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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: Mrs P Clemence

RESPONDENT: Grosvenor Estate, Belgravia

RE: 11 Wilton Crescent, London SW1

DATE OF TENANT'S NOTICE: 22 December 1993

APPLICATION TO TRIBUNAL DATED: 20 June 1995

HEARD: 27 October and 9 December 1997

APPEARANCES: Mr T Clemence
Mr T Bannister (Counsel)
Mr C S R Marr-Johnson FRICS (Marr Johnson & Stevens)
Mr S Umfreville (Messrs De Groot Collis)

for the Tenant

Mr A Radevsky (Counsel)
Mr P Scoble, (Messrs Boodle Hatfield, Solicitors)
Mr I Macpherson FRICS (Messrs Gerald Eve)
Mr G Pope FRICS (Messrs John D Wood & Co)

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs J S L Goulden JP (Chairman)
Mr D E F Baldock FRICS
Mr D J Wills ACIB

Date of Tribunal's decision 17 June 1998.

Description

A substantial Grade II listed six storey mid terrace early Victorian stone faced town house with bottle balustrading at roof level and dentiled cornice between the fifth and sixth storeys and providing the following accommodation:-

<u>Floor</u>	<u>Description</u>	<u>Dimensions in metres</u> <u>(feet and inches)</u>	
Ground	Entrance Lobby		
	Cloakroom (with WC and wash basin)		
	Inner Hall		
	Dining Room	4.3 x 6.4	(14'2" x 21'10")
	Kitchen	3.2 x 5.7	(10'6" x 18'9")
	Study	4.0 x 6.9	(13'2" x 22'7")
First	Landing		
	Drawing Room	6.35 x 10.57	(20'10" x 34'9")
	Roof Terrace		
Second	Landing		
	Bedroom 1	6.35 x 4.2	(20'10" x 13'10")
	Bathroom en suite		
Third	Landing		
	Bedroom 2	6.4 x 4.6	(21'0" x 15'2")
	Bedroom 3	3.35 x 6.4	(11'0" x 21'0")
	Bathroom		
Fourth	Landing		
	Bedroom 4	6.4 x 4.6	(21'0" x 15'2")
	Bathroom en suite		
	Bedroom 5	3.7 x 4.0	(12'2" x 13'2")
	Shower room en suite		
Basement	Bedroom 6	4.2 x 4.8	(13'10" x 15'10")
	Shower room en suite		
	Laundry room	4.5 x 5.3	(14'10" x 17'5")
	Staff sitting room	3.9 x 5.4	(12'10" x 17'9")
	Staff bedroom	3.1 x 5.5	(10'3" x 18'1")
	Bathroom		
	Boiler room		
	Patio		

The ground, first, second and basement floors are connected by a lift as well as stairs.

Values

On the reversionary value of the freeholder's interest unimproved there was a difference of £350,000 between the values. £3,850,000 from Mr MacPherson for the freeholder and £3,500,000 from Mr Marr-Johnson for the lessee. The gap largely accounted for by the value of the improvements. In respect of the value of the unimproved leasehold interest the difference was £50,000. Mr MacPherson going straight to his valuation of £1,700,000 and Mr Marr-Johnson took a differential of 50% on his freehold value giving a figure £1,750,000.

The Tribunal after considering and examining the evidence of Mr Pope and Mr Umfreville decided on a value of £3,650,000 for the freeholder interest and £1,750,000 for the leasehold.

Additional Loss Claim

The relevant basis of valuation for this enfranchisement is to be found in the Leasehold Reform Act 1967 as amended Section 9(1C), which relevant amendment was introduced by Leasehold Reform, Housing and Urban Development Act 1993 Section 66 and reproduced in Schedule 15. It provides for the enfranchisement price payable to be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions.

- “(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this part of this Act conferred no right to acquire the freehold or an extended lease and where the tenancy has been extended under this Part of this Act, that the tenancy will terminate on the original term date;”
- (b) is not applicable to Section 9(1C).
- “(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;
- (d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by an improvement carried out by the tenant or his predecessors in title at their own expense;
- (e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of

the tenancy from any liability or charge in respect of tenant's incumbrances;
and

- (f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below”.

The following provisions apply also that,

- “(a) if in determining the price so payable there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall not exceed one-half of it; and
- (b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section.”

Section 9A provides that

“If the landlord will suffer any loss or damage to which this section applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

2. This section applies to -

- (a) any diminution in value of any interest of the landlord in other property resulting from the acquisition of his interest in the house and premises; and
- (b) any loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.”

Although there was a dispute as to whether the landlord could offer the whole of the mews property with vacant possession when the lease expires, it is accepted by the Tribunal that the garage, the most valuable asset for the owner of the subject property, would be available. The Tribunal therefore determined that a case had been made for compensation to the landlord under this head for the inability, as a consequence of this enfranchisement, to sell the subject property with the contiguous rear property viz 20/20A Kinerton Street. Indeed the tenant's valuers appear to have conceded this in their suggested figure of £175,000. The landlord's valuers put this loss at £250,000. The Tribunal has determined that a figure of £200,000 is appropriate in this case.

At the hearing the following points were agreed:-

1. The share of Marriage Value was agreed at 50%.
2. Capitalisation and deferment rates were agreed at 6%.
3. The valuation date was agreed as 22 February 1994.
4. Apportionment of ground rents agreed as to £150 per annum in respect of the subject property and £75 per annum for 20/20A Kinnerton Street (totalling £225 per annum)

The points in issue were as follows:-

1. Improvements
2. Values
3. Additional loss claim

Improvements

Mr Pope for the landlord suggested that it was fair and reasonable that the value of the improvements including the lift was £150,000 and should only be those which added value. In support of this contention, Mr Radevsky referred to the Lands Tribunal case of Vignaud v Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon (1995). No specific figure was suggested on behalf of the tenant but Mr Bannister on behalf of the tenant said that since the Tribunal must take these into account, it was for the Tribunal to judge whether or not the works had been carried out and if so, their value. He referred the Tribunal to the 1963 plans exhibited to Mr Pope's report (Appendix 4) and also the plans in Mr Umfreville's report (Appendix 2). It was suggested that from a perusal of these plans it could be seen that the tenant had done enough to prove that the works had been carried out and the Tribunal should take such improvements into account in whatever sum was deemed appropriate.

Values

There was a significant difference between the parties' valuers as to the present unimproved value of the freehold interest. The landlord was of the view that this should be £3,850,000. With the tenant suggesting a figure of £3,500,000. It was suggested by Mr Radevsky that most of the difference was made up by the conflicting views between the parties as to the relative value of a 21 year lease when compared to the freehold - the landlord maintained this was worth 44% of the freehold and the tenant says 50%. In support of the landlord's contention Mr Radevsky urged the Tribunal to consider the volume of settlement evidence, the graph indicating relativity prepared by Gerald Eve/John D Wood and the table prepared by W A Ellis. In support of the tenant's contention, the Tribunal was referred to the LVT decision in 36/37 Eaton Mews South where a similar length of lease had been considered.

Mr Bannister on behalf of the tenant said that with regard to the freehold value, some of the comparables included furniture and these should be treated with caution. As to Mr Radevsky's contention that the Tribunal should have regard to the "massive volume" of settlement evidence, Mr Bannister said that this was no reason to give them "massive support" in each case. He also felt that the Tribunal should be cautious of reliance on graphs - he said this was evidence only of the opinions of Mr Pope and Mr Macpherson and took into account a much wider area which, he suggested, had no relevance to these particular capital values. With regard to the value of the lessee's interest, the landlord suggested this should be £1,700,000 and the tenant £1,750,000. Both parties agreed that the difference was small.

Additional Loss Claim

Being the difference in value between the subject property and 20/20A Kinnerton Street for sale together and separately. The landlord suggests £250,000 and the tenant £175,000. There was dispute between the parties as to whether the landlord might not be able to offer the whole of the mews property with vacant possession when the lease expires. Mr Radevsky said that the garage would be available. He also argued the legal position with regard to possession of the other parts of the mews property. Mr Bannister said that the landlord must show that the properties would fall in at the same time to get the benefit of compensation for additional loss.

Mr Macpherson for the freeholder asked for an enfranchisement price of £1,706,600 (Appendix B). Mr Marr-Johnson requested £1,380,920 (Appendix C).

Inspection

The Tribunal inspected the exterior and interior of the subject property and the exteriors Nos 3, 7, 9, 19, 25 and 29 Wilton Crescent and 49 and 80 Chester Square being comparables supplied by both parties.

Conclusions

Improvements

The relevance of these were disputed at the hearing and the Tribunal confirmed that these would be inspected in relation to this aspect with care. Mr Umfreville cited three fine marble bathrooms and a shower room, an extension to the drawing room on the first floor at the rear, the creation of a roof terrace and a passenger lift. Mr Pope put the value at £150,000 but Mr Umfreville did not offer a value and left it to the Tribunal to decide. We adopted the figure of Mr Pope viz £150,000.

Enfranchisement

The Tribunal determined the sum to be paid for the freehold interest in 11 Wilton Crescent London SW1 is £1,538,140 (one million five hundred and thirty eight thousand one hundred and forty pounds). Details of the Tribunal's valuation are set out in Appendix A.

CHAIRMAN



DATE

17 June 1998



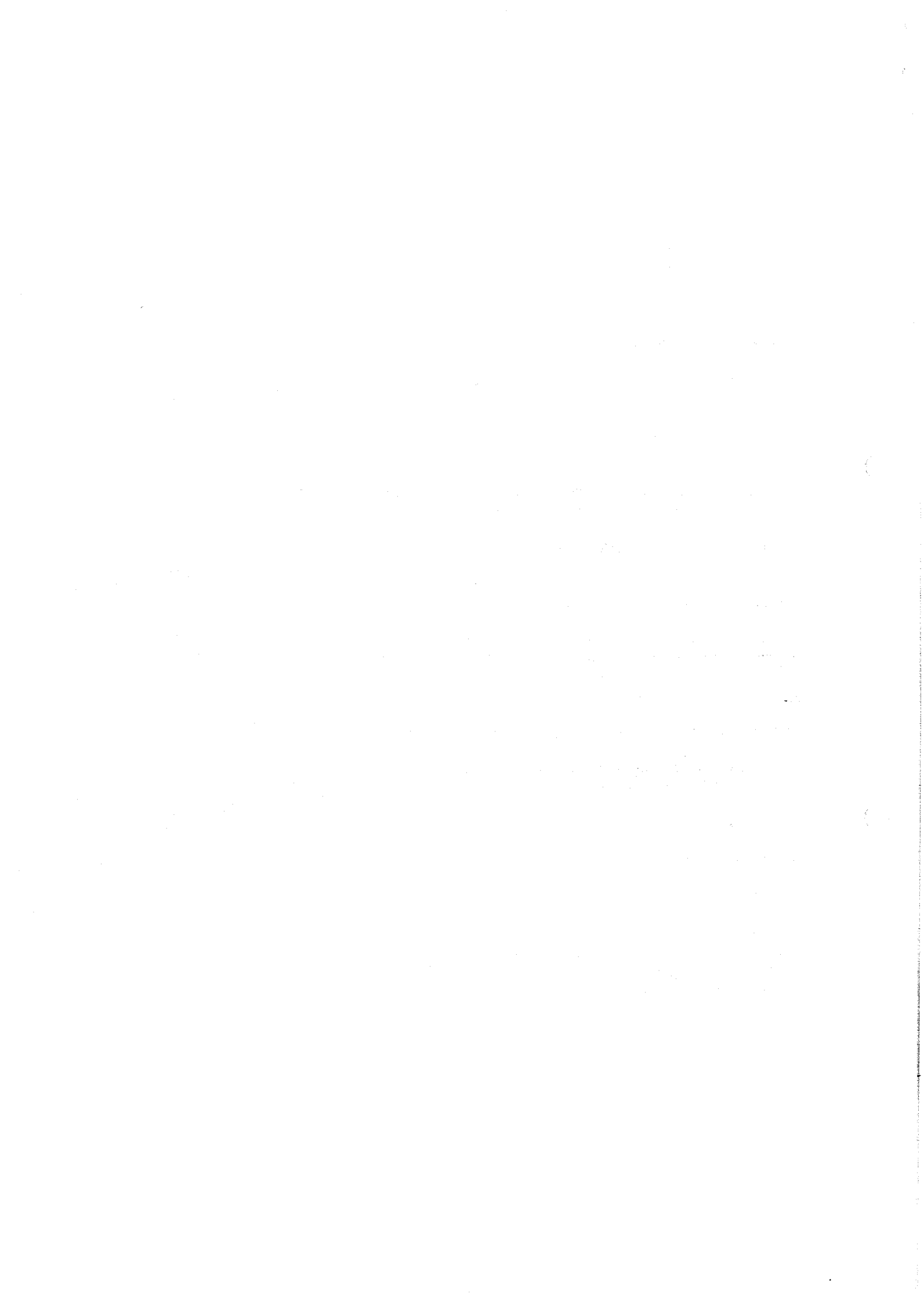
11 Wilton Crescent London SW1

THE TRIBUNAL'S VALUATIONValue of freeholder's interestGround rent income

Agreed apportioned ground rent	150		
Y.P. for UXT agreed of 21.25 years @ 6%	<u>11.835</u>	1,775	
<u>Reversion to unimproved freehold V.P. value</u>	3,650,000		
P.V. of £1 in 21.25 years @ 6%	<u>0.29</u>	<u>1,058,500</u>	1,060,275
<u>Marriage Value</u>			
Value of freehold		3,650,000	
less			
Value of unimproved leasehold interest	1,750,000		
Value of freeholder's interest	<u>1,060,275</u>	<u>2,810,275</u>	
Marriage Value		839,725	
Freeholder's share @ 50%			419,862
Compensation under Section 9A	200,000		
P.V. of £1 in 21.25 years @ 6%	<u>0.29</u>		58,000
		TOTAL	<u>1,538,137</u>
ENFRANCHISEMENT PRICE		say	<u>£1,538,140</u>

LEASEHOLD REFORM ACT 1967 AS AMENDED
Section 9(1C)
Valuation
of
11 Wilton Crescent, London, SW1
at 22nd February 1994
by
Ian Macpherson M.A. FRICS

<u>Valuation of landlords' interest excluding marriage value</u>	£	£	£
For lease term remaining -			
Ground rent currently payable	150		
Years Purchase for 21.25 years @ 6.0%	<u>11.835</u>	1,775	
For reversion to -			
G M Pope's Valuation of freehold interest with vacant possession Excluding effect on value of Tenants improvements	3,850,000		
Deferred 21.25 years @ 6.0%	<u>0.29</u>	<u>1,116,500</u>	1,118,275
<u>Add lessor's share of marriage value</u>			
Value of unimproved freehold interest with vacant possession Excluding effect on value of Tenants improvements		3,850,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	1,118,275		
G M Pope's corresponding valuation of lessee's interest having 21.25 years unexpired	<u>1,700,000</u>	<u>2,818,275</u>	
Gain on marriage		<u>1,031,725</u>	
Landlord's share @ 50.00%			<u>515,863</u>
Enfranchisement price			1,634,138
Add for other loss			
Difference in value between 11 Wilton Crescent and 20/20A Kinnerton Street for sale together and separately, as advised by G M Pope	250,000		
Deferred 21.25 years @ 6.0%	<u>0.29</u>		<u>72,500</u>
			<u>1,706,638</u>
		Say	1,706,600



Mrs Patricia Clemence

Leasehold Reform Acts 1967 & 1993

11 Wilton Crescent, London SW1

<u>Freehold Valuation as at</u>		Feb 1994 claim	Jun 2015 expiry	
Ground rent per annum:				£150
Years' purchase for:	21.3 years at	6%		<u>11.86</u>
				£1,779
Reversion to fully repaired but unimproved value, freehold with vacant possession			£3,500,000	
Present value of £1 after:	21.3 years at	6%	<u>0.288589</u>	<u>£1,010.062</u>
Open market value of landlords' interest				£1,011,841
Marriage Calculation				
Freehold as above			£3,500,000	
less freeholders' interest		£1,011,841		
and lessee's interest @ 50%		<u>£1,750,000</u>		
(ignoring the right to claim)			<u>£2,761,841</u>	
Total marriage value			£738,159	
Landlords' share @ 50%			<u>0.5</u>	<u>£369,080</u>
Enfranchisement price exclusive of costs				£1,380,920

C S R Marr-Johnson

27th October 1997