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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 SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant The Trustees of the Ilchester Estate

Respondent Mr Joseph Esfandi

RE: 85 ADDISON ROAD, LONDON W14

Date of Tenant's Notice: 6 February 1996

Application to Tribunal dated: 27 February 1998

Heard: 19 and 20 January 1999

Inspection: 4 March 1999

Appearances:

Mr B Denyer-Green of Counsel
Mrs A Pullinger)
Mr A Nicol) Hamlin Slowe, Solicitors
Miss J Ellis FRICS FSV Langley Taylor
Mr P Young, John D Wood & Co

for the Tenant

Mr T Jefferies of Counsel
Mr S Kerrigan, Boodle Hatfield, Solicitors
Mr I Macpherson, MA FRICS, Gerald Eve
Mr A McGillivray, W A Ellis
Mr G Dobson, Agent for the Trustees

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs H Kelly LLB (Chairman)
Mr W J Reed FRICS
Mr R Skinner

Date of Valuation: 6 February 1996

Date of Tribunal's decision - 5 MAY 1999

A Preliminary matters

1. This was an application to the Tribunal dated 27 February 1998 and made by the Trustees of the Ilchester Estate (the landlord) for the determination of the price to be paid for the freehold interest in the subject property. This matter falls to be determined in accordance with section 9(1A) of the Leasehold Reform Act 1967, as amended by section 66 of the Leasehold Reform, Housing and Urban Development Act 1993 by the insertion of section 9(1C).

2. Section 9(1A) of the Leasehold Reform Act 1967 provides that the price payable “shall 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” and the assumptions are then set out.

Section 9(1C) provides 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 of the Leasehold Reform Act 1967 has effect for determining whether any additional amount is payable by way of compensation under that section”.

In the present case, no claim is made for any compensation nor is it contended that the tenant has any statutory rights to security of tenure.

3. The tenant, Mr Joseph Esfandi, by a notice to the trustees dated 6 February 1996 stated that he wished to claim the freehold, his right to make the claim being admitted by the landlord in May 1996.

4. The subject premises were the house, garden and garage at 85, Addison Road as demised by the lease dated 30 January 1987. The tenant had acquired a leasehold interest in the property on 3 July 1987.

B. The following is an extract from the parties' agreed statement of facts which the Tribunal found to be most helpful.

1. Tenure of the subject house

The subject house is presently held on a lease dated 30 January 1987 for a term from 30 January 1987 expiring at 24 June 2040. At the date of the claim for the freehold, the lease had about 44.25 years unexpired.

The lease reserves a rent presently payable of £500 per annum, which is subject to review in June 2006 and June 2027 to .25% of the capital value attributable in June 2005 and 2026 respectively to a lease for 65 years with vacant possession of the

subject house, assuming that the lease would reserve a peppercorn rent throughout the 65 years term.

2. Description

The subject house is a detached house on basement, ground, first and second floors, and it includes a garage.

The subject house has been significantly altered since the lease was granted. The alterations comprised the following;

- (a) development of the roof space above the garage to provide a self-contained one bedroom staff flat,
- (b) erection of a two storey side extension used for a kitchen at upper level and a gymnasium at lower level,
- (c) erection of a rear infilling extension used for an extension to the games room at the lower level with a terrace above accessed from the reception room,
- (d) formation of a wide opening in the main rear wall at basement level to form a new games room,
- (e) formation of a gym suite at basement level with sauna and shower/wc/basin,
- (f) formation of a staff flat at basement level with separate access,
- (g) construction of a swimming pool with conservatory enclosure over,
(swimming pool since filled in and conservatory replaced with an orangery),

- (h) re-provision of the internal staircase between the ground floor and the lower ground floor,
- (i) formation of an arched opening between hallway and lobby and formation of lobby giving access to the new kitchen at ground floor level.
- (j) widening of the rear window at ground floor level to form a doorway to the new terrace.
- (k) provision of a new bay window to the staircase at first floor level,
- (l) provision of a balcony to the rear window in the master bedroom,
- (m) formation of a staircase from the study to the master bedroom suite at first floor level,
- (n) complete refitting of the first floor as master bedroom suite.
- (o) provision of improved (at front) and new (at rear) mansard windows at second floor level and complete re-arrangement and re-fitting of second floor to provide four bedrooms each with direct access to a bathroom.

Before these extensions, the subject house had comprised a total gross internal floor area of 6,770 square feet (629 square metres).

3. Situation of the subject house

The subject house is situated on the west side of Addison Road, which is fronted mainly by what were originally similar large detached houses built in the 19th century. Most of these houses continue to be occupied as single homes today.

Addison Road in the Holland Park Conservation Area and situated a little to the west of Holland Park itself.

The Addison area is described in the Royal Borough of Kensington & Chelsea's Holland Park Conservation Area Proposals Statement of October 1989 as follows:

“This area with its Regency and Victorian houses was the original backbone of development on which the surrounding township grew up. It sets the tone for the residential areas around it, with its detached villas, terraces and their classically derived architecture set along leafy avenues”.

4. Addison Road runs on a north south axis between Holland Park Road in the north and Kensington High Street to the South.
5. The Tribunal was provided with (i) a copy of the sales particulars of the house in 1987 which described the accommodation without the improvements, alterations or extensions and (ii) a set of floor plans of the house showing most of the alterations with the extensions to the original building and the first floor flat over the garage hatched red.
6. (i) The date of the valuation is the date of claim, ie 6 February 1996, at which date the unexpired term was 44.25 years.

(ii) The parties accepted that the subject property was to be valued without any of the improvements, alterations or extensions, since these had been carried out by the lessees.

(iii) At the same time, the parties accepted that the tenant was obliged to keep the house in good repair and to redecorate it, and to that extent, any repairs or replacements carried out as part of the works would not be classed as improvements.

C. Inspection

1. Addison Road is a highly regarded residential road running between Holland Park Avenue at its northern end and Kensington High Street at its southern end. The grounds of Holland Park are situated to the east and the area is served by a wide range of shops, restaurants and other amenities in Holland Park Avenue and Kensington High Street. Transport facilities include the Holland Park Underground Station and the main bus routes in Holland Park Avenue, and, at the southern end of Addison Road, those in Kensington High Street.
2. Externally this was an impressive double-fronted detached house with a double garage and an extensive south and west facing rear garden.
3. Prior to the works of improvement, the house consisted of a double reception room, dining room, study, garden room, six bedrooms, dressing room, three bathrooms, kitchen, utility room and four cloak rooms. It also had a self-contained basement flat.

4. The internal accommodation of the subject house had been transformed, altered and extended to such an extent that we could see no useful reason for an internal inspection, nor for any need to describe it in detail.

D. Inspection of comparable properties

1. We were of the opinion that Nos 7 & 8, Addison Crescent were not helpful comparables as those houses were somewhat different in character and the Crescent was much quieter than Addison Road. No 16 Addison Road was a semi-detached house and could not be described as comparable to the subject property. No 81 had been greatly improved and its freehold price in February 1997 was £5.5 million.
2. No 78 was a good comparable but was in better external condition than the subject house, while No 73 backed onto a block of garages for which there was planning permission for redevelopment.
3. We were most assisted by our consideration of No 80, Addison Road and the parties' submissions with respect to it. No 80 (which was covered by scaffolding at the time of our inspection) was of direct assistance to us as its valuation date was 16 November 1995; it was very similar in external appearance to the subject house and was situated very close to it: [see LON/LVT/696] (4 December 1997).

We were careful to visualise the properties in their condition at the various dates of sale ie in 1995 and 1997.

E. The Hearing

The principal issues between the parties were discussed and considered in great detail during the two day hearing. They were as follows:

	Issue	Contention for landlords	Contention for tenant
(1)	Freehold value in possession (excluding improvements)	£3.5m	£2.65m
(2)	Value of 65 year lease for rent review purposes	£2.94m	£2.385m
(3)	Value of existing lease	£2.42m	£2m
(4)	Capitalisation rate (until review)	5.5%	7%
(5)	Capitalisation rate (after review)	6%	7%
(6)	Deferment rate	6%	7%
(7)	Landlord's share of marriage value	66.67%	50%

(1) Price of the freehold

The landlord considered this to be £3,500,000 whereas the tenant's figure was £2,650,000.

(2) Price of a leasehold of 65 years

The landlord believed this to be 84% of the freehold while the tenant's percentage was 90% of the freehold value.

(3) Price of the leasehold of 44.25 years

The landlord proposed 69% of the freehold while the tenant put forward 75.5% of the freehold.

(4) Rate of Capitalisation and Deferment

The landlord applied different rates ie 5.5% to capitalise rents and 6% for the remainder of the term whereas the tenant used 7% as the rate of capitalisation throughout.

(5) Marriage value

The landlord sought two-thirds of the marriage value while the tenant considered that it should be divided on a 50/50 basis.

(6) The amount of the premium sought by the landlord was £829,200 while the tenant considered that the appropriate sum should be £412,312.

(7) Among the cases drawn to our attention by the parties were the following:

Trustees of John Lyons Charity v Brett [1998] LRA/16/1997

Norfolk v Trinity College, Cambridge [1976] 238 EG 421

Lloyd-Jones v Church Commissioners for England [1981] 261 EG 471

Windsor Life Assurance Co Ltd v Austin and anor [1996] 34 EG 93

Donath and anor v Trustees of the Grosvenor Estate [1996]

80 Addison Road W14 (LON/LVT/696) (4 December 1997)

Cadogan Estates Ltd v Hows LRA/1&3/1988

36/37 Eaton Mews South LON/ENF/6 (16 April 1996)

Cadogan Estates Ltd v Sharp LRA/33 & 35/97

39 St Mary's Abbots Terrace (1991) LON/LVT/448

9 St Mary's Abbots Terrace (1992) LON/LVT/480

F. The following properties were drawn to the Tribunal's attention by the parties.

**85 ADDISON ROAD
OPEN MARKET COMPARABLES**

No in Road	Date of sale	Lease length (ground rent - £pa)	Accommodation (Area in sq ft)	Notes	Leasehold Price	Freehold Price
78	December 14th 1992	47.5 (500)	6 beds (6,246 sq ft)	Unenfranchiseable (company tenant)	1,550,000	
77	November 11th 1993	FH	7 beds, 6 baths, staff suite, pool (11,000 sq ft)	Newly refurbished		4,000,000
84	September 1993	47	7 beds, 4 baths, staff suite		1,650,000	
71	19 September 1994	FH	5 beds, staff suite	Newly refurbished Builders' finish		2,465,000
72	March 11th 1995	45	6 beds, 2 baths, shower, (5,112 sq ft)		1,750,000	
72	April 7th 1995	45	6 beds, 2 baths, shower (5,112 sq ft)	With benefit of claim	1,825,000	
78	May 22nd 1995	FH	6 beds, 4 baths, staff suite (6,246 sq ft)	Refurbished		2,800,000
68	December 9th 1996	43.5	7 beds, 5 baths, staff suite, pool (6,080 sq ft)	Unenfranchiseable	2,050,000	
16	27th March 1997	FH	7 beds, 3 baths, staff suite (5,187 sq ft)	Semi-detached		2,650,000
81	26 February 1997	FH	6 beds, 3 baths, staff suite, pool (7,604 sq ft)	Refurbished		5,500,000
80	22 May 1997	FH	6 beds, 4 baths, shower, staff suite (7,235 sq ft)	Unimproved		3,700,000
87	13 August 1997	FH	6 beds, 3 baths, staff suite	Unmodernised		3,150,000
73	7 November 1997	FH	5 beds, 4 baths, staff suite	Very good order		3,500,000
77	13 February 1998	FH	7 beds, 6 baths, staff suite, pool (11,000 sq ft)	Excellent order and amenity		8,100,000
87	9 June 1998	FH	7 beds, 7 bath, pool, gym (9,440 sq ft)	Newly refurbished		7,800,000

G. Valuations

- (1) The valuation by Mr I Macpherson MA FRICS for the landlord is set out at appendix A.
- (2) The valuation by Miss J Ellis FRICS FSVA for the tenant is set out at appendix B.

H. Decision

- (1) The Tribunal was greatly assisted by the expert evidence on behalf of the parties and the written proofs of evidence in support of their valuations, and the cross-examination on behalf of each party at the hearing.
- (2) Having carefully considered all the evidence and after making an external inspection of the subject house and the comparables, the Tribunal's decision is as follows:-
 - (a) The Tribunal was of the opinion that the freehold market value of the property at the valuation date, disregarding the value of the lessees' improvements, was £3,300,000, including an additional 10% (ie £300,000) for the larger site and for the value of the development potential.

The Tribunal considered that the value of the potential for the extension of the existing dwelling should be relatively modest, as it seemed to the Tribunal from their inspections that many and possibly most of the properties of the type in the area had either already been extended or had potential for doing so and that planning permission would not be difficult to obtain.

- (b) With respect to the value of the 65 year lease, the Tribunal noted that in respect of No 80 Addison Road for the purposes of the rent review the parties had agreed a relativity of 84% of the freehold value and that this relativity was in line with the Gerald Eve/John D Wood graph. Accordingly, the Tribunal thought it appropriate to adopt the same percentage in the present case.
- (c) With respect to the value of the reversionary interest of 44.25 years, the landlord proposed 69% of the freehold value while the tenant put forward 75.5% of the freehold value.

The Tribunal noted that in the LVT decision in respect of No 80 Addison Road the parties had agreed upon 64% of the freehold value whereas 70% or thereabouts was the proportion suggested by the Gerald Eve/John D Wood graph.

The Tribunal decided to adopt 70% as the appropriate percentage of the freehold value.

- (d) With respect to the marriage value, the Tribunal decided that this should be split on a 50/50 basis, in view of the length of the lease still remaining and the relative bargaining strengths of the parties.

We accepted that, as a lease gradually expired, the relative bargaining strengths of the parties and the proportion of the marriage value might well change, and that each case must be considered on its own merits.

- (e) With respect to the rate of capitalisation, we could see no reason for using two rates as proposed for the landlord nor were we persuaded by either party to adopt their proposed rates of capitalisation.

The capitalisation of the current rent and of the reviewed rent, and the deferment of the value with vacant possession, all form part of the valuation of the landlord's freehold interest, and given the value of the property and the extent of the tenants' improvements, the Tribunal was unable to accept that the reviewed rent or the reversion were any less secure than the rent currently payable.

It also seemed to the Tribunal that the differing rates put forward by Mr Macpherson had been used more as a basis for analysis than as a basis for valuation.

The Tribunal therefore adopted a rate of 6.5% as the rate of capitalisation and deferment following the LVT decision for No 80 Addison Road. The valuation date for that property was 16 November 1995 whereas the valuation date for the subject property is 6 February 1996. The two properties are situated very close to each other, are very similar externally, and the Tribunal is not aware of any particular changes in the property market which would affect the values of these properties between those two dates.

I. Determination

Accordingly, after considering the evidence, the argument and our inspection, we determine the premium to be paid by the tenant for the freehold interest in possession of 85 Addison Road, London W14 to be £619,315 (six hundred and nineteen thousand pounds and three hundred and fifteen pounds) in accordance with our valuation which is attached to this decision as Appendix C.

CHAIRMAN *Hennietta Kelly*

DATE **5 MAY 1999**

LEASEHOLD REFORM ACT 1967 AS AMENDED
Section 9(1C)
Valuation
of
85 Addison Road, London, W14

	£	£	£
<u>Valuation of landlords' interest</u> <u>excluding marriage value</u>			
For lease term remaining -			
Ground rent currently payable	500		
Years Purchase for 10.25 years @ 5.5%	<u>7.679</u>		
		3,840	
Estimated rent payable on review			
WA Ellis' valuation of notional freehold interest in possession excluding tenant's improvements.	3,500,000		
	x 0.84		
Corresponding valuation of lease with 65 years unexpired at peppercorn rent.	2,940,000		
Rent payable @ 0.5%	<u>0.25%</u>		
Further rent review after another 21 years	7,350		
Years Purchase for 34 years @ 6.0% 14.368			
Deferred 10.25 years @ 6.0% <u>0.5503</u>			
	<u>7.9067</u>		
For reversion to -		58,114	
WA Ellis' Valuation of freehold interest with vacant possession	3,500,000		
Excluding effect on value of Tenants improvements			
Deferred 44.25 years @ 6.0%	<u>0.075895</u>		
		<u>265,633</u>	
			327,587
<u>Add lessor's share of marriage value</u>			
Value of unimproved freehold interest with vacant possession			
Excluding effect on value of Tenants improvements		3,500,000	
<u>Less</u>			
Value of lessor's interest exclusive of marriage value	327,587		
WA Ellis' corresponding valuation of lessee's interest having 44.25 years unexpired	<u>2,420,000</u>		
		<u>2,747,587</u>	
Gain on marriage		752,413	
Landlord's share @ 66.67%			<u>501,634</u>
Enfranchisement price			829,221
		Say	<u>829,200</u>

ASSESSMENT OF ENFRANCHISEMENT PRICE

85 ADDISON ROAD

Claim/valuation date: 6th Feb	1996	Values of unimproved house:	
Lease term: exp 24.06	2040	freehold	2650000
Unexpired term:	44.25 years	on 65 year lease	2385000
Current ground rent	500 p a	on 44.25 year leas	2000000
1st review is in June	2006		
	ie after 10.25 years	Capitalisation and discount rate	7 %
Review is to 0.25 % of 65 year lease value		Vendor's share of marriage value	50 %

**A VALUE OF FREEHOLDER'S INTEREST
excluding prospects of marriage**

1	Current rent		500 pa	
	YP 10.25 years @	7 %	<u>7.1454</u>	3573
	Rent on review	0.25 % of 2385000 =	5962.5 pa	
	YP 34 years @	7 %	12.854	
	PV 10.25 years @	7 %	<u>0.500</u>	<u>6.425</u>
				38307
3	Reversion			
	to capital value of freehold interest		2650000	
	PV 44.25 years @	7 %	<u>0.05009</u>	<u>132744</u>
	Value of freeholder's interest			174624

B FREEHOLDER'S SHARE OF MARRIAGE VALUE

After marriage			
Value with VP		2650000	
Before marriage			
Freeholder's interest	174624		
Lessee's interest	<u>2000000</u>	<u>2174624</u>	
Gain on marriage		475376	
Freeholder's share @	50 %		<u>237688</u>
ENFRANCHISEMENT PRICE			<u><u>412312</u></u>

Appendix C

85 Addison Road, London W14

Valuation date : 6 February 1996	Values of unimproved house -
Unexpired term : 44.25 years	- freehold £3,300,000
Current ground rent : £500 p a	- 65 year lease £2,772,000 (84%)
First review in June 2006 to 0.25%	- 44.25 year lease £2,310,000 (70%)
of value of 65 year lease	Capitalisation /deferment rate : 6.5%
Landlord's share of marriage value : 50%	

Valuation in accordance with s.9(1A) and s.9(1C) of the Leasehold Reform Act 1967, as at 6 February 1996 - the date of the tenant's notice.

A. Value of freeholder's interest

(i)	Ground rent to 23/6/06	£500 p a		
	YP 10.25 yrs @ 6.5%	<u>7.3138</u>	£3657	
(ii)	Ground rent from			
	24/6/06 based on 0.25% of the			
	capital value of a 65 year lease			
	at a peppercorn			
	£2.772m @ 0.25%	£6930 p a		
	YP 34 yrs @ 6.5%	<u>13.5766</u>		
		£94086		
	PV £1 10.25 yrs @ 6.5%	<u>0.5083406</u>	£47828	
(iii)	Reversion to unimproved freehold			
	with vacant possession	£3300000		
	PV £1 44.25 yrs @ 6.5%	<u>0.0597404</u>	£197143	£248628

B. Marriage Value

Value of unimproved freehold with vacant possession		£3300000	
<u>Less</u>			
(i) Value of freehold interest	£248628		
(ii) Value of leasehold interest	<u>£2310000</u>	<u>£2558628</u>	
	Marriage value	£741372	
	50% marriage value		<u>£370686</u>
		<u>Premium</u>	£619314
		Say	<u>£619315</u>