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Ref. No. LON/LVT/1291/00

**LEASEHOLD VALUATION TRIBUNAL FOR THE
LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 OF THE
LEASEHOLD REFORM ACT 1967**

Applicants: The Trustees of the Eyre Estate (Landlords)
Respondents: David Robert Meller and Wendy Susan Meller (Tenants)
Re: 47 Avenue Road, St. John's Wood, London N.W.8.
Application to Tribunal by the Trustees of the Eyre Estate: 8 August 2000
Hearing: 30 October 2001

Appearances: Mr. G.E. Pemberton of Pemberton Greenish, Solicitors
Mr. J.E.C. Briant, BA, MRICS of Cluttons

for the Applicants

Mr. D. Conway of David Conway & Co., Solicitors

Mr. K.G. Buchanan, BSc (Est. Man), MRICS of Colliers Conrad Ritblat Erdman

Mr. D.R. Meller

for the Respondents

Members of the Leasehold Valuation Tribunal:

Mr. P.D. Wulwik LLB (Chairman)

Mr. D.D. Banfield FRICS

Mrs. G.V. Barrett J.P.

Date of notice of Tenants' claim:	10 March 2000
Date of notice of reply to Tenants' claim:	20 April 2000
Landlords' proposed price (as amended):	£1,455,500
Tenants' proposed price:	£1,195,230
Agreed valuation date:	10 March 2000
Leasehold Valuation Tribunal's determination:	£1,298,500
Date of Tribunal's decision:	30 JAN 2002

47 Avenue Road, St. John's Wood, London NW8

A. Introduction

1. This is an application by the Applicant landlords the Trustees of the Eyre Estate to determine the enfranchisement price payable by the Respondents Mr. and Mrs. D.R. Meller for the freehold of the property at 47 Avenue Road, St. John's Wood, London N.W.8 under Section 9 (1C) of the Leasehold Reform Act 1967.
2. The Respondents are the tenants of the property under a Lease dated 31 January 1947 for a term of 99 years from 25 December 1936 at the fixed rent of £100 per annum.
3. The property occupies a large corner site at the junction of Avenue Road and Acacia Road and comprises a detached, 1930s style house on ground, first and second floors with a garage at the side of the house. There is also a two storey coach house at the rear, which faces onto Townshend Road.
4. On 10 March 2000 the tenants gave notice of their claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 20 April 2000 the landlords the Trustees of the Eyre Estate served notice in reply with a qualified admission of the tenants' right to acquire the freehold, excluding the coach house. On 8 August 2000 the landlords issued the present application to determine the enfranchisement price payable for the freehold of the property. The landlords' application proposed a price of £1,470,000. Following the issue of County Court proceedings, the landlords admitted

that the coach house should be included in the claim. Directions were given by the Tribunal on 17 August 2001.

B. Hearing

5. The hearing took place on 30 October 2001. The Applicant landlords were represented by Mr. G.E. Pemberton of Pemberton Greenish, Solicitors, and Mr. J.E.C. Briant BA, MRICS of Cluttons. The Respondent tenants were represented by Mr. D. Conway of David Conway & Co., Solicitors, and Mr. K.G. Buchanan, BSc (Est Man), MRICS of Colliers Conrad Ritblat Erdman. Mr. D.R. Meller was also present.
6. The Tribunal were informed that the issues to be determined related to the following:-
 - (1) The enfranchisement price as at 10 March 2000, the date of the tenants' notice of claim, for the freehold under Section 9(1C) of the Leasehold Reform Act 1967.
 - (2) The terms of the freehold transfer deed.
7. The landlords' costs for which the tenants were liable under Section 9(4) of the Act were originally in dispute, but the Tribunal were subsequently advised by the parties' Solicitors that both the landlords' Surveyors' costs and the landlords' legal costs had been agreed.
8. It was considered convenient by both parties to deal first with the issue relating to the terms of the freehold transfer deed. Mr. Pemberton for the landlords stated that:-
 - (1) The dispute related to Clauses 3.1 and 3.2 of the Transfer. The relevant clauses

as proposed by the landlords were as follows -

“3. The Purchasers hereby covenant with the Transferors for the benefit and protection of the adjoining and neighbouring unsold parts of the Transferors’ Eyre Estate:-

3.1 Not to make any alterations of any kind whether structural or otherwise to the height elevation or external appearance of the Property without the previous consent in writing of the Transferors such consent not to be unreasonably withheld or delayed.

3.2 Not to put up any additional buildings or erections upon any unbuilt part of the Property without the like consent such consent not to be unreasonably withheld or delayed.”

(2) The tenants accepted the principle of these clauses, but desired the following amendments -

In Clause 3.1, the opening words to read “Not to make any alterations of any **material kind ...**”

In Clause 3.2, the opening words to read “Not to put up any additional buildings or erections **of any material kind**”.

(3) The landlords’ position was that the clauses were standard clauses and had been accepted by tenants in very many previous cases.

(4) The clauses were considered to mirror Clause 10 of the existing 1947 Lease,

insofar as it dealt with external alterations. Clause 10 of the existing Lease contained a covenant that the lessee -

“WILL not in any way alter the structure (external or internal) or the height elevation or external appearance nor cut nor injure any of the party or other walls or the principal or bearing timbers or iron steel or other supports of the said premises nor put up any additional buildings or erections thereon without the previous licence in writing of the Lessors.”

- (5) The inclusion of the clauses proposed by the landlords had been accepted by the Leasehold Valuation Tribunal in *Black v. Trustees of the Eyre Estate* relating to 73 Springfield Road, London N.W.8 (Ref. LON/LVT/548) and by the Lands Tribunal in *Trustees of the Eyre Estate v. Jaskel* relating to 11 Loudoun Road, London N.W.8 (Ref. LRA/48/1997).
- (6) The introduction of the tenants' amendments did not produce clarity. What one person thought was material might not accord with the views of someone else. There could well be an argument as to what was material.
- (7) For the purposes of Section 10 (4) of the Leasehold Reform Act 1967, the landlords had to show that the restrictive covenants were reasonable. The landlords had the backing of both the Leasehold Valuation Tribunal and the Lands Tribunal.

9. Mr. Conway for the tenants had prepared written submissions on the terms of the freehold transfer deed, which he supplemented by oral submissions. He stated that:-

(1) The landlords could only introduce restrictive covenants into the transfer if they were agreed to by the tenants or permitted by Section 10 (4) of the Act. The two restrictive covenants were not agreed. The relevant provisions of Section 10 (4) were sub-paragraphs (b) and (c), which provided as follows -

“As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to Section 8 above shall include -

...(b) such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either -

(i) restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or

(ii) restrictions affecting other property which are such as materially to enhance the value of the house and premises;

(c) such further provisions (if any) as the landlord may require to restrict the use of the house and premises in any way which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has

an interest.”

- (2) The burden lay upon the landlord to prove that the two restrictive covenants in dispute fell within sub-paragraphs (b) and/or (c) of Section 10 (4). The word “materially” appeared in both sub-paragraphs (b) and (c) of Section 10 (4).
- (3) The tenants were not suggesting that Clauses 3.1 and 3.2 of the Transfer should be totally deleted. The argument in 11 Loudoun Road and 73 Springfield Road had been on the basis of all or nothing. The clauses had not been challenged in the way that the tenants were now seeking to challenge the wording of the clauses.
- (4) The fact that the clauses had been accepted in many previous cases was not relevant. It was necessary to look at Section 10 (4) of the Act and the strictures contained in it. This was shown by the decision of the Lands Tribunal in John Lyon's Charity v. Shalson relating to 98 Hamilton Terrace, London N.W.8 (LRA/54/1999 & LRA/7/2000). That was concerned with a user covenant. The Lands Tribunal held that notwithstanding the acceptance of such a covenant by other enfranchising lessees the imposition of an absolute restriction on user would not materially enhance the value of other property in the area.
- (5) The Eyre Estate had not taken advantage of their right to impose a statutory scheme of management.
- (6) There was a complete absence of any evidence to justify the restrictive covenants

in terms of Section 10 (4) of the Act.

- (7) The clauses in the form proposed by the landlords would catch even minor alterations. It should not be for the tenants to have to persuade the landlords to give their consent.

10. In reply, Mr. Pemberton for the landlords stated that:

- (1) The decision in *John Lyons Charity v. Shalson* relating to 98 Hamilton Terrace was concerned with an entirely different set of facts.
- (2) Some schemes of management were more stringent than the subject covenants. The landlords had made a conscious decision not to impose a scheme of management.
- (3) The restrictive covenants proposed had worked well to keep St. John's Wood as a high class area.
- (4) The decision in *Peck v. Trustees of Hornsey Parochial Charities* [1970] 22 P & CR 789 was relevant to the imposition of restrictive covenants by the landlords. The landlords were entitled to bring forward restrictive covenants from the existing Lease. It was reasonable to do so.
- (5) It was the landlords' contention that the restrictive covenants in the form proposed materially enhanced the value of other property.

- (6) The amendments proposed by the tenants did not reflect the wording of Section 10 (4) of the Act. The reference in the statute was to the restrictions materially enhancing the value of other property or of the house and premises, not to the alterations or additions being of a material kind.
11. With the landlords' costs no longer being in dispute, the remaining issue related to the enfranchisement price as at 10 March 2000, the date of the tenants' notice of claim for the freehold under Section 9 (1C) of the Leasehold Reform Act 1967.
12. Mr. Briant for the landlords stated that:-
- (1) The capitalisation and deferment rate (the yield) had been agreed at 6%.
 - (2) Mr. Briant's figure for the unimproved value of the freehold was £5,500,000. Mr. Buchanan's figure for the tenants was £4,750,000.
 - (3) Mr. Briant's figure for the unimproved value of the leasehold interest was £2,950,000. Mr. Buchanan's figure was £3,272,500.
 - (4) There was a slight difference between the experts in relativity between freehold and leasehold value, Mr. Briant being at a relativity of 59.5% and Mr. Buchanan at 62.1%.
 - (5) Mr. Briant's proposed enfranchisement price was £1,455,500. Mr. Buchanan's

figure was £1,195,230.

- (6) There were slight differences between the experts in two other respects -
- (i) *Improvements*: Mr. Briant had gone straight to his valuation, disregarding tenants' improvements. Mr. Buchanan had made a specific allowance of £500,000 as the value of tenants' improvements in relation to freehold value and £310,000 for leasehold value.
 - (ii) *Coach house*: Mr. Briant valued the demise as one, including the coach house. Mr. Buchanan had included a specific figure for the coach house of £500,000.

13. The parties had agreed a statement of facts, including the following matters:-

- (1) The site area was approximately 1,800 m². The original house had an effective floor area of 340 m² (3,660 sq. ft.) and a gross internal area of 629 m² (6,770 sq. ft.) The existing house had an effective floor area of 379 m² (4,080 sq. ft.) and a gross internal area of 692 m² (7,449 sq. ft.). The coach house was unchanged from the original accommodation. It had an effective floor area of 69 m² (743 sq. ft.) and a gross internal area of 129 m² (1,389 sq. ft.).
- (2) With regard to tenants' improvements/alterations, there was a Licence for alterations dated 7 October 1954. There were also works carried out in

1994/1995.

- (3) The parties had agreed that the marriage value should be shared equally.
- (4) The capitalisation and deferment rate (the yield) had been agreed at 6%, as previously stated.
- (5) There was an agreed schedule of comparables.

14. Mr. Briant produced a proof of evidence dated 18 October 2001, which he supplemented in his oral evidence. The principal points of his evidence were as follows:-

- (1) He had valued the property unimproved by reference to the original plans, which were attached to the agreed statement of facts.
- (2) He had found that the local market did not always follow the market trends in other areas of London. The market at the valuation date of March 2000 was very strong, with demand exceeding supply.
- (3) In arriving at the value of the freehold interest of £5,500,000, he had considered the following comparables -
 - (i) *23 Avenue Road*: Freehold sold in November 1997 for £3,000,000. The site was smaller than the subject property (1,300 m² compared to 1,800

m²). He had added £1,000,000 for market movement at 35%, £500,000 for condition and £1,000,000 for the larger site, arriving at a freehold value for the subject property of £5,500,000. Mr. Buchanan had added £1,000,000 for market movement, £500,000 for conversion/condition and £500,000 for the coach house, arriving at a freehold value for the subject property of £5,000,000 and £4,500,000 after deducting for tenants' improvements. Mr. Buchanan had not made any allowance for the larger site of the subject property.

- (ii) *29 Cavendish Close*: Leasehold interest of 61.48 years sold in November 1999 for £4,600,000, with the benefit of a valid notice of claim. He had added £825,000 for the benefit of the freehold (the freehold interest having been subsequently purchased for £825,000), £250,000 for market movement, £500,000 for size and deducted £500,000 for style, arriving at a freehold value for the subject property of £5,675,000. Mr. Buchanan added £500,000 only for the benefit of the freehold, £250,000 for market movement, £250,000 for condition, £500,000 for the coach house and deducted £750,000 for position/location, arriving at a freehold value for the subject property of £5,350,000 and £4,850,000 disregarding tenants' improvements. Mr. Briant considered that both were Class A streets, with Cavendish Close having the same attractions to a purchaser as Avenue Road. He did not consider that there should be a deduction for position/location. They were in the same league in terms of capital value.

(iii) *39 Circus Road*: Leasehold interest of 63 years sold in November 1999 for £4,600,000, with the benefit of a valid notice of claim. It had a similar site area (1,775 m² compared to 1,800 m²) and a similar area (407 m² compared to 340 m² and 69 m² for the coach house). He had added £1,322,000 for the benefit of the freehold, £1,000,000 for market movement and deducted £2,500,000 for style, condition and circumstances, arriving at a freehold value for the subject property of £5,722,000.

(4) In arriving at the value of the leasehold interest of £3,272,500, Mr. Briant had considered the following comparables -

(i) *42 Queen's Grove*: Leasehold interest of 35.25 years sold in April 1999 for £1,750,000. The site was much smaller than the subject property (704 m² compared to 1,800 m²) and a smaller area (227 m² compared to 340 m² and 69 m² for the coach house). He had added £300,000 for market movement, he had deducted £300,000 for the benefit of a valid notice of claim and had added £1,250,000 for size, arriving at an unimproved leasehold value for the subject property of £3,000,000. Mr. Buchanan had added £400,000 for market movement, £1,000,000 for size and the coach house, £200,000 for extra parking/garden, £200,000 for condition and deducted £250,000 for Leasehold Reform Act rights (15%), arriving at a leasehold value for the subject property of £3,300,000 and £2,990,000 after deducting £310,000 for tenants' improvements.

- (ii) *56 Avenue Road*: Leasehold interest of 30 years sold in August 1999 for £4,000,000. The site was a little smaller than the subject property (1,603 m² compared to 1,800 m²) but had a larger gross internal area (864 m²). He had added £500,000 for market movement, deducted £1,125,000 for the benefit of the Act (25%) and £250,000 for size, and added £275,000 for the unexpired term, arriving at an unimproved leasehold value for the subject property of £3,400,000. Mr. Buchanan had added £500,000 for market movement, £300,000 for condition and £100,000 for the larger house, deducted £510,000 for rights under the Act (10%), £400,000 for size, £200,000 for development potential and £250,000 for location/position, arriving at a leasehold value for the subject property of £3,540,000 and £3,230,000 after deducting for tenants' improvements.
- (5) Mr. Briant had considered further leasehold evidence requested by Mr. Buchanan -
- (i) *90 Hamilton Terrace*: Leasehold interest of 84.25 years sold in July 1999 for £3,000,000. The site was very much smaller than the subject property (1,035 m² compared to 1,800 m²). The property was in very poor condition at the sale date, being reflected in the price paid for the property. He considered that the transaction supported his valuation. There were comparables which were closer geographically. It was not a directly comparable leasehold transaction due to the length of the lease. There was no subsequent freehold purchase. Mr. Buchanan had made no adjustment in his analysis of the property for the larger site of the subject.

- (ii) *55 Avenue Road*: Leasehold interest of 55.5 years sold in July 1998 for £2,480,000. The site was again very much smaller than the subject property (957 m² compared to 1,800 m²). There were leasehold transactions which were closer in terms of the unexpired term and closer in terms of size. It was not a good comparable but rather a different animal.
- (6) Mr. Briant produced a graph showing the differential between the freehold and the leasehold values compared with the unexpired term of the lease in respect of settlements on the Eyre Estate and John Lyon's Charity Estate. The graph indicated that the differential between a leasehold of 35.82 years unexpired and the freehold value should be approximately 59.5%. This was consistent with his figures in the present case. He and Mr. Buchanan were fairly close in terms of the differential between freehold and leasehold values.
- (7) Mr. Briant considered that he was supported by the Lands Tribunal decision relating to 85 Avenue Road in *Trustees of the Eyre Estate v. Saphir* (Ref. LRA/18/1998 & LRA/47/1998). The valuation date had been 8 May 1996. It had a much smaller area (278 m² compared to 409 m² for the subject property) and a smaller site (1,364 m² compared to 1,800 m²). The unimproved freehold value was £2,302,750. He added £2,302,750 (100%) for market growth, £1,150,000 for size and £100,000 for location, arriving at an unimproved value for the subject property of £5,855,000. The unexpired term in the case of 85 Avenue Road of 37.67 years was slightly longer than the unexpired term of 35.82 years for the

subject property. He did not believe that the differential between freehold and leasehold values of 65.25% markedly contradicted the differential which he had adopted, which was in line with the settlements graph.

- (8) With regard to tenants' improvements, Mr. Briant accepted that the property was requisitioned during World War II, before the Lease was granted. It appeared to have been built in the late 1930s. It was left vacant during the War, requisitioned and then returned back after the War, at the end of 1946. As at the date of the grant of the Lease, the property was about 7-8 years old. Mr. Briant now accepted that the condition of the property was not known for certain at that time. He had valued the house on the basis that it had been in good condition at the grant of the Lease and on the basis of the original size. He did not dispute that work had been carried out to the property as detailed in Mr. Buchanan's proof of evidence.
- (9) With regard to the coach house, Mr. Briant had treated this as part of the property. He had not carried out a separate valuation. He was not saying that he was right in doing so and that Mr. Buchanan was wrong to separately value the coach house. It was just a different approach. He thought that Mr. Buchanan was a little low in saying that the coach house was worth only £500,000. He considered that it was worth £100,000 - £150,000 more. It was in poor condition at the date of notice of claim. It was to be valued in poor condition.
- (10) In Mr. Briant's opinion, the comparables produced an unimproved freehold value of £5,500,000 and an unimproved leasehold value of £3,272,500. He arrived at an

enfranchisement price of £1,455,500. A copy of his valuation is at Appendix 1.

15. In answer to questions from Mr. Conway, Mr. Briant stated that:-

- (1) Cluttons were the Managing Agents of the Eyre Estate. Mr. Briant was a partner in Cluttons and was designated as the Estate Surveyor to the Eyre Estate, below a chief executive who was nothing to do with Cluttons. His own office was on the premises of the Eyre Estate. The former chief executive of the Eyre Estate had been a senior partner of Cluttons. Mr. Briant used the Eyre Estate notepaper. He was paid by Cluttons. The management of property was dealt with by Cluttons. They did not run the Eyre Estate, which was the job of the chief executive. The Trustees of the Eyre Estate made the decisions. Mr. Briant did not feel that he was under any difficulty in giving evidence as an expert.
- (2) Clause 2 of the Lease dated 31 January 1947 gave 12 months to the lessee to complete the property. Before the War, 3 months had been given. There were differences after the War. Slightly longer periods were given to complete a property because of the difficulty in getting materials. Mr. Briant did not know the condition of the property at the time the Lease was granted. There was no schedule of condition at the date of the grant of the Lease.
- (3) It was quite possible that the tenants had spent £1,000,000 on the property, with £750,000 on works and £250,000 on furnishings and fabrics.

- (4) He had looked at the FPD Savills index. He was cautious of over-reliance on indices.
- (5) He had the following comments on the comparables in arriving at the value of the freehold interest -
- (i) *23 Avenue Road:* The size of the site was important. The subject property had a larger and much better site.
 - (ii) *29 Cavendish Close:* There had been a rent review to one thirtieth of site value. Mr. Briant did not disagree with the figure of £30,000 as a guestimate. It enjoyed an exclusive location, with usually little traffic other than vehicles visiting the property. There was a new stand at Lords Cricket Ground, immediately adjacent to the property. He had not adjusted for location since he considered that the property was still on a par. He thought that approximately £500,000 would have been paid as part of the enfranchisement price to buy out the rent review. Again, this was a guestimate.
 - (iii) *39 Circus Road:* There had also been a substantial rent review to one thirtieth of site value. The rent was reviewed to the region of £75,000. Mr. Briant considered that the price paid had been a full price in terms of the leasehold value of the property. The enfranchisement price reflected the rent review, including a sum to the order of £1,000,000 to buy out the rent

review.

(6) His comments on the comparables in arriving at the leasehold interest were as follows:-

(i) *42 Queen's Grove:* The valuers were now closer in their respective figures.

(ii) *56 Avenue Road:* The property might have some development potential on the left hand side as one faced the property. It would mean removing the existing garage. The property had been purchased for £3,000,000 plus and then resold at £4,000,000. There was no evidence that the price paid was a full price. Mr. Briant considered that Mr. Buchanan's adjustment for condition of £300,000 was too low. The property had been in a bad state when it had been sold.

(7) With regard to the further leasehold evidence requested by Mr. Buchanan, Mr. Briant stated as follows:-

(i) *90 Hamilton Terrace:* He had seen the property at the date it was sold. It had been re-fitted in the 1970s and needed redoing again. There were the Avenue Road comparables. It was better to use freehold comparables for freehold values and leasehold comparables for leasehold values. It was necessary to go with the best evidence.

(ii) *55 Avenue Road*: This was a very different type of property. It was a 1960s house. It was very different in size and style to the subject property. From the outside elevation, the properties were very different.

(8) With regard to the Lands Tribunal decision relating to 85 Avenue Road, Mr. Briant considered that the decision was secondary evidence. In terms of the differential between freehold and leasehold values, Mr. Briant was at 59.5% and Mr. Buchanan was at 62.1%. The Lands Tribunal's differential was 65.25% for an unexpired term of 37.67 years. The property had not been in first class condition. The fixtures were 1970s. The property had been well looked after but it was dated. The effective floor area was smaller than the subject property. There was some potential to enlarge the property. It was set quite a long way back. Any development would require demolition. It would be quite difficult to develop on the existing site. There was a different local authority for planning. The property was not in a conservation area. It was easier to get planning permission to develop on the site of 85 Avenue Road, than the subject property.

(9) Mr. Briant stated that there was no specific reason for not relying on his schedule of settlements. The property at 61 Avenue Road was near to the subject property. It was on the same side of the road. The properties were fairly identical. It was a corner plot. They were probably built at the same time. The main difference was that the coach house had been sold off. It was a larger house built on the back of the plot. Mr. Briant accepted that he should have included it in his evidence. He disagreed with Mr. Buchanan's figures. Mr. Buchanan had taken the unimproved

freehold value of £3,000,000 in May 1998. He had added £1,000,000 for market movement, £500,000 for size and £500,000 for the benefit of the coach house and he had deducted £250,000 for position, suggesting an unimproved freehold value of £4,750,000 for the subject property. Mr. Briant considered the adjustment for size might be a little low. He would add £800,000 (20%) for size and £750,000 for the coach house. The property was quieter, with traffic going one way out of Norfolk Road. He did not think the market would take much notice of that. There was a lack of privacy for the subject property, by comparison to 61 Avenue Road. Again, it was a question of what difference it made in the market. Mr. Briant arrived at a figure of £5,550,000 for the subject property based on 61 Avenue Road, compared to his own figure for the freehold of £5,500,000.

(10) Mr. Briant did not remember enough about 50 Avenue Road to comment. Mr. Buchanan had not given sufficient details of the property. The site of the subject property was larger. Mr. Buchanan had only made an allowance of £250,000 for size which was inadequate. He also considered Mr. Buchanan's addition of £500,000 for the coach house was low.

(11) With regard to 34 Avenue Road, that had been a decision of the Leasehold Valuation Tribunal (Ref. LON/LVT/1083/99). Mr. Briant did not think that there was much to say about it. It was situated opposite the subject property.

16. Mr. Meller gave evidence. He stated that he had purchased 47 Avenue Road with his wife in June 1994. The property had been owned by a Saudi Arabian company. They had only

occupied the property for one month each year. It did not appear that they had spent any money on the house during the 20-year period of their ownership. The garden was overgrown. There was a greenhouse with broken windows. The front driveway was in very bad repair. The position was similar inside the property. There was nothing internally that they could keep. The fittings were early 1970s. The property had not been used for about 11 months before they bought it. Mr. Buchanan's proof of evidence listed the improvements they had carried out in 1994/1995. He had spent £1,000,000 on works to the property in that period, probably £750,000 on building works and £250,000 on furnishings and fabrics.

17. In answer to questions from Mr. Briant, Mr. Meller stated that he had paid £2,150,000 for the property, inclusive of an agent's fee of 1% - 1.5% plus VAT.
18. Mr. Buchanan produced a proof of evidence dated 25 October 2001, which he supplemented in his oral evidence. The principal points of his evidence were as follows:-
 - (1) He stated that the major works of alterations and improvements to the property had been carried out by the tenants in about 1994/1995. He listed the tenants' improvements to the property. It was difficult to attribute individual values to specific improvements. He had therefore treated the value of the improvements on a global basis. In his view the value of the tenants' improvements was in the order of £500,000 in relation to the freehold value. He subsequently gave a breakdown of this figure to include £150,000 for a new extension and garage, £100,000 for ground floor alterations, £50,000 for first floor alterations, £150,000 for second

floor alterations and £50,000 for associated works (landscaped rear garden and new driveway). On a pro-rata basis, the value of the tenants' improvements in respect of the leasehold value would be approximately £310,000. He had made a deduction of £500,000 and £310,000 respectively from his improved freehold and leasehold values to determine the unimproved values for the subject property. He had adjusted each comparable where appropriate on a similar basis.

- (2) He considered that the extent of the comparable evidence, especially for freeholds, was very limited, particularly recent freehold sales in Avenue Road. He had considered the limited comparable evidence available, a decision of the Leasehold Valuation Tribunal and two recent settlements in Avenue Road, which he considered to be good supporting evidence in the absence of up-to-date comparables. He had adjusted for market movement by reference to the Savills index, together with the views and opinions of local estate agents and his own experience and judgment.
- (3) In arriving at the unimproved freehold value of £4,750,000, he had considered 23 Avenue Road, 29 Cavendish Close and 90 Hamilton Terrace, the decision of the Leasehold Valuation Tribunal relating to 34 Avenue Road and the settlements relating to 61 and 50 Avenue Road.
- (4) In arriving at the unimproved leasehold value of £2,950,000, he had considered 56 Avenue Road, 42 Queen's Grove and 55 Avenue Road. He had also looked at the settlement for 61 Avenue Road for the expected relativity of a lease of this

length, adopting a relativity of 62.1% between freehold and leasehold value. A copy of his valuation is at Appendix 2.

19. Mr. Briant had no questions for Mr. Buchanan. In answer to questions from the Tribunal, Mr. Buchanan stated that he had added a figure of £500,000 for the coach house. It was derelict. He needed to put a value on it.

20. In his closing remarks, Mr. Conway for the tenants stated that:-

- (1) The landlords had not proved their case for the wording they sought in respect of Clauses 3.1 and 3.2 of the transfer, particularly when one looked at the provisions of Section 10 (4) of the Leasehold Reform Act 1967.
- (2) It was not accepted that 29 Cavendish Close and 39 Circus Road were truly comparable. 39 Circus Road had not been on the market and was to be treated with caution.
- (3) With regard to the size of the site, the value of the site could be seriously affected by planning constraints and other factors.
- (4) Mr. Briant and Mr. Buchanan had approached the case from opposite directions. Mr. Buchanan looked at the property as it was and deducted for the value of improvements. Mr. Briant said that he had made his deduction at the outset. Mr. Briant had originally said the property should not be discounted for condition. He

had now moved on this. The tenants considered that the period of 12 months referred to in Clause 2 of the 1947 Lease for completing the property was a very good indication of the state of the property at the time following the requisitioning of the property. It was a much longer period than the Eyre Estate would ordinarily allow to complete a property. It could not be explained simply by the difficulty in getting materials.

- (5) Mr. Briant had ignored settlement evidence. Settlement evidence might not be the best evidence, but at the very least it was a cross-check. 61 Avenue Road was a very similar property. Mr. Buchanan's valuation was supported. He asked the Tribunal to determine an enfranchisement price of £1,195,230.

21. In his closing remarks, Mr. Briant stated that:-

- (1) The wording of the restrictive covenants proposed by the landlords had worked in practice. There had not been disputes over minor alterations. The Eyre Estate had not sought to abuse its position. There had been a number of cases where minor alterations had been made without difficulty. The tenants were sufficiently protected by the proviso that consent was not to be unreasonably withheld or delayed. It was clear from the opening words of Clause 3 of the transfer that once the Eyre Estate parted with ownership, the restrictive covenants would fall. The Tribunal should be slow to change something which worked extremely well on the ground. It would be a retrograde step to introduce uncertainty.

- (2) The starting point for valuation purposes was the open market. Settlement evidence was a check. Fairly substantial adjustments were needed for settlement evidence. He rejected the criticism of 29 Cavendish Close and 39 Circus Road, though stating that he had treated those sales with caution.
- (3) With regard to 47 Avenue Road, there was the size of the site to take into account. The value of the extra land could be affected by planning constraints. He was not looking at the matter from this perspective. The property was a large site with an attractive garden.
- (4) The extent of the tenants' improvements was agreed. He had taken the value of the house unimproved and had worked from that. Mr. Buchanan had made an adjustment for improvements. He had tried to square off the fact that he was looking at the old house. He was not disputing the fact that there should be an adjustment for the value of improvements. Similarly, with the coach house, he had valued the property as one demise including the coach house. It had a value. He was higher than Mr. Buchanan for the value of the coach house.
- (5) He considered that £5,500,000 was fair for the unimproved freehold value of the property. He thought that the property would sell for substantially more in the market.

C. **Inspection**

22. The Tribunal inspected the subject property at 47 Avenue Road on 31 October 2001.

23. In addition, the Tribunal inspected the various comparables externally, namely 23, 34, 50, 55, 56, 61 and 85 Avenue Road, 29 Cavendish Close, 39 Circus Road, 42 Queen's Grove and 90 Hamilton Terrace.

D. **Decision**

(1) **Form of transfer**

24. The Tribunal consider that the restrictive covenants in Clauses 3.1 and 3.2 of the transfer should be in the form proposed by the landlords. The Tribunal have reached this conclusion for the following reasons:-

- (1) The starting point is the existing restrictions on external alterations to be found in Clause 10 of the 1947 Lease. The proposed restrictive covenants in Clauses 3.1 and 3.2 of the transfer to a large degree mirror what is in the existing Lease.
- (2) The Tribunal can well see the need to ensure that any external alterations should be professionally considered in the interest of the value of other properties on the Estate.
- (3) It is important to bear in mind that the proposed restrictive covenants are subject to the express proviso that the Estate's consent is not to be unreasonably withheld or delayed. The Tribunal are of the view that the tenants have no need to fear that the application of the restrictive covenants in their proposed form would prevent the carrying out of minor alterations. The Estate cannot unreasonably withhold their consent.

- (4) There is no evidence before the Tribunal that the restrictive covenants have not been operated fairly in other cases.
- (5) It is important to bear in mind the special character of the St. John's Wood area. It is a high class area. There is no scheme of management in operation on the Eyre Estate. In the Tribunal's view, the landlords are justified in seeking to maintain the values of other properties on the Estate for the benefit of the landlords and other residents. Indeed, the opening words of Clause 3 of the transfer expressly refer to the covenants being for the benefit and protection of the adjoining and neighbouring unsold parts of the landlords' Eyre Estate.
- (6) The Tribunal are satisfied that the landlords are correct in saying that the adoption of the restrictive covenants in the form proposed by them will materially enhance the value of other property in which the landlords have an interest and that the restrictive covenants in the form proposed do satisfy the requirements of Section 10 (4) (b) and (c) of the Leasehold Reform Act 1967.
- (7) The Tribunal are of the view that by virtue of the fact that the tenants accept that there should be some restrictive covenants dealing with external alterations in the transfer that it necessarily follows from that that the tenants accept that the landlords are able to bring their case relating to the inclusion of the restrictive covenants within the provisions of Section 10 (4) of the Act.
- (8) The tenants' proposed wording would produce a lack of certainty. Moreover, the

Tribunal agree with the landlords that the tenants' suggested wording for the restrictive covenants does not actually reflect the provisions of Section 10 (4) of the Act.

(2) General observations

25. The Tribunal make the following general observations:-

- (1) Location is important. The Tribunal have been particularly assisted by the Avenue Road comparables. Conversely, the Tribunal have derived little assistance from 29 Cavendish Close, 39 Circus Road and 90 Hamilton Terrace. Those properties are situated off the other side of Wellington Road and are too far from the subject property to be of any real assistance other than by way of illustrating values in the area generally.
- (2) In relation to the subject property at 47 Avenue Road, there is no clear evidence before the Tribunal as to the condition of the property at the commencement of the term of the 1947 Lease. The original plans show that the design of the property was approved in August 1938. It appears that the property was built in the late 1930s, it was requisitioned during World War II and then returned after the War at the end of 1946. Clause 2 of the 1947 Lease contained a covenant by the tenant to complete the premises within 12 months. It was accepted by the landlords that a period of 12 months was rare. Pre-war, a period of 3 months had been given to complete a property. The landlords suggested that a longer period was given in this case because of the difficulty after the War in obtaining materials.

Nevertheless, it does suggest to the Tribunal that the property did require more work than usual, albeit that the precise extent of the works necessary is not clear on the evidence before the Tribunal.

(3) Value of the freehold interest

26. The landlords' suggested figure for the unimproved freehold value of 47 Avenue Road was £5,500,000. The tenants' figure was £4,750,000.
27. In the Tribunal's view, the two best comparables for the value of the freehold interest are 23 Avenue Road (a joint comparable) and 61 Avenue Road (a settlement included by Mr. Buchanan which Mr. Briant agreed should have been included in his evidence).
28. The Tribunal discount 29 Cavendish Close, 39 Circus Road and 90 Hamilton Terrace on the grounds of remoteness from the subject property. The settlement at 50 Avenue Road is on the opposite side of the road. It has a smaller frontage. It is the same age, but of a different architectural appearance. 34 Avenue Road (a decision of the Leasehold Valuation Tribunal) is on the opposite side of the road, close to the subject property. It is a wide but shallow site, almost square. It is very much secondary evidence. 85 Avenue Road (a decision of the Lands Tribunal) is a very different property and again secondary evidence.
29. The Tribunal's view of 23 Avenue Road and 61 Avenue Road when adjusting to arrive at the improved freehold value of the subject 47 Avenue Road is as follows:-

(1) *23 Avenue Road:* The freehold was sold in November 1997 for £3,000,000. It is a smaller site than 47 Avenue Road. To arrive at a figure for the freehold value of 47 Avenue Road, the Tribunal add £1,000,000 for market movement, £500,000 for condition and £1,000,000 for the coach house/larger site of 47 Avenue Road, arriving at an improved freehold value of £5,500,000.

(2) *61 Avenue Road:* This was a settlement in May 1998 at £3,000,000. It is a very good comparable because of its corner location on the same side of Avenue Road, it is of a similar age and architectural style and even has a pedestrian crossing opposite, as 47 Avenue Road. To the figure of £3,000,000, the Tribunal add £1,000,000 for market movement, £750,000 for size and £750,000 for the coach house/larger site of 47 Avenue Road, again arriving at an improved freehold value of £5,500,000.

30. With regard to the value of tenants' improvements to be deducted in relation to the freehold value, Mr. Buchanan's figure of £500,000 for the value of the improvements was broken down as follows:-

New extension and garage	£150,000.00
Ground floor alterations	£100,000.00
First floor alterations	£ 50,000.00
Second floor alterations	£150,000.00
Associated external works (landscaped rear garden and new driveway)	<u>£ 50,000.00</u>
	<u>£500,000.00</u>

31. The Tribunal allow a deduction for the value of tenants' improvements of £375,000 in relation to the freehold value as follows:-

New extension and garage	£150,000.00
Ground floor alterations	£100,000.00
First floor alterations (no enhancement to value of property)	Nil
Second floor alterations	£100,000.00
Associated external works	<u>£ 25,000.00</u>
	<u>£375,000.00</u>

32. Deducting the figure of £375,000 from the improved freehold value of £5,500,000 based on 23 and 61 Avenue Road, the Tribunal arrive at an unimproved freehold value for the subject 47 Avenue Road of £5,125,000.

(4) Value of the leasehold interest

33. The landlords' suggested figure for the unimproved leasehold value of 47 Avenue Road was £3,272,500. The tenants' figure was £2,950,000.

34. In the Tribunal's view, the two best comparables for the value of the leasehold interest are 42 Queen's Grove and 56 Avenue Road (both joint comparables).

35. The Tribunal did not consider that 55 Avenue Road was a good comparable. It is on the same side of the road as 47 Avenue Road, though further away from Regent's Park. It is a smaller house on a smaller plot, a very different type of property and a 1960s house. The

size and style of the property are different, as well as it being of later construction.

36. The Tribunal's view of 42 Queen's Grove and 56 Avenue Road when adjusting to arrive at the improved leasehold value of the subject property is as follows:-

(1) *42 Queen's Grove*: The leasehold interest was sold in March 1999 with 35 years unexpired for £1,750,000. The property is situated off Avenue Road. It has the advantage of being in a side road, but is overlooked by flats. To arrive at a figure for the leasehold value of 47 Avenue Road, the Tribunal add £400,000 for market movement, £1,200,000 for size (house and site), £200,000 for condition and £100,000 for poor location (property overlooked). The Tribunal deduct £262,500 (15%) for Leasehold Reform Act rights, arriving at an improved leasehold value of £3,387,500.

(2) *56 Avenue Road*: The leasehold interest was sold in August 1999 with 30 years unexpired for £4,000,000. It is on the opposite side of the road, but enjoys a corner site. It is further away from Regent's Park. The Tribunal add £500,000 for market movement, £300,000 for condition and £250,000 for longer lease. The Tribunal deduct £800,000 for Leasehold Reform Act rights (20%), £400,000 for size, £200,000 for development potential and £250,000 for location, arriving at an improved leasehold value of £3,400,000.

37. The Tribunal allow a deduction of £231,600 for the value of tenants' improvements in respect of the leasehold value of the property (a 61.76% relativity in relation to the value

of tenants' improvements in respect of the freehold value of £375,000).

38. Deducting the figure of £231,600 from the improved leasehold value of £3,387,500 (based on 42 Queen's Grove) and £3,400,000 (based on 56 Avenue Road), the Tribunal arrive at an unimproved leasehold value of £3,155,900 and £3,168,400 respectively.
39. Averaging the figures arrived at from the two leasehold comparables, 42 Queen's Grove and 56 Avenue Road, the Tribunal's unimproved leasehold value for 47 Avenue Road is £3,162,150, which the Tribunal round up to £3,165,000.

(5) Relativity

40. The landlords' figures for the unimproved freehold and leasehold values of 47 Avenue Road suggested a relativity of 59.5%. The tenants' figures gave a relativity of 62.1%.
41. The Tribunal's figures give a relativity of 61.76% between freehold and leasehold values.

E. Determination

42. The Tribunal determine the enfranchisement price payable by the tenants to be £1,298,500 in accordance with the Tribunal's valuation annexed to the decision at Appendix 3.

Chairman *P. Wulwik*

Peter Wulwik

Date **30 JAN 2002**

THE LEASEHOLD REFORM ACT 1967

47 Avenue Road S 9(1c)

Valuation Date: 10/03/00

LEASE TERMS:

Lease commenced: 25/12/36
Lease to expire: 25/12/35
Unexpired Term: 35.82
Ground rent (pa) £100 fixed

	Unimproved	
FHVP (unimproved)	£5,500,000	
Leasehold Value	£3,272,500	59.50%

LANDLORDS INTEREST:

Term:			
Ground Rent:		£100	
YP	35.82 @	6%	14.5994
			£1,460

Reversion:			
FHVP Less improvements:		£5,500,000	
PV £1	35.82 @	6%	0.1240
			£682,000
			£683,460

MARRIAGE VALUE:

FHVP:	£5,500,000
Less	
Landlords Interest:	£683,460
Leasehold Interest:	£3,272,500

Total Marriage Value:	£1,544,040	
Take 50% MV		£772,020

Freeholders interest:		<u>£1,455,480</u>
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say £1,455,500

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DATE: October 2001
PROPERTY: 47 Avenue Road and 66 Townshend Road, London NW8
VALUATION DATE: 10th March 2000

LEASE DETAILS

DATE 31st January 1947
TERM 99 years from 25/12/36
EXPIRY DATE 25/12/2035
UNEXPIRED TERM 35.82 years
GROUND RENT £100 p.a. fixed

VALUES

UNIMPROVED – Existing House & Coach House

FHVP £4.75m
UNEXPIRED TERM £2.95m
LESSEE'S IMPROVEMENTS (£500,000)

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM</u>	GROUND RENT			£100 p.a	
	x YP 35.82 years	6%	14.5994		
					£1,460
<u>REVERSION</u>	FHVP (less improvements)			£4.75m	
	x PV 35.82 years	6%	.1240		
					£589,000
				Lessors interest	£590,460

MARRIAGE VALUE

	FHVP (less improvements)	£4,750,000
Less	Lessor's Present Interest	£590,460
	Lessees Interest (less improvements)	£2,950,000
		£1,209,540
Marriage Value		£1,209,540
	50% Marriage Value	£604,770
	TOTAL	£1,195,230

LVT Valuation

Leasehold Reform Act 1967 (as amended)

Valuation under section 9(1C)

47 Avenue Road and 66 Townshend Road London NW8

Valuation date 10 March 2000

FHVP unimproved	£5,125,000
Leasehold value	£3,165,000
Relativity	61.76%

Value of Lessor's interest

For remainder of term

Ground rent to 25/12/2035	£	100	
Capitalised at 6% for 35.82 years		14.5994	
			£ 1,460
Reversion to FHVP	£	5,125,000	
PV £1, 35.82 years at 6%		0.124	
			<u>£ 635,500</u>
Lessor's interest excluding marriage	£		636,960

Marriage value

FHVP		£ 5,125,000	
Less			
Lessor's interest	£	636,960	
Lessee's interest	£	3,165,000	
		<u>£ 3,801,960</u>	
Marriage value		£ 1,323,040	
Lessor's share	50%		<u>£ 661,520</u>
			£ 1,298,480
Enfranchisement price	Say		<u>£1,298,500</u>