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LON/LVT/717

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

RECEIVED
02 MAR 1998

Applicants: Mr and Mrs R Adams

Respondent: The Trustees of the Eyre Estate

Re 26 Marlborough Place, London NW8

Tenants' notice of claim and valuation date: 3 October 1996

Application to the tribunal: 19 May 1997

Heard: 6 January 1998, with inspection 9 February 1998

Appearances:

Mr T Dutton (counsel)
Mr C S R Marr-Johnson FRICS (Marr-Johnson & Stevens, chartered surveyors)
Mr R Adams (tenant)

for the tenants

Mr J E C Briant ARICS (Cluttons Daniel Smith, chartered surveyors)

for the landlord

Leasehold valuation tribunal:

Lady Wilson
Mr R Potter FRICS
Mrs M Cunningham JP MA

Date of the tribunal's decision: **27 FEB 1998**

The facts

1. 26 Marlborough Place is a Grade II listed detached Victorian Gothic house with an effective floor A area of 230m². Its accommodation, as improved by the tenants, includes five bedrooms, three bathrooms and a playroom built into the roof space on the second floor. It has a garage, and off street parking space for five cars. There is a garden at the rear and the area of the whole site is approximately 884m². It is held by the tenants under a lease dated 13 October 1989 for a term of 77½ years which expires on 24 December 2066 at a current ground rent of £1000 per annum, rising at 21 year intervals to 1/60 of land value. Approximately 70¼ years of the term remained outstanding at the valuation date, which is 3 October 1996, and the first rent review is due in 2010.

2. Mr Marr-Johnson for the tenants proposes a premium of £115,723, and Mr Briant for the landlord a premium of £229,669. Their valuations are attached to this decision as appendices A and B respectively. They agree that the marriage value should be divided equally and that the value of the tenants' improvements is £100,000.

3. The issues are:

- (i) the value of the unimproved freehold interest,
- (ii) the value of the unimproved leasehold interest,
- (iii) the yield,
- (iv) the ground rent on review.

4. On 9 February we internally inspected 26 and 30 Marlborough Place, and we externally inspected all the comparables listed in a schedule attached to this decision as appendix C, and 28 and 34 Elm Tree Road and 67A Marlborough Place, which Mr

Briant relies on as comparables for the freehold land value.

Decision

(i) the value of the freehold

Mr Marr-Johnson proposes a value of £1,515,000. He bases this on a settlement of a leasehold enfranchisement claim in respect of 30 Marlborough Place, a very similar house, though with a larger A area, two doors from 26. About 43 years remained on the lease at the valuation date, 21 June 1994, and the ground rent was £200 per annum with a review to $\frac{1}{30}$ of site value. The tenant's claim was determined by a leasehold valuation tribunal, and the landlord's appeal to the Lands Tribunal was compromised at £350,000 shortly before the hearing. Mr Marr-Johnson arrives at his freehold value of No 26 by taking what appears to have been the agreed freehold value of No 30 (£1,250,000), and updating it to the valuation date in the present case by reference to the Savills Prime Central London (North) Residential Capital Values Index, which showed a 21.1% increase between the two valuation dates. He says that the comparables which Mr Briant relies on are secondary, and interesting rather than directly relevant.

Mr Briant says that Mr Marr-Johnson's approach is unsound. The essence of valuation, he says, is that it should be based on the evidence of comparables. By taking only one transaction (particularly based on compromise rather than tested in the market) and relying solely on an index which includes unidentified properties of all kinds, including flats, and in a number of different types of locality, Mr Marr-Johnson has fallen into error. He says that his own valuation, based on identified freehold comparables, is transparent and greatly more reliable. He takes the transactions relating to 9 Cavendish

Avenue, 29 Acacia Road, 25 Queen's Grove, and 57 and 123 Hamilton Terrace which are listed in appendix C, and adjusts them for factors such as size, condition, facilities, location and valuation date, to arrive at his valuation of the freehold of £1,800,000.

We prefer Mr Briant's approach, although in our view none of the freehold comparables he relies on is closely similar to the property we are considering. While the figure agreed for the value of the freehold of No 30 as at June 1994 is a factor which we are entitled to take into account, we have to remember that it is only a figure agreed for the purpose of the compromise of litigation, and, as such, it should be viewed with caution. Moreover, the valuation date for No 30 was a considerable time ago, and the Savills Index, though no doubt a good general guide to price movements over a given period, is too unspecific to be an entirely reliable guide to price movement affecting a particular property. In arriving at our valuation of the freehold, we have taken into account all the freehold comparables relied on by Mr Briant with the exception of 29 Acacia Road, (which is an offer and not a completed transaction), and of 25 Queen's Grove, (the sale of a 41 $\frac{3}{4}$ year lease with a negotiated additional payment for the freehold, which we regard as an unreliable guide), together with the agreed figure for the freehold of No 30, and the sale (discussed in more detail below) in September 1993 for £1,075,000 of the then 73 year lease of the improved subject property, which we regard as particularly helpful. Based on the totality of the evidence, we consider the value of the unimproved interest at the valuation date to be £1,700,000.

(ii) value of the lease

Mr Marr-Johnson values the existing lease at £1,365,000. He arrives at this figure principally by considering the sale in September 1993 of the then 73 year improved leasehold interest in the subject. He says that the Savills Index for the period between

the exchange of contracts (5 July 1993) and the claim date for No 30 (June 1994) shows a rise of 15.9%, which suggests an improved leasehold value of £1,245,925, which is 92.3% of the improved freehold value of No 30. He then further adjusts his improved leasehold value of No 26 by 40.4% in accordance with the Savills Index to allow for the increase in value between the exchange of contracts on No 26 and the valuation date, to produce a value of £1,509,000 for the improved leasehold, which is 93.4% of the improved leasehold value. This, he says, seems too high, so he adjusts the differential to 90%, which gives an unimproved leasehold value of £1,365,000. He does not consider that the price paid for the lease in September 1993 included any element of hope value for enfranchisement because so little was then known about the workings of the legislation which had recently altered and extended enfranchisement rights in respect of high value houses. Mr Adams, one of the tenants, was called by Mr Dutton to give evidence that when he and his wife bought their house they also considered buying No 30, which was on the market at the same time. He said that the houses were very similar, but that they regarded the lease of No 26 as more attractive mainly because the ground rent review was less onerous, and the possibility of enfranchisement was not a factor which they took into account.

Mr Briant values the existing lease at £1,500,000, relying on the sale of the improved lease of the subject in September 1993 and on the sale (listed in appendix C) with the benefit of a valid notice of claim, of a then 66 year lease of 29 Norfolk Road for £1,900,000. He adjusts the sale of 29 Norfolk Road to allow for the value of the notice of claim, for the superior location of the comparable, for its inferior off street parking, and for market movement. He adjusts the sale of the subject by about 50% to allow for market movement, because, he says, the uplift in the market for houses over the relevant period was greater in St John's Wood than the 36.17% suggested by the Savills Index as appropriate for north London properties generally. He then deducts £100,000 for

improvements. He also relies as a cross-check, because of the lack of good leasehold comparable evidence, on a graph showing differentials between leasehold and freehold values derived from settlements and leasehold valuation decisions on the Eyre and John Lyons Charity Estates which, he says, suggests that the differential between the leasehold and freehold values in the present case should be in the region of 83%, which, he says, is consistent with his valuation and is supported by recent settlement evidence. He says that Mr Marr-Johnson's proposed differential of 90% is well off the mark.

We accept from Mr Adams that the price he paid for the lease in September 1993 did not include a significant element for the right to enfranchise. In our view, based on the sales of the leases of the subject and of 29 Norfolk Road, together with, as a cross-check, our opinion of the likely differential between the leasehold and freehold values, as to which we accept that the graph produced by Mr Briant is a useful broad general indication of the band of likely differentials, the value of this lease at the valuation date, unimproved, is £1,425,000.

(iii) yield

Mr Marr-Johnson suggests a yield of 7%. He accepts that the best parts of central London now generally attract a yield of 6% in valuations under the 1967 Act, but says that the subject is not central, it faces a busy road, and that there is no market evidence to support a yield of 6%. Other leasehold decisions in the area, notably *139 Hamilton Terrace* (LON/LVT/597) had been at 7%. Although the yield in relation to 30 Marlborough Place had been agreed at 6%, the lease was much shorter, and the rent review was more favourable to the landlord.

Mr Briant argues for 6%. He relies on a schedule of enfranchisement settlements and

leasehold valuation tribunal decisions which are not subject to appeals, which show that high value properties in good locations in St John's Wood have been agreed or determined at 6%. He also refers to a bundle of agreed breakdowns of prices agreed on enfranchisement settlements on the landlord's estate, which also show yields of 6%. He says that factors affecting yields include location and capital value.

In our view the appropriate yield in the present case is 6%. We accept that settlements must always be viewed with caution and that they do not necessarily govern the result in another case, as, indeed, leasehold valuations do not. We also consider that, by excluding from his schedule all leasehold valuation decisions not subject to appeal, Mr Briant has excluded most decisions which apply a yield greater than 6%, which is, though understandable, a distortion. We accept, too, that Marlborough Place, though a very good location in St John's Wood, is subject to the disadvantage of heavy traffic at some times of the day, and that the different lease length and rent review provisions at 30 Marlborough Place distinguish it to some extent from the present case. Nevertheless, taking into account the quality of the property, its location, and the rent review clause, together with the settlement evidence, particularly the settlement relating to 30 Marlborough Place, we consider on balance that 6% is the appropriate yield.

(iv) ground rent on review

Mr Marr-Johnson says that the rent at the first review should be taken at £10,767 per annum, based on a land value of 40% of £1,615,000, his estimate of the improved value of the freehold, which he considers to be equivalent to its gross development value. He says that there is very little, if any, scope for improving the existing house, which is a listed building and would have to retain its existing external appearance, although he concedes that the addition of a basement might be possible. Mr Dutton argues that in

comparing the value of the site at 67A Marlborough Place with the value of the site at 26, account should be taken of the fact that the cost of building a single house on each of the sites will be the same, so that the values of the sites should be similar.

Mr Briant says that the rent should be taken at £16,667 per annum. He bases this on his estimate of the land value, which is £1,000,000. He relies on the sale for £1,500,000 in April 1991 of a 70 year lease of a property at 34 Elm Tree Road (the subject of a leasehold valuation decision LON/LVT/716) which was subsequently demolished and rebuilt, on the sale for £1,500,000 in June 1995 of a property at 28 Elm Tree Road which was subject to a subsidence claim and was also demolished and rebuilt, and on the sale for £500,000 in November 1996 of a cleared site of 225m² at 67A Marlborough Place. This last is, he says, the best comparable. He adjusts the sale upwards to allow for the much greater size (884m²) and better shape of the subject. As a cross-check, he says that he considers the gross development value of the subject at the valuation date to be £2,500,000, allowing for the addition of a basement and rearrangement of the accommodation, and says that, assuming the site to be worth not less than 40% of the gross development value, (in fact, he considers that 40% is too low but accepts that it is the figure usually adopted), the gross development value approach supports the value produced by the cleared site approach. He also, as further cross-check, gives a residual valuation at the same figure.

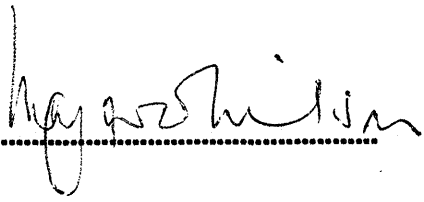
We have not used a residual valuation, which we consider too subjective to be reliable, nor have we found it necessary to arrive at the gross development value in view of the very helpful evidence of the value of the cleared site at 67A Marlborough Place. This site is very much smaller and more hemmed in by other buildings than the site of the subject, and it is in a less attractive and prestigious, though somewhat quieter, part of Marlborough Place. In our view it provides very good support for Mr Briant's valuation

of the subject site, which we accept at £1,000,000. We accordingly take the ground rent at the first review to be £16,667 per annum.

Determination

We therefore determine that the price to be paid for the freehold in possession is £216,000, in accordance with our valuation which is attached to this decision as appendix D.

CHAIRMAN.....



DATE.....

27 FEB 1998

Mr & Mrs R Adams

Leasehold Reform Acts 1967 & 1993

26 Marlborough Place, London NW8

<u>Freehold Valuation as at</u>			Oct 1996 claim	Dec 2066 expiry	
Ground rent per annum:					£1,000
Years' purchase for:	70.2	years at	7%		<u>14.162</u>
					£14,162
Rent review at	Jun 2010	with increase of:			£9,767 *pa
	(years)	(rate)			
Years' purchase for:	70.2	7%	14.1618		
less ditto for:	13.7	7%	<u>8.61831</u>	<u>5.54347</u>	
					£54,141
Reversion to fully repaired but unimproved value, freehold with vacant possession				£1,515,000	
Present value of £1 after:	70.2	years at	7%	<u>0.008675</u>	
					<u>£13,143</u>
Open market value of landlords' interest					£81,446
Marriage Calculation					
Freehold as above				£1,515,000	
less freeholders' interest			£81,446		
and lessee's interest @	90%	say	<u>£1,365,000</u>		
(ignoring the right to claim)				<u>£1,446,446</u>	
Total marriage value				£68,554	
Landlords' share @ 50%				<u>0.5</u>	
					<u>£34,277</u>
Enfranchisement price exclusive of costs					<u>£115,723</u>

C S R Marr-Johnson

6th January 1998

* Rent review based on cleared site value of say:

£1,615,000	at	40%	£646,000	
	at	1/60	£10,767	new rent
		less	£1,000	old rent
			<u>£9,767</u>	increase at June 2010

26 MARLBOROUGH PLACE S 9(1c)

Valuation Date: 03/10/96

LEASE TERMS:

Lease commenced:	24/06/89
Lease to expire:	25/12/66
Unexpired Term:	70.27
Ground rent (pa) to review:	£1,000
Date of Review:	24/06/10
Term to Review:	13.73
Term post Review:	56.54
Ground rent (pa) post review:	£16,667

FHVP Less improvements	£1,800,000	
Leasehold value less improvements	£1,500,000	83.33%

LANDLORDS INTEREST:

Term 1:

Ground Rent:			£1,000
YP	13.73 @	6%	9.1787

£9,179

Term 2:

Ground Rent:			£16,667
YP	56.54 @	6%	16.0487
PV £1	13.73 @	6%	0.4493

7.2103

£120,173

Reversion:

FHVP Less improvements:			£1,800,000
PV £1	70.27 @	6%	0.0167

£29,987

£159,339

MARRIAGE VALUE:

FHVP:	£1,800,000
Less	
Landlords Interest:	£159,339
Leasehold Interest:	£1,500,000

Total Marriage Value: £140,661

Take 50% MV £70,331**Enfranchisement Price****£229,669**

26 MARLBOROUGH PLACE, LONDON NW8

Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
26 MARLBOROUGH PLACE	Semi detached double fronted gothic style house with stucco elevations.	230 m ² 2477 sq ft	INTERNAL: 5 bedrooms, 3 bathrooms (1 en suite), living room, study, kitchen, breakfast room, dining room cloakroom, W.C, playroom. EXTERNAL: Garage, In Out driveway with OSP approx 5 cars, large rear garden.	77 1/2 years from 24/6/89, expiring 25/12/2066. 70 1/4 years unexpired.	£1,000 p.a. Reviews every 21 years to 1/60th of the F/H land value.	£1,075,000 in September 1993	Valuation date 3/10/1996
FREEHOLD COMPARABLES							
29 ACACIA ROAD	4 storey detached house in need of internal modernisation.	207 m ² 2228 sq ft	INTERNAL: Entrance hall, guest cloakroom, living room, dining room, kitchen, 8 bedrooms, 2 bathrooms, self contained lower ground floor flat comprising 5 rooms. EXTERNAL: Garage, OSP for 3 cars.	FREEHOLD	N/A	£2,300,000	Under Offer October 1997
9 CAVENDISH AVENUE	Detached 4 storey house. Tired condition in 1994. Excellent condition in 1997.	Not known but approximately 300 m ²	INTERNAL: 6 bedrooms, 3 reception rooms, 3 bathrooms. EXTERNAL: Driveway, OSP 3, rear garden, front courtyard.	FREEHOLD	N/A	£2,250,000 £4,125,000	November 1994 April 1997
57 HAMILTON TERRACE	Detached period house of brick construction under a slate roof.	201 m ² 2163 sq ft	INTERNAL: 5 bedrooms, 3 bathrooms (1 en suite), Kitchen, family room, staffbedroom, bathroom, drawing room, dining room, study. EXTERNAL: Rear garden overlooked by the Telephone exchange. No provision for OSP	FREEHOLD	N/A	£1,425,000	December 1996
123 HAMILTON TERRACE	4 storey linked detached 1930's house. Good condition	295 m ² 3175 sq ft	INTERNAL: study, family room, kitchen/breakfast room, dining room, reception room, utility room, 7 bedrooms, 2 bathrooms (1 en suite) EXTERNAL: Rear garden OSP 4 cars	FREEHOLD	N/A	£2,600,000	April 1997
25 QUEEN'S GROVE	Detached 1930's low-built house situated on corner of Ordnance Hill.	358 m ²	INTERNAL: 7 bedrooms, 2 bathrooms, 2 WC's, 4 reception rooms, kitchen, pantry, boiler room. EXTERNAL: Small garden, OSP 4	41 3/4 years Unexpired and FREEHOLD SALE.	£90pa Fixed	£2,200,000 for L/H interest. £450,000 extra for F/H interest.	April 1997

APPENDIX C

26 MARLBOROUGH PLACE, LONDON NW8

Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
26 MARLBOROUGH PLACE	Semi detached double fronted gothic style house with stucco elevations.	230 m ² 2477 sq ft	INTERNAL: 5 bedrooms, 3 bathrooms (1 en suite), living room, study, kitchen, breakfast room, dining room cloakroom, WC, playroom. EXTERNAL: Garage, In Out driveway with OSP approx 5 cars, large rear garden.	77 1/2 years from 24/6/89, expiring 25/12/2066. 70 1/4 years unexpired.	£1,000 p.a. Reviews every 21 years to 1/60th of the freehold land valu.	Valuation date 3/10/1996	
LEASEHOLD COMPARABLES							
26 MARLBOROUGH PLACE	Semi detached double fronted gothic style house with stucco elevations.	230 m ² 2477 sq ft	INTERNAL: 5 bedrooms, 3 bathrooms (1 en suite), living room, study, kitchen, breakfast room, dining room cloakroom, WC, playroom. EXTERNAL: Garage, In Out driveway with OSP approx 5 cars, large rear garden.	77 1/2 years from 24/6/89, expiring 25/12/2066. 70 1/4 years unexpired.	£1,000 p.a. Reviews every 21 years to 1/60th of the freehold land valu.	£1,075,000 in September 1993	Valuation date 3/10/1996
29 NORFOLK ROAD	Detached grade II listed Gothic style double fronted house, set behind a garden wall.	234 m ² 2513 sq. ft	INTERNAL: 5 bedrooms and staff bedroom, 3 bathrooms, 2 reception rooms, family room, study, kitchen/ breakfast room, utility room. EXTERNAL: Landscaped south facing rear garden, Single garage, off street parking for 2 cars.	Leasehold 79 years from 24th June 1983 expiring 24 June 2062. Unexpired term 66 years	£400 p.a. review in 2003 to 1/30th of the site value	£1,900,000 Assigned with the benefit of notice.	February 1997

26 Marlborough Place Section 9(1c)

Valuation Date: 03/10/96

LEASE TERMS:

Lease commenced: 24/06/89
 Lease to expire: 25/12/66
 Unexpired term: 70.27
 Ground rent (pa) to review: £1,000
 Date of Review: 24/06/10
 Term to Review: 13.73
 Term post Review: 56.54
 Ground rent (pa) post review: £16,667

FHVP Less improvements £1,700,000
 Leasehold value less improvements £1,425,000

LANDLORDS INTEREST:

Term 1:

Ground Rent: £1,000
 YP 13.73@ 6% 9.1787
 £9,179

Term 2:

Ground Rent: £16,667
 YP 56.54@ 6% 16.0487
 PV £1 13.73@ 6% 0.4493 7.2103
 £120,173

Reversion:

FHVP Less improvements: £1,700,000
 PV £1 70.27@ 6% 0.0167
 £28,390

£157,742

MARRIAGE VALUE:

FHVP: £1,700,000
 Less
 Landlords Interest: £ 157,742
 Leasehold Interest: £1,425,000

Total Marriage Value: £117,258
 Take 50% MV

£58,629Enfranchisement Price

Say £216,371
£216,000