LRA/59/2006

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – house – price – disputed site value – standing house approach – cleared site approach – comparables – site value percentage – whether LVT correct to look at direct evidence of site value by reference to developable space – purchase price determined at £437,000 – appeal dismissed – Leasehold Reform Act 1967 S 9(1)

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **EVANGELOS TSIAPKINIS** **Appellant**

and

EARL CADOGAN **Respondent**

Re: 146 Pavilion Road,
London,
SW1X 0AX

Before: His Honour Judge Huskinson and A J Trott FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
on 29-30 October 2007

Edwin Johnson QC, instructed by Bircham Dyson Bell, for the appellant
Anthony Radevsky, instructed by Pemberton Greenish, for the respondent

The following cases are referred to in this decision:

Arrowdell Ltd v Conniston Court (North) Hove Ltd [2007] RVR 39
Langinger v Earl of Cadogan and Cadogan Estates Ltd (2001) Lands Tribunal LRA/46/2000 (unreported)
Wellcome Trust v Romines [1999] 3 EGLR 229
Chelsea Properties Limited v Earl Cadogan and Cadogan Estates Limited (2007) Lands Tribunal LRA/69/2006 (unreported)
Kemp v Josephine Trust Limited (1971) 22 P&CR 804
Loder Dyer v Cadogan [2001] 3 EGLR 149
Snook and others v Somerset County Council [2005] 1 EGLR 147

The following cases were also cited:

Arbib v Earl Cadogan [2005] 3 EGLR 139
Cadogan Estates Ltd v Hows and Another [1989] 2 EGLR 216

DECISION

Introduction

1. This is an appeal by Evangelos Tsiapkinis (the appellant) against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel made on 14 March 2006 on an application to acquire the freehold interest in 146 Pavilion Road, London, SW1X 0AX (the appeal property) made by the then tenant under Part 1 of the Leasehold Reform Act 1967. The lease of the property pursuant to which the enfranchisement claim was made is an under lease dated 4 September 1962. It was granted for a term of 60.75 years (less three days) from 24 June 1962.

2. The tenant's notice of claim to acquire the freehold interest in the appeal property was served on 19 May 2004 (the valuation date) at which time the lease had 18.84 years unexpired. The freeholder, Earl Cadogan (the respondent), served a notice in reply to the tenant's claim on 7 February 2005 stating that the property should be valued in accordance with section 9(1) of the 1967 Act. The appellant subsequently took an assignment of the lease and of the benefit of the notice of claim.

3. The LVT determined that the price payable for the freehold interest in the appeal property was £437,000. It derived this figure from its assessment of £1,000,000 as being the site value as at the valuation date. This value, and the appropriate method by which it was calculated, were the only disputed issues between the parties, all other valuation matters having been agreed between them. There was disagreement about whether the cleared site approach should be used at all and, if so, how it should be assessed. Both parties examined the standing house approach.

4. The LVT refused permission to appeal this decision on 3 May 2006. The appellant then applied to this Tribunal for permission to appeal which was granted on 24 July 2006. The appeal was heard by way of a rehearing.

5. Mr Edwin Johnson QC appeared for the appellant and called Mr Robert James Orr-Ewing, a partner at Knight Frank, as an expert witness. Mr Anthony Radevsky of counsel appeared for the respondent and called Mr Andrew James McGillivray, a partner at W A Ellis, and Mr Keith Douglas Gibbs FRICS, an associate of Gerald Eve, as expert witnesses.

6. We made an accompanied site inspection of the appeal property and an external inspection of comparable properties on 14 November 2007.

Facts

7. Pavilion Road is located in a prime area of central London and runs parallel with, and immediately to the west of, Sloane Street, which connects Sloane Square and Knightsbridge. It is a quiet residential road comprised mainly of mews properties. 146 Pavilion Road is located on the west side of the road between Pont Street to the north and Cadogan Gate to the south. It adjoins the rear of the large residential properties on the eastern side of Cadagon Square.

8. The property is a traditional two-storey Victorian terrace mews house of standard construction with brick built external and party walls with a suspended wooden first floor and a solid concrete slab ground floor. It comprises two garages with living accommodation above. At the valuation date the parties agreed that the property was unmodernised and in poor condition. By the time of our site inspection the upper floor accommodation had been refurbished and conversion work was being undertaken to the northern garage. The gross internal area of the property was 1,360 sq ft (126.34 sq m). The parties agreed that there was potential for the construction of a third floor that would add a further area of 500 sq ft (46.45 sq m) of accommodation making a total of 1,860 sq ft (172.79 sq m). It was agreed that this potential could be realised either by extending the existing building or by demolition and re-building. It was also agreed that planning permission would be granted.

9. The appeal property is subject to a head lease dated 4 January 1961 that was granted for a term of 63.25 years from 25 December 1959. It was agreed before the LVT that the head lessee is not entitled to a share in the enfranchisement price to reflect the reduction in rent payable under the head lease that would occur when the appellant acquires the superior interests in the property.

The LVT's decision

10. The LVT gave its decision on 14 March 2006 and determined that the price payable by the appellant for the freehold interest in the appeal property was £437,000 (see Appendix 1).

11. The LVT criticised the standing house approach that had been used by both valuers (the same expert witnesses appeared before the LVT as appeared before this Tribunal). Mr Orr-Ewing was said to have relied principally upon transactions in Pavilion Road only three of which were sales and one of which was not considered to be a comparable of a house modernised and adapted to best advantage. His remaining comparables were settlements that the LVT considered "are at best secondary evidence". The LVT did not accept Mr Orr-Ewing's argument that it was established as the norm that the site value was 50% of the entirety value. Mr McGillivray's reliance upon comparables from "very different locations" was criticised by the LVT, as was his approach to the calculation of site value. The LVT said that he had made no allowance for the value of retained parts of the original structure when analysing comparables and that he should have at least indexed the eventual sale price back to the acquisition date. The Tribunal said:

> "19 … it is most unlikely that a developer would consider a site ratio approach in making his bid as he would be far more concerned with how much space he can develop. Fortunately there is direct evidence of site value requiring only small adjustment for demolition and in the Tribunal's opinion it makes far more sense to approach the cleared site value from this evidence directly rather than determining a percentage of the standing house value."

12. The direct evidence that the LVT relied upon consisted in part of information that Mr McGillivray sent to the tribunal, at its request, after the hearing. He wrote to the LVT on 26 January 2006 providing details of the sale of three properties in Cadogan Lane one of which, number 18, was one of two transactions then relied upon by the LVT in its decision (the other being the sale of 2 Ennismore Mews). The LVT adjusted the sale price of these two comparables by adding an allowance for demolition costs and dividing the result by the amount of "developable space" to give a figure per square foot. The LVT took the figure so calculated for 18 Cadogan Lane, £635 per sq ft, and reduced it by 10% to reflect the difference in locational quality between that address and the appeal property. This gave a rounded value of £570 per sq ft. The analysis of 2 Ennismore Mews gave a value for the developable space of £540 per sq ft. The LVT determined that the appropriate figure for the developable space of the appeal property was £537 per sq ft, which gave a site value, based upon 1,860 sq ft, of £1,000,000. Using the variables agreed between the parties the LVT reached a figure of £437,000 for the price payable for the freehold interest.

13. The appellant did not receive a copy of the letter from Mr McGillivray to the LVT dated 26 January 2006 and was not invited to comment upon it. Given the LVT's reliance upon one of the comparables referred to in that letter, this Tribunal considered that the failure to give the appellant the opportunity to deal with it constituted a procedural defect that was sufficiently serious to grant permission to appeal.

The case for the appellant: evidence

The standing house approach – entirety value

14. Mr Orr-Ewing relied upon the standing house approach and he submitted a revised valuation at the start of his evidence using the agreed valuation variables that determined the freehold interest in the property at £326,000. This was based upon an entirety value of £1,488,000 and a site value percentage of 50%. This produced a site value of £744,000. He relied upon three sets of comparables. Firstly, he looked at sales and enfranchisement claims in Pavilion Road. Secondly, he examined sales evidence in Clabon Mews which runs parallel to the western side of Cadogan Square. Finally, he considered comparable sales in Cadogan Lane which runs parallel to the eastern side of Cadogan Place. Mr Orr-Ewing placed the greatest weight upon the comparables from Pavilion Road. He considered the evidence from Clabon Mews "for completeness' sake" but only looked at the properties in Cadogan Lane because the respondent's valuer felt it was relevant and because it was considered by the LVT.

15. He ignored any sales that took place more than two years either side of the valuation date. He also made a series of adjustments to the comparables. Where a property had development potential (often for the construction of an additional floor) he calculated its effective floor area by adding 50% of the additional floor space to the area of the original building. He used this percentage because it was his figure for the site value proportion. Prices were then indexed to the valuation date. If the comparable was an unmodernised property Mr Orr-Ewing made a fixed addition of £200 per sq ft that he considered to be the cost of putting the comparables into a modern condition adapted to best advantage. The entirety values thus calculated were expressed per square foot of effective (or existing) floor space. Finally, for comparables in Clabon Mews and Cadogan Lane, the entirety values were reduced by 10% to reflect their superior location to Pavilion Road. He then averaged the entirety values of the comparables in each location.

16. Mr Orr-Ewing identified six comparables in Pavilion Road, but he accepted during cross-examination that one of these, number 66, was "not the strongest comparable". It was not included in the summary table that he used to calculate average figures. He acknowledged that the Tribunal should give it no evidential weight "so far as the rate per square foot is concerned." The other five comparables were at 104, 114, 116, 122 and 138 Pavilion Road. Mr Orr-Ewing stated during cross-examination that he had not inspected any of these properties internally, relying instead upon conversations with colleagues and agents. He considered that numbers 104, 116 and 138 had all been in good condition at the date of sale by which he meant that the properties had good quality kitchens and bathrooms and were generally not merely in repair.

17. He acknowledged that the presence of a spiral staircase in number 104 detracted from its value although he believed that the ground floor kitchen and the lack of an en suite bathroom were both insignificant factors. He analysed its entirety value at £636 per sq ft. Number 116 was another property with a spiral staircase but that otherwise had a sensible layout. He calculated the entirety value to be £661 per sq ft. In cross-examination Mr Orr-Ewing agreed that an adjustment should have been made to the values of both 104 and 116 Pavilion Road to reflect the presence of the spiral staircases although he felt unable to quantify what this should be. He rejected the suggestion that neither of these houses was modernised and developed to best advantage at the date of sale.

18. The condition of number 138 was described as excellent having been redeveloped by a well-known developer, Mike Spink, and sold in April 2003. However Mr Orr-Ewing said that the redevelopment had not gone well, probably due to the creation of an irregular, triangular shaped ground floor room that had been designed to maximise the light received. He also commented that Pavilion Road was not a location that was likely to attract the top residential developers. The analysis of the sale of this property showed an entirety value of £1,001 per sq ft.

19. The remaining two comparables, numbers 114 and 122, were both unmodernised houses. Mr Orr-Ewing did not submit number 114 as evidence of a sale. He relied instead upon a valuation of the freehold interest that was agreed between one of his colleagues and the Cadogan Estate and which was used as the basis of a rent review. He accepted that "not very much weight" should be placed upon this comparable and he stated that "he was happy not to

rely upon it". Nevertheless it was included in his summary sheet and was therefore reflected in his calculation of the average adjusted entirety value of the Pavilion Road comparables. He calculated the entirety value of 122 Pavilion Road at £914 per sq ft.

20. The four comparables in Pavilion Road that were relied upon by Mr Orr-Ewing at the hearing ranged in value from £636 to £1,001 per sq ft. He denied that this large variance reflected the fact that the comparables had not been adjusted to the correct condition. He had averaged the figures due to their significant range and this produced a value of £803 per sq ft. He felt that a figure of £800 per sq ft was a reasonable rate for the entirety value of the appeal property at the valuation date based upon this evidence.

21. Mr Orr-Ewing relied upon eight comparable sales in Clabon Mews. He described two of these, numbers 15 and 25, as being in excellent condition. He denied that number 15 fell short of being modernised to best advantage and considered that it was well finished and decorated in a neutral, and acceptable, manner. The analysis of these comparables produced entirety values of £827 and £976 per sq ft respectively.

22. The remaining six comparables were all said to be unmodernised. Number 18, whilst sold very close to the valuation date, was said by Mr Orr-Ewing to require too many adjustments to be a reliable comparable. Number 42 was sold twice within two years of the valuation date. No work had been done to the property between the two sales and Mr Orr-Ewing said he preferred to use the earlier sale since it was closer to the valuation date. This property was said to have clear potential for extension and had an effective floor area of 1,980 sq. ft. He reduced the purchase price by £100,000 to reflect the existence of a garden, a feature that was not enjoyed by the appeal property. He calculated the entirety value at £760 per sq ft in respect of the first sale in March 2003 and that of the subsequent sale in August 2005 at £1,164 per sq ft. 41 Clabon Mews also had potential for extension. Mr Orr-Ewing said it had an effective floor area of 2,475 sq. ft. This produced an entirety value of £827 per sq ft. None of the remaining three comparables in Clabon Mews, numbers 5, 40 and 59, had potential for extension and Mr Orr-Ewing analysed their entirety values at £914, £817 and £932 per sq ft respectively.

23. The average adjusted entirety value of the Clabon Mews comparables was £918 per sq ft. Mr Orr-Ewing included both sales of number 42 in this analysis as well as the sale of number 18. He concluded that this figure "seems to me towards the top end of an entirety value for Pavilion Road". He therefore decided to rely upon the figure of £800 per sq ft that he had determined from the sales comparables in Pavilion Road. In cross-examination it was put to him that there was no reason to reject the evidence of the Clabon Mews sales and that he should consider the evidence as a whole. He said he had taken account of the Clabon Mews evidence but did not accord it as much weight as that from Pavilion Road and did not wish to reconsider his conclusions.

24. There were six comparable sales in Cadogan Lane which Mr Orr-Ewing submitted as evidence of entirety value. 78 and 80 Cadogan Lane had entirety values of £966 and £1,135 per sq ft respectively. He was reluctant to concede that number 18 was sold as a development site.

He considered this to be a perfectly satisfactory and habitable house that was sold with planning permission to add an extra floor. It was marketed as a dwelling rather than a development site. At the hearing he produced a letter dated 28 February 2007 from Mr Andrew Saville-Edells who had purchased the property early in 2004. Mr Saville-Edells confirmed that he had bought the property on the basis of an existing house with planning permission for extension. It was not until later that his architect advised him that the existing walls and floors were in poor condition and that it would be more economic to demolish the existing structure and re-build. He had not originally intended to do so. Mr Orr-Ewing said that number 18 had an effective floor area of 1,187 sq ft and he analysed the sale, on the basis of an unmodernised house, to show an entirety value of £915 per sq ft.

25. Mr Orr-Ewing acknowledged that 85 Cadogan Lane was not a mews property. It was an unmodernised house on the eastern side of the road that was built in approximately 1950. But he considered it to be as good a comparable as any other in Cadogan Lane and analysed its entirety value as £797 per sq ft. 68 Cadogan Lane was another property that had been sold twice within Mr Orr-Ewing's time frame. It was first sold in October 2003 at an entirety value of £1,024 per sq ft. He described this property as being in very good condition. It was sold again in March 2006 at an entirety value of £940 per sq ft. Mr Orr-Ewing said that the "gloss had come off" the house between the sales.

26. 32 Cadogan Lane was also said to be in very good condition. The sale of the property in January 2006 had included what Mr Orr-Ewing described as toys, such as flat screen television and radio facilities in all rooms, video screens, solid walnut floorboards, under floor heating to all bathrooms and other features. He considered this to be a fit out that was above that required to constitute a property modernised to best advantage. He made a "comparatively small adjustment" of £50 per sq ft to the purchase price to reflect this superfluous specification. The adjusted entirety value was calculated to be £786 per sq. ft.

27. Mr Orr-Ewing said that the average of the adjusted entirety values for his comparables in Cadogan Lane was £957 per sq ft. He thought that this figure was distorted by the sale of 80 Cadogan Lane which he said had produced an unusually high rate. The average without this comparable was £943 per sq ft.

28. He concluded that the comparable evidence of standing house sales in Pavilion Road was the best available and he preferred it to that from sales in Clabon Mews and Cadogan Lane. He therefore adopted an entirety value of £800 per sq ft that was based upon the average for the Pavilion Road comparables and which, when applied to the agreed floor area of 1860 sq ft, gave an entirety value for the appeal property of £1,488,000.

The standing house approach – site proportion

29. Mr Orr-Ewing argued that the appropriate proportion for site value under the standing house approach was 50%. He referred to *Hague on Leasehold Enfranchisement (4th Edn)* at page 190: "the highest reported proportion is the 50% for houses in Chelsea". He supported his argument by reference to two LVT cases where the tribunal had declined to go above this figure. One of these

involved 66 Pavilion Road and was a hearing in which Mr Orr-Ewing appeared on behalf of the tenant. He relied upon and updated the evidence that he gave in that case. However, during cross-examination he accepted that three of the comparables he had there relied upon, 19/19A Wilton Row, Cavendish House (28 Caroline Terrace) and Old Chelsea House (15 Old Church Street) were substantially larger than the appeal property and were therefore not reliable evidence.

30. The remaining comparable was 19A Princes Gate Mews. Mr Orr-Ewing did not think that this property was a cleared site when it was sold for £550,000 in June 1999. It was derelict but retained the party walls and a front wall. He believed that owner-occupiers as well as developers were in the market for this property and that they would pay more because they did not require a developer's profit. He also considered that the retention of the walls, foundations and drains was of value and that a certain amount of the purchase price, which he took as £100,000, should be allocated to the house itself, thereby reducing the cost of the site to £450,000. He then calculated the site proportion by dividing this figure by £1,030,000, which was the sale price of the re-developed house in July 2000. This gave a site value proportion of 43.7%. He said that the figure of £100,000 had been obtained from his sales colleagues. He had not inspected the site himself. He had not allowed for any VAT savings because although no VAT would be payable on the development of a cleared site Mr Orr-Ewing contended that this was never such a property.

31. He accepted that the site value proportion that had been used in the past did not necessarily have to be used now. But he did not agree that if the rate of house price inflation exceeded building cost inflation then this would lead to a greater site value proportion. He said that if a developer still wanted a 15% return on his costs then the differential inflation rates would not have an effect. He understood the theoretical argument but had not seen any increase in site value proportion in practice. He said that developers still paid between 40 and 50% of the entirety value for sites.

The cleared site approach

32. Mr Orr-Ewing did not consider that there was any evidence of sales of cleared sites. He felt that the closest to such a sale was the disposal of 2 Ennismore Mews in June 2004 at a price, net of VAT, of £1,600,000. This property, formerly a public house, was re-developed as a house and sold in January 2006 for £3,625,000. Adjusting for the difference in dates between the two sales gave a site value proportion of 49.5%. In answer to questions from the Tribunal, he said that the first sale of 2 Ennismore Mews showed a site value of £543 per sq ft. He thought that Ennismore Mews was a better location than Pavilion Road, being quieter with less traffic and a better outlook. The house that was built on this site was larger than the appeal property but he did not consider this to be a material factor.

33. Mr Orr-Ewing said that 18, 32, 78 and 80 Cadogan Lane were sold as unmodernised houses rather than development sites. The last three were bought by developers but could have been bought by owner-occupiers. Mr Saville-Edells had said that he had no intention of demolishing and re-building number 18 at the time that he purchased it.

34. Using a residual valuation as a check Mr Orr-Ewing calculated that the site value of the appeal property was £619,500 giving a site value proportion, based upon his entirety value of £1,488,000, of 41.6%. He also undertook a residual valuation using Mr Gibbs's entirety value of £1,774,440 and his site value of £1,065,000. This showed that the developer's profit (at 0.3%) was almost non-existent.

35. Mr Orr-Ewing rejected the concept of developable space, introduced by the LVT in its decision. He said that it failed to take account of the value of the finished product. A developer was bound to take either a proportion of the value of the finished product or to carry out a residual valuation in order to determine whether or not he would make a profit. He did not believe that there was an established market for developable space. This was a novel approach that should, at the very least, be checked by an established method such as the standing house approach or a residual valuation.

The case for the appellant: submissions

The Tribunal's powers on appeal

36. Mr Johnson submitted that the burden was on the appellant to show that the LVT's decision was wrong based upon the evidence presented to this Tribunal on a rehearing. He said that the parameters of the Tribunal's decision must lie between the price determined by the LVT (£437,000) and the price for which the appellant contended (£326,000). The former was slightly lower than was spoken to by the respondent's expert valuers (£465,600) which was the same figure that they had spoken to below. The respondent had not appealed but nevertheless had asked, if this Tribunal concluded that the respondent's evidence should be accepted in its entirety, that we should increase the amount payable for the freehold interest in the appeal property to £465,600.

37. Mr Johnson opposed the respondent's application for what he said was effectively a cross appeal. In its reply to the appellant's statement of case the respondent stated that it "… will contend for a price as per the Leasehold Valuation Tribunal's valuation …" This was a clear expression of intention that the respondent thought the LVT was correct and that its decision should not be disturbed. The appellant had relied upon the respondent's clearly stated position in its reply and was prejudiced by the respondent's revised approach. The respondent had not applied to amend its reply and the fact that Mr Gibbs argued for the higher figure in his expert report that was submitted in February 2007 was not to the point; that report had not amended the respondent's reply.

38. Mr Johnson understood why the respondent had not appealed. It was a commercial decision. But the dynamics of that decision changed once the tenant appealed. The respondent was going to have to wait to receive his money in any event and so he should either have intimated in his reply that he wanted to argue for a price higher than that awarded by the LVT or he should have appealed. He had not done so and there had to be some limit on the respondent's ability to argue for that which he had sought before the LVT. Mr Johnson

distinguished this appeal from that considered in *Arrowdell Ltd v Conniston Court (North) Hove Ltd* [2007] RVR 39 in which the respondent had not said in his reply that he wanted to rely upon his original submissions to the LVT. It was not necessary under the circumstances of the subject appeal for the appellant to show prejudice. Although he could not say that the appellant would not have appealed had it known the respondent's position, Mr Johnson submitted that there was still a prejudice to conducting an appeal when the parameters of that appeal would be extended by nearly £30,000 above the LVT's determination. That was not a trivial sum.

39. Mr Johnson referred to *Langinger v Earl of Cadogan and Cadogan Estates Ltd* (2001) Lands Tribunal LRA/46/2000 (unreported) in which the Member, His Honour Judge Rich QC, concluded that the price payable for an extended lease as determined by the LVT should be reduced by less than £4,000 or 3%. But Judge Rich QC said that it was quite impossible for him to say on these figures that the LVT was wrong. Mr Johnson submitted that it was a moot point as to whether the Tribunal had intended this decision to provide quantitative guidance about when it was justified in saying that the LVT was wrong. This Tribunal would only be justified in refusing to say that the LVT was wrong where its decision was close to that of the LVT and it had heard the same evidence and reached the same conclusions. If its conclusions were different then it should substitute its decision for that of the LVT even if its valuation was close. If it thought that the LVT was wrong to concentrate on two comparables, 2 Ennismore Mews and 18 Cadogan Lane, to the exclusion of all others and its consideration of the broader evidence indicated a different price then that price should be awarded. However, this was subject to his arguments about the respondent not being entitled to rely upon the price for which he argued before the LVT. If the Tribunal found that the enfranchisement price should be greater than the £437,500 awarded by the LVT then the correct action would be to dismiss the appeal and uphold that figure.

Valuation

40. Mr Johnson submitted that the correct valuation method was the standing house approach and not the novel developable space approach used by the LVT. The entirety value should be the figure of £1,488,000 spoken to by Mr Orr-Ewing and the site value proportion 50%. The resultant enfranchisement price should be £326,000.

41. Mr Orr-Ewing had supported his standing house approach valuation by reference to a residual valuation. Mr McGillivray said that developers would usually carry out such a valuation and indeed he had done so when considering 32 Cadogan Lane. So it was appropriate to use it as a check. But the respondent's figures produced an unrealistic result when included in such a residual valuation. The respondent had criticised Mr Orr-Ewing's valuation and had argued that it should be rejected because the input variables were wrong. But there was very little between the parties on the most significant variable, building costs. Mr Orr-Ewing had taken a figure of £250 per sq ft and in his evidence Mr McGillivray had used £242 per sq ft. The residual valuation evidence was important and should be taken into account. It illustrated the point made by Mr Orr-Ewing that the sale of dilapidated houses should not be taken as evidence of site value.

42. Mr Johnson submitted that the developable space approach was wrong. It assumed that a purchaser bought a site with knowledge of the floor space to be developed and the price to be realised upon the sale of the completed development. These were unsafe assumptions. They were wrongly applied by the LVT to the comparable at 18 Cadogan Lane as the letter from Mr Saville-Edells showed; this property was not purchased for redevelopment. In the real world the developable space approach was not used. Neither Mr Orr-Ewing nor Mr McGillivray used the method before the LVT and their combined expertise was very substantial.

43. Mr McGillivray purported to use the developable space approach in his evidence before this Tribunal, relying upon four comparables from Cadogan Lane, including number 18, but excluding 2 Ennismore Mews. He divided the adjusted sale price of each site by the floor area that was subsequently created. He concluded that, using this evidence, a site value of £573 per sq ft was a reasonable figure to pay for the site of the appeal property. In fact this figure was derived from the standing house approach and Mr McGillivray acknowledged this in his supplementary report. Mr Johnson therefore queried whether Mr McGillivray had used the developable space approach at all and submitted that it did not perform any useful function in his evidence.

44. Calculating a gross development (entirety) value for the appeal property on the statutory assumptions was difficult because there was a shortage of modernised properties in Pavilion Road. The location had not attracted developer interest. Only Mike Spink had tried a redevelopment there and that had not been a complete success. Mr McGillivray's answer to this lack of suitable comparables had been to look elsewhere for them. He assumed that it was by chance that Pavilion Road had not produced the right evidence but in fact it was simply not worth developers redeveloping properties in that location. The respondent's exhortation to search for the 'gold standard' of properties modernised to best advantage in Pavilion Road was wrong. Mr Orr-Ewing had been reasonable in making adjustments to his comparables. He was unable to say what the effect of a spiral staircase was upon value but Mr McGillivray could not give a figure either. It was unlikely to make much difference to the value.

45. The sale of 2 Ennismore Mews was the one piece of direct evidence of site value, although even this was not a sale of a cleared site. But the parties agreed that this property would not have been marketed for its existing use as a public house. It was sold for residential redevelopment. It was the closest and most reliable evidence available and its sale showed a site value proportion of 49.5%. Mr Johnson said that the sale of this property could not be used as direct evidence of what a cleared site was worth because of its distance from the appeal property. But that factor did not affect the site value proportion.

46. Mr McGillivray determined the site value proportion of his comparables by indexing the purchase price of the sites to the date of the sale of the completed developments and then calculating the appropriate percentage. Mr Johnson submitted that there were two problems with this approach. Firstly, when the purchase of the site took place the sale price of the completed development was not known. It was necessary to understand what the developer had in mind at the time he bought the site. Secondly, a developer would usually carry out a residual valuation. But the cost of holding the property during its development would be

allowed for as a cost of development and to index forward the purchase price of the site (or, conversely, to index back the sale price of the completed development) would be to double count. Mr Johnson referred to an extract from *Modern Methods of Valuation (9th Edn)* at page 166, which had been produced in evidence by Mr Orr-Ewing and which supported this view.

The case for the respondent: evidence

47. Mr McGillivray used the developable space approach favoured by the LVT to analyse comparable evidence of the sale of four sites in Cadogan Lane. These were not cleared sites but had retained structures on them and he described them as "virtual sites". He divided the price paid for each site by the floor area of the building that was subsequently developed on it to give a rate per square foot. He then compared these rates with the figure of £573 per sq ft that he derived from the standing house approach as being the rate for the developable space of the appeal property. He used comparables for the standing house approach that were houses modernised to best advantage. He indexed prices to the valuation date and made the same allowances for differences in location as Mr Orr-Ewing. However, he made no adjustments to determine the effective floor area nor for the cost of modernising the comparables since he was only concerned with houses that were already modernised.

The developable space approach

48. Mr McGillivray relied upon comparables at 18, 32, 78 and 80 Cadogan Lane. He did not rely upon 2 Ennismore Mews as a direct comparable of site value because he said that it was considerably larger than the appeal property. Unlike Mr Orr-Ewing he considered that number 18 was sold as a site for redevelopment. However, he conceded that the letter from Mr Saville-Edells had undermined the value of this comparable as evidence of a site transaction. He calculated the rate per square foot of these comparables to be £646, £612, £617 and £685 respectively (adjusting for location). All of the sites had been sold within five months of the valuation date. He concluded that a prospective purchaser who was unsuccessful in purchasing any of these four sites at the prices shown would, using this evidence, conclude that a price of £1,065,000 or £573 per sq ft was a reasonable figure to pay for the appeal property. Mr McGillivray did not accept that the presence of owner-occupiers as well as developers in the market for such unmodernised houses meant that it was unreliable to use these transactions as evidence of site sales. He argued that they had all been sold with development potential and that persons who wanted to exploit it had bought them.

49. When asked what role the developable space approach had played in the derivation of his site value he said that it would be used by a developer to satisfy himself that he was not overpaying for the site. He had checked his standing house valuation against the developable space approach and it had withstood the test. The adjusted average of the four site values was £640 per sq ft which was greater than the figure of £573 per sq ft calculated using the standing house approach.

The standing house approach: entirety value

50. In his standing house approach Mr McGillivray relied upon eight comparable sales of houses that had been modernised and adapted to best advantage. All had been sold within 15 months of the valuation date and their prices had been indexed accordingly. Only one of the comparables was in Pavilion Road. This was number 138 which was the property developed by Mike Spink and which showed an entirety value of £934 per sq ft. This was lower than Mr Orr-Ewing's equivalent figure because Mr McGillivray had made an additional allowance in respect of the void area above the kitchen/dining room. He also relied upon two other comparables, 32 Cadogan Lane and 25 Clabon Mews, that had been used by Mr Orr-Ewing. He analysed the former at £924 per sq ft and the latter at £1084 per sq ft. These were the same figures as Mr Orr-Ewing had used before adjusting for over specification and location.

51. The remaining five comparables were located further away from the appeal site to the north of Brompton Road. 9 Montpelier Mews was sold at £992 per sq ft. The location was considered to be superior to Pavilion Road but a neighbour's garage was situated under the property and it was sold at a time when there was construction activity in the vicinity, both of which factors may have affected the price. The remaining comparables were all located in Princes Gate Mews, at numbers 9, 12A, 18 and 36. Mr McGillivray considered this to be a worse location than Pavilion Road but all of the properties had the benefit of a terrace or balcony. The entirety values were taken as £949, £988, £1036 and £980 per sq ft respectively.

52. Mr McGillivray concluded that the best evidence of entirety value was the sale of 138 Pavilion Road. But this had some design disadvantages and, assuming a property that was to be designed and adapted to best advantage, it was reasonable to assume a higher figure than £934 per sq ft. He supported this conclusion by reference to the sale of the properties in Princes Gate Mews, all of which were higher than 138 Pavilion Road despite being in a worse location. He concluded that the appropriate entirety value for the appeal site was £950 per sq ft giving a rounded total value of £1,775,000.

53. Mr McGillivray did not accept that the lack of comparables in Pavilion Road was because it was not a sufficiently attractive location for developers. He felt that there had not been any houses available for developers to buy that would generate a sufficient profit. He agreed that there was no shortage of unmodernised houses in Pavilion Road but often these were slightly dated with design defects that did not justify complete redevelopment. He saw no need to try and adjust these comparables for their unmodernised condition as Mr Orr-Ewing had done. It was possible instead to look at other comparables that had been developed to best advantage. He believed that the geographical location of one mews in relation to another did not influence value. What mattered was the broad market for mews properties in the whole Knightsbridge area. He thought that Princes Gate Mews and Montpelier Mews were part of this wider market and were sufficiently close to the appeal property to be valid comparables.

54. Mr McGillivray conceded that 104 Pavilion Road might have been in good repair but he considered that the presence of a spiral staircase was a serious matter and very off-putting to prospective purchasers. However, he felt that it was impossible to make a financial adjustment for such a staircase. He also said that the layout of number 104 could be improved and he explained

how this could be achieved. Nevertheless he considered that the difference between his figure of £950 per sq ft for the entirety value of the appeal site and Mr Orr-Ewing's value of £636 per sq ft for number 104 was very narrow in terms of the viability of any such reconfiguration and he concluded that a developer would not undertake such an exercise. He reached a similar conclusion in respect of 116 Pavilion Road; its existing use value was too high to justify redevelopment or reconfiguration to best advantage. It was inappropriate to make adjustments to unmodernised properties and Mr McGillivray disagreed with Mr Orr-Ewing's use of a figure of £200 per sq ft to allow for the modernisation of his comparables.

55. Mr McGillivray considered that 15 Clabon Mews fell short of the standard required to be described as modernised to best advantage. This was because of the decorative finish and the layout of the top floor. He rejected the suggestion that these were just subjective points and said that the layout was not as well arranged as it could be – for instance there seemed to be nowhere to put a double bed – and that it could make a huge difference to the marketability of a property if the decorations were not to everyone's taste. He said that similar factors applied to the sale of 68 Cadogan Lane which had been sold twice within 29 months, the second sale being at a significantly lower entirety value due to the owner's unusual decorations and the fact that the house, whilst still in good repair, was not presented to best advantage.

56. Mr Orr-Ewing's adjustment of £50 per sq ft to the value of 32 Cadogan Lane in respect of 'toys' was rejected by Mr McGillivray who argued that the market demanded this type of specification and that the developer would not have installed the features unless he obtained a sufficient return on his cost. He did not think that the entirety value of this property, which he accepted was £924 per sq ft, should be looked at in isolation from the market evidence as a whole.

Standing house approach: site value proportion

57. Mr McGillivray relied upon six comparables of site sales to establish the site value proportion. He deduced this proportion in each case by indexing the price paid for the site to the sale date of the completed development. Two of the comparables, 32 and 78/80 Cadogan Lane (treated as one property for the purposes of calculating the site value proportion) had also been used by Mr McGillivray in his developable space approach. The former showed a 74% site value and the latter 58%. The remaining comparables were at 19A Princes Gate Mews (70%), 19A Lexham Mews (59%), 21 Cresswell Place (58%) and 2 Ennismore Mews (49.5%). Based upon this evidence Mr McGillivray considered that it was fair and reasonable to adopt a site value proportion of 60%.

58. None of the comparables was sold as a cleared site. At the date of purchase they were all (except 2 Ennismore Mews) unmodernised houses that were then substantially, but not totally, demolished and rebuilt. 2 Ennismore Mews was a disused public house that was sold for residential redevelopment. The purchaser totally demolished the existing building. However, Mr McGillivray did not think that this was necessarily the best evidence of site value proportion because the completed house, with an area of 2,949 sq ft, was considerably larger than the appeal property. This might mean that there were fewer owner-occupiers in the market for the completed development.

59. Mr McGillivray made no allowance for the cost of demolition and site clearance in respect of the five comparables that were only partially demolished. Nor did he allow for the fact (with the exception of 2 Ennismore Mews) that a cleared site would have been exempt from VAT. He said that such allowances would have led to higher site values.

60. The historic site value proportion in this area was acknowledged by Mr McGillivray to be 50% of the value of the site as developed to best advantage. However, he said that he was unaware of any recent market evidence of similar size sites to the appeal property that supported this view and he considered that percentage to be too low.

61. Mr Gibbs said that average UK building costs for two-storey private residential houses had increased by 173% since 1980 whereas house prices in Prime Central London South West had increased by 953% over the same period. He also said that building costs for both Greater London and Kensington and Chelsea were falling at the valuation date compared with the UK average. He concluded that at the valuation date the indications were that local house prices were likely to increase whilst building costs in the area were likely to fall by comparison with building costs in other regions. He believed that this evidence meant two things. Firstly, developers would be likely to accept a lower profit margin and, secondly, it was appropriate to question the historic site value proportion of 50%. His conclusions were further supported by the long-term reduction in interest rates which diminished this element of the construction costs and meant that a developer could afford to pay more for the site. He acknowledged that before the valuation date the house price index had been flat but he believed that developers would have expected it to pick up again. Mr Gibbs concluded that a site value proportion of at least 60% was appropriate.

62. Mr McGillivray agreed that a developer, when purchasing a site, was likely to carry out a residual valuation that required him to estimate the value of the completed development. He thought that such an estimate would be reasonably accurate since it would be based upon the comparable evidence then available. However, the developer would not know what property price inflation was likely to be between buying the site and selling the completed development. He would know what completed developments were selling for when he purchased the site and would use this knowledge to estimate the eventual sale price. Mr McGillivray said that in order to obtain the site value proportion he had indexed the purchase price to the sale date (indexing back the sale price to the purchase date gave the same result). He did this in order to obtain a site value proportion that was based upon an estimate of the market value of the completed development at the date of purchase. He could not think of any other way of comparing the purchase and sale prices. He had taken price inflation out of the calculation. He did not accept that by indexing the prices in this way he had double counted the costs of financing the site purchase.

63. Mr McGillivray considered residual valuations to be unreliable and susceptible to variations in the inputs used. He illustrated this by undertaking a residual valuation of 32 Cadogan Lane using Mr Orr-Ewing's figures. This showed a loss of 13.13% if one indexed the sale price back to the date of site purchase or 0.83% if, as Mr Johnson had suggested in cross-examination, it was not appropriate to do so.

64. Mr McGillivray was referred to Mr Orr-Ewing's residual valuation of the appeal site which showed that, using Mr McGillivray's figures for the completed development value and site value, the developer's profit would only be 0.3%. He agreed that developers would usually carry out such a valuation when deciding how much to pay for a site but said, "the residual would look different to this one".

65. Mr Gibbs concluded that, using an entirety value of £1,775,000 and a site proportion of 60%, the site value was £1,065,000 leading to a value of the freehold interest in the appeal property of £465,600 using the agreed valuation variables.

The case for the respondent: submissions

The Tribunal's powers on appeal

66. Mr Radevsky submitted that it was for the appellant to show that the decision of the LVT was wrong. He relied upon the judgment of P H Clarke FRICS in *Wellcome Trust v Romines* [1999] 3 EGLR 229 at 235. The object of the exercise was to determine the appropriate enfranchisement price and there was a margin of error allowed to the LVT in deciding what this should be. Thus in *Langinger* His Honour Judge Rich QC said that a difference of 3% between the LVT valuation and his own determination of the price was not sufficient for him to say that the LVT was wrong. But this decision gave no general guidance on the point. In this appeal the Tribunal was not reviewing the methodology used by the LVT. It was a rehearing and so the Tribunal had to reach a decision on the evidence that it heard.

67. The respondent had not sought to appeal and would have been content with the LVT's decision. He received no interest on the purchase monies which, if taken at a notional interest rate of 5%, meant that, had he appealed, he would have lost some £21,000 per annum in a no costs regime. It did not make commercial sense to appeal in respect of the difference between £437,000 and £465,600. But the tenant had appealed and Mr Radevsky relied upon the authority of *Arrowdell* at paragraph 15 in support of his argument that the respondent was entitled to argue for the same figure before this Tribunal as it had before the LVT (but no higher):

> "Thus the injustice that would result from there being no provision for cross-appeal in either the LVT Regulations or the Lands Tribunal Rules can be mitigated by virtue of the provision in section 175(4) [of the Commonhold and Leasehold Reform Act 2002]. It is open to the Tribunal to entertain contentions on the part of a respondent that a price more favourable to the respondent than that in the LVT's decision should be determined and to determine such a price. The respondent, however, has no right in this respect. It is a matter for the Tribunal's discretion, and clearly the tribunal would only exercise the power to make a determination more adverse to the appellant than that of the LVT if it was fair to do so."

Arrowdell was followed in *Chelsea Properties Limited v Earl Cadogan and Cadogan Estates Limited* (2007) Lands Tribunal LRA/69/2006 (unreported). In both cases the Tribunal was prepared to exercise its discretion where there had been no prejudice to the appellant.

68. In this appeal Mr Johnson had not identified any such prejudice. There was none. The respondent was making the same case as he had done before the LVT and therefore this Tribunal should allow the respondent to contend for the correct price even though he had not appealed. Mr Radevsky accepted that the statement of case had not said that the landlord would contend for the higher figure and that the appellant had not received any warning in terms of the respondent's intentions until the letter sent to the appellant on 10 October 2007 (although Mr Gibbs's report referred to the higher figure of £465,600). However, the tenant was under no illusion that he would be facing arguments for the higher figure before this Tribunal and the crucial point was the lack of any prejudice against him. The appellant would not have acted any differently and had not argued that his appeal depended upon the landlord's perceived stance. This Tribunal had the discretion to allow the respondent to argue for the figure to which he had spoken before the LVT and Mr Radevsky asked it to exercise such discretion in this appeal.

Valuation

69. Both parties had used the standing house approach in calculating the gross development value of the appeal site and there was little between the experts in terms of the method used. However, Mr Radevsky emphasised that it was necessary to assume that the property was modernised and adapted to best advantage. He referred to *Kemp v Josephine Trust Limited* (1971) 22 P&CR 804 in which R C Walmsley FRICS said at p810:

> "… a section 15 rent …must take into account any potential for modernisation, otherwise 'the letting value of the site (without including anything for the value of the buildings on site)' would differ for identical sites in the same street merely because there happened to be modernised houses on some sites but unmodernised houses on others."

70. Mr Orr-Ewing had relied upon an entirety value of £800 per sq ft that he had derived by averaging the values of a number of properties in Pavilion Road. But the variance of the comparables that he had used, ranging from £636 to £1001 per sq ft, indicated that he had not properly adjusted his comparables to the required standard. Mr McGillivray said that it was not appropriate to consider comparables of varying degrees of modernisation and then to make adjustments. It was better to look just for modernised houses. Mr Orr-Ewing had looked for any houses that had sold in Pavilion Road, regardless of condition. He had then used an arbitrary figure of £200 per sq ft to increase their value to reflect what they would have been worth in a modernised condition. He had produced no evidence to support that figure and he had used it on comparables in other streets as well, regardless of the condition of the properties or their location.

71. Mr Orr-Ewing, having considered the value of properties in Pavilion Road, then looked at comparables in Clabon Mews and Cadogan Lane. Both locations revealed average entirety values greater than £900 per sq ft even when adjusted to reflect their superior location. But Mr Orr-Ewing ignored these and made no adjustment to the figure of £800 per sq ft that he had obtained from Pavilion Road. The exercise of looking at the other streets had thus been a complete waste of time. Mr McGillivray on the other hand had looked at all the modernised mews houses that had been sold in the area. This approach was to be preferred and Mr McGillivray had produced a convincing argument in favour of £950 per sq ft.

72. Mr Orr-Ewing had discarded three of the comparables upon which he had relied in his report to obtain the site value proportion because they were much larger than the appeal property. That left only 19A Princes Gate Mews and 2 Ennismore Mews. With regard to the former Mr Orr-Ewing deducted £100,000 from the purchase price of the site to reflect what he described as the benefit of the retained structure and the reduced developer's profit that would have been bid in order to compete with owner-occupiers. But Mr McGillivray had rightly pointed out that further adjustments needed to be made to this figure in respect of the cost of demolition and site clearance and for VAT on building work which would not have been payable had this been a cleared site. He calculated that a total of £75,000 should be offset against Mr Orr-Ewing's figure of £100,000 giving an adjusted site cost of £525,000. Indexing this figure to the date of sale produced a site proportion of 66.7% rather than Mr Orr-Ewing's figure of 43.7%.

73. It was better to look at the direct evidence from the sale of sites, whether in terms of the LVT's developable space approach or by looking at the site values themselves. The fact that a site had still got a derelict house on it did not mean that it was not good evidence. Mr Radevsky referred to *Loder Dyer v Cadogan* [2001] 3 EGLR 149 at paragraph 52 where the member, N J Rose FRICS, found that the analysis of a property with potential for redevelopment:

> "…did not also reflect the value of the existing mews houses themselves, since they were presumably considered ripe for demolition and redevelopment."

That was the situation in the subject appeal. Mr McGillivray had relied upon comparables that were ripe for demolition and redevelopment, the price of which did not include value for the existing properties. 32, 78 and 80 Cadogan Lane had been sold for redevelopment and had been completely rebuilt. The LVT had felt more comfortable with this direct evidence and its use was to be preferred to the standing house approach. The comparable evidence justified Mr McGillivray's figure of £1,065,000.

74. Mr Radevsky submitted that the Tribunal should be very cautious about giving any weight to the evidence of residual valuations. He referred to *Snook and others v Somerset County Council* [2005] 1 EGLR 147 in which the Tribunal had said at 151 that the method was to be adopted only in the absence of some more reliable method:

> "The potentially wide range of plausible assumptions that could be made as to the inputs in such a valuation, and the wide variations in the final result that quite small differences in these assumptions might make, means that it is in general an unreliable valuation method."

75. Mr Radevsky highlighted a number of assumptions that had been made by Mr Orr-Ewing in his residual valuations that he said were wrong or not supported by any evidence; for instance the cost of (or necessity for) obtaining planning permission, project management costs, the costs of a monitoring surveyor, promotion costs and, importantly, construction costs. Mr Radevsky submitted that these residual valuations could not contradict Mr McGillivray's direct evidence and should be rejected. A prospective purchaser may well use a residual valuation but in the absence of knowledge about what the value of the input variables would be there was nothing to support Mr Orr-Ewing's conclusions. Mr McGillivray had looked at actual transactions and these should be relied upon. The appeal should therefore be dismissed and Mr Gibbs's price of £465,600 should stand.

Conclusions: the cleared site approach

76. Both parties agreed that there was no evidence of the sale of comparable cleared sites. Mr McGillivray relied upon four sales of what he described as "virtual sites", each of which was an unmodernised house that was sold for redevelopment. Mr Orr-Ewing rejected these sales as comparables because the market for them consisted of purchasers interested in retaining the existing buildings as well as developers looking to redevelop. He referred to the letter from Mr Saville-Edells as good evidence that this was so in the case of 18 Cadogan Lane. However Mr Orr-Ewing did acknowledge that 2 Ennismore Mews was the best comparable of a site sale. It had the benefit of being sold for residential redevelopment, there being no prospect of a continuation of its existing use as a public house. When asked by the Tribunal what significance he attributed to this sale Mr Orr-Ewing replied that it showed £543 per sq ft on a site value basis. He did not believe that its larger size when compared with the appeal property was a material valuation factor. However, he considered Ennismore Mews to be a better location than Pavilion Road. In response to questions from the Tribunal Mr McGillivray said that he had not relied upon 2 Ennismore Mews as a site value comparable. He said that it was too big by comparison with the appeal property and he felt that smaller properties would have a broader market. He preferred to use the Cadogan Lane evidence.

77. The LVT placed weight upon the sale of 2 Ennismore Mews as a site and we think that it was right to do so. There is no dispute among the parties that this was the closest comparable to a cleared site. It was marketed as a residential redevelopment and that there were no bidders seeking to maintain its existing use. There is agreement about the developable area. Both experts agree that Ennismore Mews is a better location than Pavilion Road. Mr McGillivray quantified this difference at 10%. In our opinion this property is good evidence of a site sale. But it was not a cleared site and the LVT allowed (apparently without evidence) an additional £30,000 for the cost of demolition. We heard no evidence about such costs in relation to this property. We note that Mr Orr-Ewing in his residual valuation of the appeal property allowed £20,000 for demolition costs. Mr McGillivray took £15,000 as being the cost of demolition of 32 Cadogan Lane. In view of the fact that 2 Ennismore Mews is larger than the appeal property, and in the absence of any other evidence, we have accepted the LVT's adjustment for such costs.

78. The analysis of the sale of 2 Ennismore Mews in June 2004 shows that the purchase price, net of VAT, was £1,600,000. Adding £30,000 for the cost of demolition and dividing by the floor area to be constructed of 2949 sq ft gives a cleared site value of £553 per sq ft. (The LVT used a floor area of 3016 sq ft. giving a figure of £530 per sq ft. This reflects an improved planning permission. The experts in this appeal did not comment on this.) There is no need to adjust to the valuation date since this was only a month before. However, an adjustment needs to be made to reflect the superior location of Ennismore Mews and we have adopted the figure of 10% suggested by Mr McGillivray. This gives an adjusted value of £498 per sq ft.

79. The remaining four comparables relied upon by Mr McGillivray as evidence of site value were in Cadogan Lane. Although all the properties were eventually redeveloped it was accepted by Mr McGillivray that the purchase of number 18 by Mr Saville-Edells had not been

based upon a presumption of redevelopment. Given Mr McGillivray's acknowledgement that the letter from Mr Saville-Edells dated 28 February 2007 undermines his argument that this was a site sale, we have attributed less weight to it than the LVT, who did not see this correspondence. Nevertheless we consider that the evidence of the sales in Cadogan Lane is helpful in calculating site value.

80. 18 Cadogan Lane had a site value of £646 per sq ft based upon an agreed developed floor area of 1350 sq ft and adjusting the purchase price to the valuation date (the LVT used a floor area of 1519 sq ft and made no indexation allowance). The remaining three properties in Cadogan Lane had site values of £612, £617 and £685 per sq ft respectively as at the valuation date and based upon the areas eventually developed. The average figure for the four sites is £640 per sq ft (adjusting for location). This figure does not include an allowance for the costs of demolition or for the value of existing structures and VAT. In the absence of detailed evidence about these issues for each comparable we have made the assumption that their combined effect will be broadly neutral. The higher figure per square foot compared with 2 Ennismore Mews may be due to the presence of owner-occupiers in the market for the Cadogan Lane properties and to the larger size of number 2. The value of 78 and 80 Cadogan Lane may also have been influenced by the presence in the market of the owner of the adjoining property in Cadogan Square (who eventually purchased both these redeveloped properties).

81. The appellant argued that the developable space approach upon which the LVT's figure was based was wrong. We do not agree. The method used by the LVT was to look at the purchase price of a site and to divide it by the floor space that was eventually constructed. Mr Orr-Ewing submitted an extract from *Hague on Leasehold Enfranchisement (4th Edn)* as part of his evidence. At p187 it says of the cleared site approach:

> "In some cases, it may be appropriate in using this method to arrive at the site value by reference to area, i.e. ascertaining the value of development land per square metre and multiplying the area of the site in question by that value. But the calculations of this kind are open to criticism and should be used with caution."

The LVT used floor space rather than site area but the principle seems to us to be the same.

82. The appellant's criticism is directed at the fact that the amount of such floor space will not be known at the date of purchase. However in the analysis of the comparables the respondent has used the developable areas that were known at the time of purchase and not the larger areas that were subsequently achieved upon revised planning permissions. We think that this is the correct approach and explains why we have used an area of 1350 sq ft to value 18 Cadogan Lane rather than 1519 sq ft as used by the LVT. Similarly we have analysed 2 Ennismore Mews by reference to 2949 sq ft rather than the improved planning permission area of 3016 sq ft that was adopted by the LVT. The method is essentially no different to the assumptions that are made about the extent of development in residual valuations upon which Mr Johnson invited us to place weight. A purchaser will bid upon the basis of the development that he believes can be constructed and, in some cases, for which planning permission already exists. It was a feature of this case that the two experts were generally in agreement about the development potential of each site. In our opinion the LVT did not err by expressing the purchase price of sites in terms of the developable

area in order to provide a meaningful unit of comparison (and where the comparables were not otherwise distinguished by different plot ratios or garden sizes).

83. We consider 2 Ennismore Mews to be a somewhat more informative comparable for the purposes of the present exercise than the Cadogan Lane properties. As against that, however, the Cadogan Lane transactions are nonetheless useful and have the advantage of being four in number as compared with the single transaction in Ennismore Mews. We note that, even leaving aside number 18, the other three Cadogan Lane properties were sold as development opportunities, were purchased by developers and were in fact effectively completely rebuilt. Having regard to both Ennismore Mews and the Cadogan Lane properties indicates a site value of between £498 and about £640 per sq ft of developable space but somewhat closer to the lower figure. We take £550 per sq ft which gives a site value based upon a developable space of 1860 sq ft of £1,023,000.

84. We accept Mr Johnson's argument that Mr McGillivray did not rely upon the developable space approach directly to calculate the site value. However, the LVT did do so and we find it to be a useful approach on the facts of this case where there is some evidence enabling a direct assessment of site value. But we acknowledge the problems of using the method in this case and we are conscious that none of the comparables can be used without adjustment. We therefore believe it necessary to consider the standing house approach as well.

Conclusions: the standing house approach

85. Mr Orr-Ewing relied upon this approach and applied it to comparables in Pavilion Road, all except one of which were unmodernised houses but none of which he had inspected. Although he also considered comparables in Clabon Mews and Cadogan Lane he did not rely upon them and rejected them in favour of the evidence from Pavilion Road. He made a standard addition of £200 per square foot (as at the valuation date) to each of the unmodernised properties to adjust it onto the basis of a house modernised to best advantage. He produced no evidence of the provenance of this figure, which is essentially arbitrary, and we place no weight upon it or the comparables to which it was applied. Mr Orr-Ewing's analysis was further undermined in our view by his application of the figure of £200 per sq ft to the whole of the effective floor area. But that part of the area that reflected the potential for extension was necessarily assumed to be modernised and needed no further adjustment. To add £200 per sq ft to this part of the effective area seems to us to be double counting.

86. Number 138 was the only property in Pavilion Road that the parties agreed was modernised. We prefer Mr McGillivray's analysis of this transaction which showed an entirety value of £934 per sq ft. Mr Orr-Ewing argued that 104 and 116 Pavilion Road were also modernised but both properties contained spiral staircases that the experts agreed would have a detrimental, but unspecified, effect upon value. In the light of this uncertainty and the disagreement of the experts about the condition of these properties we have not placed weight upon this evidence.

87. We do not accept that the evidence of sales of modernised properties in Clabon Mews and Cadogan Lane should be rejected. Both parties agreed that these locations are superior to Pavilion Road, albeit close to it, but otherwise the type and size of the properties used in evidence are generally comparable with the appeal property. The experts agreed that 25 Clabon Mews had an adjusted entirety value of £976 per sq ft as at the valuation date. Mr Orr-Ewing also referred to 15 Clabon Mews as a modernised house with an adjusted entirety value of £827 per sq ft. Mr McGillivray did not accept that this comparable was modernised and adapted to best advantage.

88. The parties agreed that 32 Cadogan Lane had an entirety value of £924 per sq ft before adjustments. Mr Orr-Ewing deducted a sum of £50 per sq ft for what he described as its over specification with "toys". We are not persuaded that the inclusion of these features justifies the deduction made and we prefer Mr McGillivray's argument that the developer was responding to the market. We have therefore not allowed this deduction. Adjusting for location gives an entirety value for this property of £832 per sq ft. The parties also identified 68 Cadogan Lane as a modernised house and said that the adjusted entirety value of the first sale in October 2003 was £1024 per sq ft and that of the second sale in March 2006 was £846 per sq ft. We accept the experts' view that by the time of the second sale this property, whilst still in good repair, was not presented to best advantage.

89. The remaining evidence of sales of modernised houses was from Princes Gate Mews and Montpelier Mews, both of which are located further away from the appeal property. We accept Mr McGillivray's opinion that the former location is worse, and the latter is better, than Pavilion Road. 9 Montpelier Mews sold for an entirety value of £992 per sq ft whilst the average entirety value of the four properties in Princes Gate Mews was £988 per sq ft.

90. All of the evidence of the sale of modernised houses shows an entirety value greater than the £800 per sq ft adopted by Mr Orr-Ewing and we consider his figure to be too low. In the light of all the evidence we consider that the appropriate value should be £925 per sq ft. This gives a rounded total value of £1,720,000.

91. The respondent's evidence and argument about the site value proportion was persuasive. Mr Orr-Ewing relied upon the historic proportion of 50% which he said was supported by the sale and redevelopment of 2 Ennismore Mews. But three of the other comparables upon which he depended in his report were admitted to be unreliable because of their substantially greater size. The analysis of the comparable at 19A Princes Gate Mews depended upon an arbitrary adjustment of £100,000 and was challenged cogently by the respondent. Mr McGillivray produced six comparables that showed site value proportions of between 49.5% and 74%. Mr Gibbs's evidence of the differential rates of cost and value inflation gave theoretical support to the respondent's arguments for a higher site value proportion as at the valuation date. We do not accept Mr Orr-Ewing's comments that if a developer still requires the same percentage return on his costs (including the cost of the land) then such differential inflation will not make any difference to the site value proportion. In our opinion it will increase the proportion under those conditions. However, we do not accept that there is sufficient evidence to support Mr McGillivray's figure of 60%. For the reasons stated above we give substantial weight to the transaction at 2 Ennismore Mews that the parties agreed showed a site value

proportion of just under 50%. In the light of this comparable and the others produced by Mr McGillivray we consider that the appropriate site value proportion in this case should be 55%. Applying this percentage to the entirety value of £1,720,000 gives a site value of £946,000.

92. We were invited by Mr Johnson to give weight to the residual valuations prepared by Mr Orr-Ewing. We decline to do so because in our opinion the use of such residuals in this case illustrates precisely the problems with this method of valuation that were described by this Tribunal in *Snook*. We also consider that Mr Orr-Ewing misapplied the reference to *Modern Methods of Valuation (9th Edn)* at page 166. This extract deals with residual valuations and the relevant part of it states:

> "It should be remembered that the valuation approach is to determine the surplus available after meeting costs. The proceeds of sale are the whole of the anticipated money to be realised from the development. It is true that they will not be receivable until the work is completed which may be some considerable time in the future. Nonetheless it would be incorrect to discount the proceeds to their present-day value. This is because the cost of holding the property is taken as a cost of the development and therefore to discount the proceeds of sale would be to double deduct."

The appellant used this extract to criticise Mr McGillivray for indexing the sale price of completed residential developments to the date at which the sites were acquired for the purposes of calculating the site value proportion. He was said to have double counted according to the above extract. But Mr McGillivray was not carrying out a residual valuation at this point; he was trying to show what figure a developer would have adopted as the proceeds of sale as at the date of acquisition. The double counting referred to in *Modern Methods* would only arise if the indexed figure adopted by Mr McGillivray as the proceeds of sale were itself to be discounted for the holding period from the date of acquisition to the date of sale of the completed development. Mr McGillivray did not do this and we do not accept that there was any double counting. The criticisms raised by Mr Johnson (see paragraph 46 above) may be valid in relation to a residual valuation but for purposes of establishing a site value proportion in the manner he did it seems to us that Mr McGillivray acted appropriately in his use of indexation.

93. We have considered the site value figure of £1,023,000 derived from the cleared site approach with the equivalent figure of £946,000 as calculated using the standing house approach. The former approach requires less adjustment than the latter and reflects some useful direct evidence of site value. We consequently give it more weight. However, the standing house approach indicates that the figure of £1,023,000 may be a little too high and we therefore adopt a figure of £1,000,000 as the site value.

94. We have reached our own conclusions based upon all the evidence presented to us in this appeal (which took place by way of rehearing) and have found that the site value of the subject property at the valuation date was £1,000,000. Thus not merely do we conclude that the LVT was not wrong in its determination of site value but we specifically agree with that figure. The resultant value of the freehold interest using the variables agreed between the parties is £437,000 (see Appendix 1). We therefore dismiss the appeal.

95. Having regard to our conclusions as stated above it is not necessary for us to make any findings on the issues raised by the parties based upon *Arrowdell* (paragraphs 36 to 38 and 67 and 68 above) or upon *Langinger* (paragraphs 39 and 66 above). Those points do not arise.

96. Neither party made any application for costs against the other (understandably bearing in mind the Tribunal's limited costs jurisdiction). Accordingly no order for costs is made.

Dated 25 January 2008

His Honour Judge Huskinson

A J Trott FRICS

146 Pavilion Road SW1
Valuation under S.9(1) of the Leasehold Reform Act 1967

Lease details

Expiry dates of lease	25/03/2023		
Valuation date	19/05/2004		
Unexpired term (years)	18.84		

1. Capitalisation of annual ground rent

Ground rent		£75	
Years purchase for	18.84 years @ 5%	12.0233	
			£902

2. Reversion to Section 15 Rent

Site value		£1,000,000	
Yield on letting value		4.5%	
Section 15 Rent		45,000	
Years purchase	in perpetuity @ 4.5%}		
Deferred for	18.84 years @ 4.5%}	9.697	£436,365
			£437,267
But say			£437,000