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Ref LON/LVT/864/98

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

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

**Applicant** Mr N W Dalamal

**Respondent** The Trustees of the Eyre Estate

**RE:** 18 Norfolk Road, London, NW8

**Date of Tenant's Notice:** 16 June 1997

**Application to Tribunal dated:** 20 March 1998

**Heard:** 21 and 23 September 1999. **Inspection:** 22 September 1999

**Appearances:** Mr E Johnson of Counsel  
Mr D Conway and Miss R Roberts, David Conway & Co Solicitors  
Mr K G Buchanan BSc (EstMan) ARICS, Conrad Ritblat

for the Tenant

Mr J Small of Counsel  
Miss K Glanville, Lee & Pembertons, Solicitors  
Mr J E C Briant BA ARICS, Cluttons Daniel Smith

for the Landlord

**Members of the Leasehold Valuation Tribunal:**

Ms L M Tagliavini BA (Hons) DipLaw LLM (Chairman)  
Mr D L Edge FRICS  
Mr P S Roberts DipArch RIBA

**Date of Tribunal's decision:** 05 NOV 1999

**LON/LVT/864/98**

LEASEHOLD REFORM ACT 1967: SECTION 21  
18 NORFOLK ROAD, London NW3

1. This is an application made on behalf of The Trustees of the Eyre Estate, seeking a determination of the enfranchisement price of the freehold interest of the house known as 18 Norfolk Road ("the house") to be paid by the lease-holder, Mr N W Dalamal under section 9(1C) of the Leasehold Reform Act 1967 (as amended).

The Property

2. The house in question is a semi-detached property built around the late 1970's or early 1980's and situated in the St John's Wood area of London. In December 1986 Mr Dalamal purchased the remaining term of the lease granted on 29/11/77 for a term of 99 years from 24/6/77 at a ground rent of £200 per annum subject to review every 21 years to 1/30<sup>th</sup> of the freehold site value. By a notice dated 16<sup>th</sup> June 1997 Mr Dalamal stated his intention to purchase the freehold of this property. Mr Dalamal's right to purchase the freehold is admitted by the Applicant as is the relevant date for valuation purposes being 16<sup>th</sup> June 1997.

3. The property itself consists of accommodation arranged over four floors with an agreed EFA of 245 m<sup>2</sup>. The property was totally reconstructed in a Regency Style to match the previous house on the site and benefits from a good sized rear garden. There is no off-street parking available or garage. It is agreed by the parties that a number of alterations to the property, including the construction of a swimming pool in the rear garden with new landscaping together with the alterations and extension to the second floor accommodation fall to be disregarded for the purposes of this valuation.

#### The Evidence.

4. Written submissions and proofs of evidence were presented to the Tribunal by both parties. These consisted of a Statement of Case dated 16/3/99 from Lee & Pembertons, solicitors on behalf of the Applicant, together with a proof of evidence by J E C Briant BA ARICS dated 13/9/99 (with three Appendices). On Mr Dalamal's behalf written submissions were prepared by David Conway & Co. dated 9/4/99 and proofs of evidence were submitted by K G Buchanan Esq BSc (Est Man) ARICS dated 9/9/99 and Mr David Radford BSc (Hons) dated 27/8/99. Additionally, the Respondent was represented

throughout by counsel, Mr E. Johnson. There was also presented to the Tribunal at the hearing a Statement of Agreed Facts (including a Schedule of 11 agreed comparables) provided by the parties which narrowed the issues to the following questions which were required to be determined by this Tribunal:

- (i) Whether or not the house constitutes an improvement under Section 9(1A)(d) of the Act?
- (ii) What is the freehold value of the property?
  - (a) On the assumption that the house does not constitute an improvement?
  - (b) On the assumption that the house does constitute an improvement?
- (iii) What is the correct capitalisation and deferment rate ("the yield")?
- (iv) What is the level of the reviewed rent?

#### The Point of Law

5. A preliminary point of law was raised by the Respondent and heard by the Tribunal. At that hearing both parties were represented by counsel, Mr J. Small appearing on behalf of

the Applicant landlord. Both counsel presented skeleton arguments. In addition, the Applicant sought to rely on an earlier written opinion of counsel, Mr Radevsky dated 4/8/98.

6. The legal point that was raised by the Respondent concerned the construction of section 9(1A)(d) which states:

*"the price payable for a house and premises...shall be the amount which at the relevant time the house and premises...might be expected to realise on the following assumptions...(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessor in title at their own expense."*

7. It was common ground between the parties that the property in question had been built by the tenant's predecessors in title after the grant of the lease at their own expense. However, it was submitted on behalf of the Applicant that the object of the qualifying improvement must be the house itself or house and premises ie. the section presupposes the existence of the house at the time improvements were made. Reliance was placed on the decision dated 14/5/99 of Judge Rich QC sitting in the Lands Tribunal in Morris Rosen v Trustees of Campden Charities (Unreported) (see transcript LRA/6/1998) where the same point had arisen. Mr Small sought also to submit that

this authority, although not binding on this Tribunal was highly persuasive and should be followed.

8. Conversely, counsel on behalf of Mr Dalamal sought to persuade the Tribunal that the improvement referred to in section 9(1A)(d) does not have to relate to an improvement to an existing house but can include an improvement to a bare site. It was submitted that the object of the improvement referred to in section 9(1A)(d) is not the "house and premises" but the demised premises. As an alternative argument Mr Johnson submitted that an improvement to the "premises" was wide enough to include a bare site. The Tribunal's attention was drawn to a number of cases namely National Electric Theatres v Hudgell [1939] Ch 553; Sainty v Minister of Housing and Local Government (1964) 15 P&CR 432 CA and Price v Esso Petroleum [1980] 2EGLR 58. Mr Johnson also submitted that although the Rosen decision is relevant it is not binding on this Tribunal and can be departed from if the Tribunal regards it as being wrong in law.

Decision of the Tribunal on a Point of Law.

9. It is this Tribunal's decision that the proper and natural interpretation of Section 9(1A)(d) pre-supposes the existence of a house to which improvements can be made and which can fall to be disregarded for valuation purposes. In reaching this decision the Tribunal has had regard to the cases cited by counsel for both parties and in particular the decision of HHJ Rich in Rosen, although it is the Tribunal's view that it is not bound to follow this decision. Further, it is the Tribunal's view that the term "*house and premises*" in section 9(1A)(d) does not include a bare site as section 2(3) of the 1967 Act states:

*"subject to the following provisions of this section, where in relation to a house let and occupied by a tenant reference is made in this Part of the Act to the house and premises, the reference to premises is to be taken as a reference to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to him with the house....."*

10. It is the Tribunal's view that this definition supports the Applicant's argument that section 9(1A)(d) pre-supposes the existence of a house that can be the subject of improvements. Further, there is no reference to a bare site as being within the definition of "premises". Consequently, for these reasons the Tribunal is of the view that the construction of the house

in question does not constitute an improvement within the meaning of the section and cannot be disregarded for the purposes of this valuation.

Valuation, Yield and Reviewed rent.

11. Oral evidence was heard from Mr Briant on behalf of the Applicant and Mr Buchanan on behalf of the Respondent. In addition a statement of Mr Radford was produced on behalf of Mr Dalamal and was read by the Tribunal, it having been agreed by the parties that Mr Radford need not attend the hearing for questioning. It was submitted by Mr Briant that the following figures should be accepted by the Tribunal (where the house was not to be regarded as a tenant's improvement):

- The unimproved freehold vacant possession value of the property is £1,750,000.
- The unimproved leasehold value would be 90% of the freehold value (agreed in Statement of Facts).
- The marriage value should be equally shared between the parties (agreed in the Statement of Facts).
- The correct capitalisation rate for the property is 6% bearing in mind its location within the prime residential area of St John's Wood.
- The gross development value ("GDV") of the subject property is in the region of £2,500,000 at the valuation date.



- The freehold site value is £1,000,000 (being 40% of the GDV).
- The reviewed rent should be 1/30<sup>th</sup> of £1m ie. £33,333.00 per annum from 24/6/98.
- The freehold purchase price is £535,207.

**[See valuation attached as Schedule B]**

12. Mr Buchanan submitted on behalf of Mr Dalamal that the following figures should be accepted by the Tribunal (where the house was not regarded as a tenant's improvement):-

- The correct capitalisation rate for the property is 6.5% having regard to the location of the house, value and lease terms having particular regard to its close proximity to the Army Barracks and the lack of off-street parking in a good road but not prime.
- The Gross Development Value of the subject property is circa £2,000,000 at the valuation date.
- The unimproved freehold vacant possession value is £1,650,000.
- The site value is £800,000 (being 40% of the GDV).
- The reviewed rent should be 1/30<sup>th</sup> of £800,000 ie. £26,666.00 per annum from 24/6/98.
- The freehold purchase price is £393,430.

**[See valuation attached as Appendix C]**

13. In support of the parties' arguments a number of comparable properties were put forward in the Agreed Statement of Facts. Further, Mr Briant in addition to his statement, referred the Tribunal to the Lands Tribunal decision in The Keepers and Govenors of the Possessions Revenues and Goods of the Free Grammer School of John Lyon and Ernest Brett [Transcript LRA/16/1997 & LRA/18/1997 (consolidated)].
14. During the hearing of this application the Tribunal members inspected the subject property together with the agreed (11) comparables as well as a number of the other comparables put forward by the parties including 21 Norfolk Road and 26 Marlborough Place.
15. The Tribunal's Decision.
- (i) The house cannot be regarded as an improvement within the meaning of section 9(1A)(d).
  - (ii) The capitalisation rate or "yield" is 5%.
  - (iii) The gross development value is £2,100,000.
  - (iv) The freehold site value is £840,000 i.e. 40% of £2.1m.
  - (v) The unimproved freehold vacant possession value is £1,700,000.

- (vi) The estimated ground rent on review is £28,000 per annum from 24/6/98 i.e. 1/30 of £840,000.
- (vii) The freehold purchase price is £456,300.

### The Tribunal's Reasoning.

#### Yield

16. The Tribunal having considered all the evidence put forward before it on behalf of the parties and drawing upon its own inspections of the house and site, comparable properties and its expertise agreed with Mr Briant's argument that the capitalisation rate or "yield" was properly set at 6%. Although the Applicant and Respondent both referred to the examples of previous "settlements" and "agreed yields" as being evidence in support of and against a 6% yield respectively, Mr Buchanan did state that he would also have accepted a 6% figure but for the house's proximity to the army barracks on Ordnance Hill and the lack of any off-street parking. On this basis Mr Buchanan submitted these factors increased the yield rate to 6.5%. The Tribunal, however, rejected Mr Buchanan's submissions on this point as there was no evidence of any

submissions on this point as there was no evidence of any complaints having been made by the tenant, Mr Dalamal or from any of the other occupiers of Norfolk Road of any inconvenience caused by the location of the barracks. Nor, was there any evidence put forward as to the inconvenience caused, if any, by the lack of off-street parking at 18 Norfolk Road. The Tribunal, therefore accepted Mr Briant's evidence on these points to the effect that the location of the barracks and the lack of off-street parking had no or at best, minimal effect on the capitalisation rate.

#### Site Value

17. In reaching its decision as to the site value of this house the Tribunal paid particular attention to the agreed comparable offered by the parties at 67A Marlborough Place and to the comparables put forward by Mr Buchanan of 21 Norfolk Road and 26 Marlborough Place. The former property was sold as a site (including a dilapidated house) for £500,000 in November 1996, developed with a house and then sold for £1,300,000 in May 1999. Number 21 Norfolk Road, a three storey semi-detached period property with a site area of 522m<sup>2</sup> had a site value of £850,000 - £900,000 as of June 1997, based on

£2020,000. Taking into account these comparable properties and the size and location of the subject property the Tribunal felt that the site value in respect of 18 Norfolk Road proposed by Mr Briant of £1m was not sustained by any proper evidence. The Tribunal preferred instead the evidence of Mr Buchanan on this point, especially the sale of 67a Marlborough Place in November 1996, subject to some upward adjustment, having regard to the location and rate of growth between September 1996 and June 1997 (by reference to Saville's Prime Central London Houses Residential Capital Values Index). Consequently, the Tribunal decided that a site valuation figure of £840,000 was appropriate.

#### Gross Development Value

17. The Tribunal regarded the house's development potential as being limited to a "new build" and the possible addition of off-street parking as the house currently occupying the site was, in the Tribunal's view already as large as the site could sustain. The suggestion that the addition of a conservatory as put forward by Mr Briant as greatly adding to the "GDV" was not accepted by the Tribunal. Mr Briant made mention of the

recent sale of 45 Queens Grove but was unable to provide the Tribunal with any further evidence as to the details of sale.

18. In light of the Tribunal's decisions on the issues set out by the parties and as set out above the Tribunal reached the conclusion that the proper price to be paid for the freehold by Mr Dalamal is **£456,300. [Valuation attached as Appendix A].**

Signed: .....

Dated: .....

*H. Toghiani (Chairman)*

**05 NOV 1999**

## **APPENDIX A**

### **18, Norfolk Road, NWS**

Lease Term: 99 years from 24 June 1977. (Expiry date 24<sup>th</sup> June 2076).

Valuation date: 16<sup>th</sup> June 1997.

Ground Rent (until review) 24/6/98: £200 pa.

Ground Rent (from review) 24/6/98: £28,000 pa.

G.D.V: £2,100,000.

Site Value: £840,000.

F.H.V.P. £1,700,000 (less improvements).

Unexpired Term: £1,530,000 (less improvements).

### **VALUE OF FREEHOLD PRESENT INTEREST**

#### **Term 1**

Ground Rent	200	
YP 1 year @ 6%	<u>0.94</u>	
		188

#### **Term 2**

Ground Rent	28,000	
YP 78 years 6% 16.49)		
PV 1 year 6% 0.9434)	<u>          </u>	

435587

**APPENDIX A (cont.)**

Reversion

FHVP (less improvements) 1,700,000

PV 79 years @ 6%:           0.012074

20,526

456,301

Marriage Value

FHVP (less improvements) : 1,700,000

Less lessor's present interest: 456,301

Lessee's interest:               1,530,000

- 286,301

Marriage Value @ 50%:

nil

£456,301 (say £456,300)

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# House not an improvement

Appendix B  
(Schedule B)

**SECTION 9(1C)**

PROPERTY 18 Norfolk Road

NOTICE DATE 12/06/97

LEASE DETAILS

DATE	29/11/97		
TERM	99		
EXPIRY DATE	24/06/76		
UNEXPIRED TERM	79.09		
GROUND RENT (Until Review)	£200	to	24/06/98
GDV	£2,500,000		
SITE VALUE	£1,000,000		
ESTIMATED GROUND RENT (from review)	£33,333	from	24/06/98

VALUES

FHVP (Less Lessees' Improvements)	£1,750,000	
UNEXPIRED TERM (Less Lessees' Imps.)	£1,575,000	90.00%

VALUE OF FREEHOLD PRESENT INTEREST

<u>TERM 1</u>	GROUND RENT	£200	
	x YP 1.03 years @ 6.00%	0.97	
		£195	

<u>TERM 2</u>	ESTIMATED GROUND RENT	£33,333	
	x YP 78.05 years @ 6.00%	16.49	
	x PV 1.03 years @ 6.00%	0.9415907	
		£517,568	

<u>REVERSION</u>	FHVP (Less Lessees' Improvements)	£1,750,000	
	x PV 79.09 years @ 6.00%	0.0099682	
		£17,444	

**Lessors Interest      £535,207**

MARRIAGE VALUE

Less	FHVP (Less Lessees' Improvements)	£1,750,000
	Lessor's Present Interest	£535,207
	Lessees Interest (Less Lessees' Imps.)	£1,575,000

Marriage Value		-£360,207
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Take	<b>50% Marriage Value</b>	say	£0
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<b>TOTAL</b>	<b>£535,207</b>
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**THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

DATE: August 1999  
 PROPERTY: 18 Norfolk Road, London NW8  
 NOTICE DATE: 16/06/97

**LEASE DETAILS**

DATE  
 TERM 99 years from 24/06/77  
 EXPIRY DATE 24/06/2076  
 UNEXPIRED TERM 79 years  
 GROUND RENT (Until Review) £200p.a to 24/06/98  
 GROUND RENT (From Review) £26,666p.a from 24/06/98

**VALUES**

FREEHOLD ~~SITE~~ VALUE £1.65m  
 LEASEHOLD ~~SITE~~ VALUE £1.485m  
 LESSEE'S IMPROVEMENTS

**VALUE OF FREEHOLD PRESENT INTEREST**

<b><u>TERM 1</u></b>	GROUND RENT x YP 1 years @ 6½%	.939	£200 p.a. <hr/>
			£188
<b><u>TERM 2</u></b>	GROUND RENT x YP 78 years @ 6½%	15.27}	£26,666
		} 14.32	
	x PV 1 years @ 6½%	.938}	
			<hr/> £381,857
<b><u>REVERSION</u></b>	FHVP (less improvements) x PV 79 years 6½%	.0069	£1.65m
			<hr/> £11,385
			Lessors interest £393,430

**MARRIAGE VALUE**

	FHVP (less improvements)	£1.65m	
Less	Lessor's Present Interest	£393,430	
	Lessees Interest (less improvements)	£1.485m	
		<hr/>	
Marriage Value		£ -	
	50% Marriage Value		<hr/> £ -
		TOTAL	£393,430