant possession			£700,000
Present value of £1 after:	12.3 years at	6%	0.487546
			<u>£341,282</u>
Open market value of landlords' interest			£341,923
 <b>Marriage Calculation</b>			
Freehold with vacant possession			£700,000
less freeholders' interest	£341,923		
and lessee's interest @ 30% (ignoring the right to claim)	<u>£210,000</u>		<u>£551,923</u>
Total marriage value			£148,077
Landlords' share @ 50%			<u>0.5</u>
			<u>£74,039</u>
<b>Total enfranchisement price, excluding costs</b>			<u><u>£415,961</u></u>

**C S R Marr-Johnson**  
**6th November 1996**

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## CADOGAN HOLDINGS COMPANY

LEASEHOLD REFORM ACT 1967 (AS AMENDED)

Property: 3 Astell Street, London SW3

Date of Claim: November 10, 1993

Unexpired term of lease: 12.33 years

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

	£	£	£
<b>Value of Lessor's interest excluding marriage value</b>			
For remainder of term -			
Rent currently payable	75		
Capitalised for 12.33 years @ 5.50%	<u>8.786</u>	659	
For reversion to -			
Value of freehold in possession			
Deferred 12.33 years @ 6.00%	825,000	<u>0.4875</u>	402,850
		<u>402,191</u>	
<b>Add Lessor's share of marriage value</b>			
Value of freehold in possession		825,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	402,850		
Value of lessee's interest exclusive of marriage value	<u>215,000</u>	<u>617,850</u>	
Gain on marriage		207,150	
Attributed to lessor at 50.0%			<u>103,575</u>
Enfranchisement price			506,425
		say	<u>£ 506,400</u>

Nov-97

**Gerald Eve**  
 Chartered Surveyors  
 KDG/JRD/A10889

3 ASTELL STREET - OPEN MARKET COMPARABLES

Address	Date of Sale	Lease Length (ground rent £pa)	Accommodation (Area in sq ft)	Notes	Rate per Sq Ft (£)	Price
31 Jubilee Place	July 1992	Freehold	3,656 7 beds, 4 baths, shower, 3 receipts	Terrace, garden, integral garage	341	£1,250,000
21 Jubilee Place	September 1993	Freehold	2,268 4 beds, 2 baths, shower, 2 receipts	Terrace	249	£565,000
34 Astell Street	October 1993	Freehold	1,990 3 beds, 2 baths, 3 receipts	Small rear courtyard	256	£510,000
1 Mulberry Walk	December 1993	Freehold	3,505 6 beds, 4 baths, 4 receipts	UNMODERNISED garden, small roof terrace	299	£1,050,000
23 Astell Street	April 1994	40 <sup>3</sup> / <sub>4</sub> GR £54 pa	2,999 6 beds, 3 baths, 3 receipts	Garden, integral garage	281*	£845,000
17 Chelsea Park Gardens	August 1994	Freehold	3,173 6 beds, 3 baths, 2 receipts	Communal garden	393	£1,250,000

\* Note: Low rate per sq ft achieved as a result of length of lease

VALUATION

Address	Date of Notice	Lease Length (ground rent £pa)	Accommodation (Area in sq ft)	Notes	Rate per Sq Ft (£)	Valuation
3 Astell Street	November 1993	12.33	3,239 7/8 beds, 2 baths, 3/4 receipts			
3 Astell Street	November 1993	Freehold	3,239 7/8 beds, 2 baths, 3/4 receipts		254	£825,000



**LEASEHOLD REFORM ACT 1967 (As amended)**

**3, ASTELL STREET, LONDON, SW 3**

Valuation date: 10 November 1993

**Value of Lessor's Present Interest**

	£75		
Ground Rent receivable, per annum	8.541		
12.3 years @ 6%	£641		
Reversion			
Freehold interest excluding tenant's improvements	£825,000		
Deferred 12.3 yrs @ 6%	0.4875		
	£402,188		
Value of lessor's interest		£402,829	
<b><u>Lessor's share of marriage value</u></b>			
Freehold interest - as above	£825,000		
Less :			
Value of lessee's interest	£215,000		
Value of lessor's interest - as above	£402,829		
	£617,829		
Marriage Value		£207,171	
50% to lessor			£103,586
			£506,415
	Total		£506,415
	Say		£506,400
<b><u>Enfranchisement Price</u></b>			