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Ref. No.: LON/LVT/1271/00

LEASEHOLD VALUATION TRIBUNAL FOR
THE LONDON RENT ASSESSMENT PANEL

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

Applicant: The Trustees of the Eyre Estate (Landlord)
Respondent: Sir Maurice Hatter (Tenant)
Re: 38 Queen's Grove, St. John's Wood, London NW8

Application to Tribunal by the Trustees of the Eyre Estate: 1 June 2000

Hearing: 25 June 2001

Appearances:

Mr. S.G. Schaw Miller (Counsel)
Mr. J.E.C. Briant BA, ARICS of Cluttons

for the Applicant

Mr. E. Johnson (Counsel)

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

Mr. K.C. Buchanan BSc. ARICS
of Colliers Conrad Ritblat Erdman Limited

for the Respondent

Members of the Leasehold Valuation Tribunal:

Mr. P.D. Wulwik LLB (Chairman)
Mr. D.L. Edge FRICS
Professor V. Morris MA, MSc.

Date of notice of tenant's claim:	24 May 1999
Date of notice of reply to tenant's claim:	21 July 1999
Landlord's proposed price (as amended):	£201,000
Tenant's proposed price:	£175,000
Agreed valuation date:	24 May 1999
Leasehold Valuation Tribunal's determination:	£180,000
Date of Tribunal's decision:	30 JUL 2001

38 Queen's Grove, St. John's Wood, London NW8

A. Introduction

1. This is an application by the Applicant landlord the Trustees of the Eyre Estate to determine the enfranchisement price payable by the Respondent Sir Maurice Hatter for the freehold of the property at 38 Queen's Grove, St. John's Wood, London NW8 under Section 9 (1C) of the Leasehold Reform Act 1967.
2. The Respondent is the tenant of the property pursuant to a Lease dated 5 April 1967 for the term of 99 years from 25 December 1966 at the initial yearly rent of a peppercorn and thereafter £400 per annum during the first 33 years of the term, £525 per annum during the following 33 years and £650 per annum during the residue of the term.
3. At the date of the grant of the Lease, there was an existing detached house on the site which had been built in the 1840's. The house which now stands on the site (and stood on the site at the valuation date of 24 May 1999) was built by the original tenant Greentab Securities Limited at the tenant's expense over a period of about 1 year following the grant of the 1967 Lease.
4. On 24 May 1999 the present tenant Sir Maurice Hatter gave notice of his claim to acquire the freehold of the property under the Leasehold Reform Act 1967. On 21 July 1999 the landlord the Trustees of the Eyre Estate served notice in reply admitting the tenant's right to acquire the freehold. On 1 June 2000 the landlord issued the present application to

determine the enfranchisement price payable for the freehold of the property. The landlord's application proposed a price of £265,000. The application was originally to have been heard on 9 January 2001. The hearing was adjourned on that date, and directions were given by the Tribunal.

B. Hearing

5. The hearing took place on 25 June 2001. The Applicant landlord was represented by Mr. S.G. Schaw Miller of Counsel. The Respondent tenant was represented by Mr. E. Johnson of Counsel, instructed by Mr. D. Conway of David Conway & Co., Solicitors.
6. The parties had agreed a statement of facts and a supplementary statement of facts, including the following matters:-
 - (1) The issue to be determined by the Tribunal was the enfranchisement price as at 24 May 1999, the date of the tenant's notice of claim, for the freehold under Section 9 (1C) of the Leasehold Reform Act 1967.
 - (2) The current house was not the house that fell to be valued but the old house, which was described more fully in the agreed statement of Mr. P. Drury FSA, ARICS, IHBC and Mr. V. Belcher MA dated 5 January 2001.
 - (3) The effective floor area of the accommodation of the old house (excluding bathrooms, WC's, and circulation space) was agreed to be 2,189 sq. ft. or 203 m². The property additionally benefited from a garage to the right hand side when facing the house, which accommodated one standard sized motor car.
 - (4) There was an agreed schedule of freehold and leasehold comparables.

(5) The parties had agreed that the marriage value should be shared equally.

(6) The capitalisation and deferment rate had been agreed at 6%.

7. At the outset of the hearing, the Tribunal were informed that:-

(1) The form of transfer had been agreed. There had previously been a dispute as to Clause 3.7 of the draft transfer which imposed a restriction on the nature of the vehicles which might be parked at the property. The clause was to be as printed in roman type, with the additional words presently shown printed in italic type.

(2) Relativity had been agreed at 83% as between the freehold vacant possession value and the leasehold vacant possession value of the property for the purpose of the present hearing only.

(3) The parties differed as to the condition in which the Tribunal should regard the old house for the purpose of the valuation exercise. Mr. Briant for the landlord had valued the old house on the basis that it had been brought up to the standard of the new house to arrive at a revised enfranchisement price of £201,110, say £201,000. On the basis that the old house was to be valued in the condition that it was as described by the expert historians, his proposed price was £185,000. Mr. Buchanan for the tenant had valued the old house on the basis that it was in the condition as described by the expert historians, arriving at an enfranchisement price of £175,000. On the basis that the old house was to be valued in an updated condition, his proposed price was £209,000.

(4) The tenant was prepared to agree Mr. Briant's figure of £201,000 for the enfranchisement price of the house in an updated condition in the event that the house was to be valued in an updated condition, the difference in figures being related to the relativity percentage

between freehold and leasehold values which was now agreed at 83%. The tenant was also prepared to agree the enfranchisement price of the house in its condition as described by the expert historians in the sum of £180,000, splitting the difference between Mr. Briant's figure of £185,000 and Mr. Buchanan's figure of £175,000. This was not agreed by the landlord.

8. It very quickly emerged that the parties were agreed that the improved freehold vacant possession value of the old house was the sum of £2,100,000 and that where the experts differed was whether the unimproved freehold value should be £1,900,000 (Mr. Briant) or £1,750,000 (Mr. Buchanan). This in turn depended on whether the value to be attributed to improvements to the old house should be £200,000 (Mr. Briant) or £350,000 (Mr. Buchanan) or some other and, if so, what figure.
9. Mr. Briant gave evidence for the landlord. He had prepared a proof of evidence dated 8 January 2001. He had noted that the current house was well maintained by the lessee. He had assumed that the old house had been well maintained in accordance with the lease and was fit for use and occupation, and that the lessees would have renewed old fittings as a matter of course. He had not allowed for additional improvements such as a new conservatory, though similar houses had modern conservatories. He had assumed that there was a hot water supply and central heating to ground and principal bedroom only.
10. Mr. Briant had prepared his original valuation on the basis that the effective floor area of the old house was 260 m². The effective floor area of the old house had now been agreed as 203 m². He had therefore produced revised valuations of £201,110 (say £201,000) for the old house in an updated condition and £185,000 in the condition as described by the expert historians.

11. Mr. Briant referred to the tenant's repairing and decorating obligations under Clauses 2 (17) and 2 (18) of the Lease. The current house was a modern house built in 1967/1968 which had been kept and maintained to a good standard. The reality of the market place in St. John's Wood, coupled with the lease obligations, led him to think that had the original house survived it would have been maintained to a similar standard to the new house. The vast majority of houses let on long lease in this part of St. John's Wood were very well maintained, and fixtures and fittings were renewed. It was extremely rare that lease obligations had to be enforced against a tenant of this type of property. He considered the reality of the market place to be more important than the lease obligations.
12. Mr. Briant stated that the improved freehold vacant possession value of the old house was considered by both experts to be £2,100 000. He had deducted a figure of £200,000 for improvements to arrive at an unimproved freehold value for the old house of £1,900,000. The unimproved leasehold value was then derived by applying the agreed 83% differential.
13. In cross-examination, Mr. Briant agreed that broadly speaking he had assumed for his valuation that the previous house had been repaired and maintained to the standard of the existing house. He was not saying that the work required to bring the old house up to the standard of the existing house was all required by the repairing covenants in the Lease, nor was he saying that some of the work was improvements. He had tried not to assume an element of improvement in the assumed condition of the old house. It would have been repaired and decorated and otherwise looked after. Certain of the fixtures and fittings would have been renewed.
14. Mr. Briant referred to the fact that the Lease was a full repairing lease. He would have expected the kitchen and bathroom fittings to be replaced, just as they had been in the new house. He agreed that one could not require the replacement of fittings if the previous fittings had been in working order. He was not saying that the original maid's bathroom

was out of repair, but it was old-fashioned. He did not think upgraded fittings were important within the Leasehold Reform Act 1967 for two reasons. First, they were very often renewals. Secondly, when one used the word improvements under the 1967 Act, it was the value of improvements under the 1967 Act which was to be disregarded. He accepted that there could be an element of improvement in renewal.

15. Mr. Briant stated that he had assumed that the old house had been decorated, that the electrical wiring was in good repair and that there was partial central heating. He was talking about maintenance, decorations and looking after the old house. He had assumed that the old house had been maintained, not improved. He reiterated his view that there were very few houses held on long lease in this part of St. John's Wood which were in disrepair.
16. In answer to questions from the Tribunal, Mr. Briant stated that he had not entirely focussed on the condition of the old house as referred to in the report of the historical experts. He would have expected the old house to have been painted from time to time. He assumed that works had been carried out in accordance with the obligations in the Lease. He had assumed a rather better condition than in 1967, and certainly no worse condition. He had not assumed that the old house had been decorated just before the valuation date. He had not assumed dry rot. He had assumed that the wiring was serviceable. Re-wiring was not included in his allowance of £200,000. He had assumed that the plumbing was the same. He considered that external decorations were part of the Lease obligations. He had assumed that the old house had been repaired regularly. He had valued the old house in an updated condition. He had allowed for the roof to be in good condition. One had to consider the difference in the market between a tired house and an upgraded property. He put the difference at £200,000. The reality of the market was that this was somebody's home.

17. Mr. Briant considered that the standard of decoration required was covered by the Lease. Repairs and renewals were governed by the Lease and were otherwise as considered appropriate by the market. Interior design was all about the market. There was no element of interior design involved in his assumptions. The figure of £200,000 represented both lease obligations and the market, the majority namely 70% being represented by lease obligations and only 30% of the £200,000 being the effect of the market. He had allowed in the 30% for some modernisation of kitchen fittings and bathroom fittings going beyond repair. Styles had changed over the period. Some items would no longer have been in working order.

18. Mr. Buchanan gave evidence for the tenant. He had valued the original house at the date of the notice of claim in May 1999 but in the condition that it was as at the date of the grant of the current Lease in April 1967, namely unimproved and unmodernised. He had assumed that the original house was in the condition in which it existed in 1964, ignoring any improvements or deterioration which might have occurred between 1964 and 1999.

19. Mr. Buchanan had arrived at an improved freehold value for the old house of £2,100,000. He was of the view that the cost of the works required to improve the original house to the condition of the new house would be in the order of £350,000. Although costs did not always equate to value, he considered that the additional value attributable to the improvement works would be at least equal to the cost of the works. He had therefore made an adjustment of £350,000, arriving at an unimproved freehold value of £1,750,000.

20. Mr. Buchanan had arrived at an enfranchisement price of £175,000 on the basis that the old house was to be valued in the condition that it was described by the expert historians and £209,000 for the house in an updated or improved condition. The reason for the difference between his figure of £209,000 on an improved basis and Mr. Briant's figure of £201,000 on an improved basis lay in the relativity percentage adopted between

freehold and leasehold values. This was now agreed at 83%. He was not disputing Mr. Briant's figure of £201,000 on an improved basis.

21. In cross-examination, Mr. Buchanan referred to the report of the expert historians as to the condition of the house in 1964. For his primary valuation in an unimproved condition, he had assumed that the fixtures and fittings were those existing at that time, that there was an old-fashioned kitchen, plumbing, wiring and bathroom fittings, a sub-standard hot water system, with an old electric boiler to heat the hot water. He agreed that more lessees in St. John's Wood would renew fixtures and fittings than would not do so. It was necessary to strip out the value of improvements.
22. Mr. Buchanan stated that he found it very difficult to reconcile the current house with the old house. It appeared strange to him to look at the condition of the new house when one was not valuing the new house but the old house. He had discarded the new house. They were two different animals. One was a modern house built in the 1960's. He had not included any element of maintenance and renewal in his valuation on an unimproved basis.
23. Mr. Buchanan stated that he had arrived at his figure of £350,000 to improve the original house to the condition of the existing house from adjustments made in the case of 36 Queen's Grove (Ref. No. LON/LVT/1202/00). He had there been considering a similar property namely 37 Queen's Grove where substantial improvements had been carried out. He believed that the value of the refurbishment works in the case of 37 Queen's Grove was £600,000. He adopted a figure of £350,000 as the value of improvements in relation to the freehold value.
24. In answer to questions from the Tribunal, Mr. Buchanan stated that he had not included in his figure any maintenance. He had been asked to provide a valuation of the old house as it existed in 1964. He had assumed that there was no liability to carry out repairs,

maintenance or redecoration. He arrived at the figure of £350,000 on the basis of 37 Queen's Grove.

25. In his closing remarks, Mr. Johnson for the tenant stated that it was agreed that it was necessary to value the old house standing on the site. If it was right to assume that it had been brought up to the standard of the existing house, then the agreed enfranchisement price was £201,000. If it was appropriate to look at the house in its unimproved condition, then the difference in price was £175,000 (Mr. Buchanan) and £185,000 (Mr. Briant).
26. Mr. Johnson stated that the difference between the figures of £175,000 and £185,000 on an unimproved basis was due to the value that one put on the assumed works. There was the subsidiary question as to what element was attributable to repair and maintenance and what element to improvements. If the property was to be valued on an unimproved basis, the freehold value was £1,900,000 on Mr. Briant's figures and £1,750,000 on Mr. Buchanan's figures. No more than 30% of Mr. Briant's figure of £200,000 was considered by him to relate to improvements. Mr. Buchanan's figure of £350,000 was purely for improvements. It derived from his consideration of 37 Queen's Grove. Mr. Briant's figure of £200,000 was otherwise considered to be seriously on the light side.
27. Mr. Johnson stated that the old house had a substantial value in its own right. It was wrong to put in any value for later works. Likewise, one did not assume that the property would have continued to deteriorate. Further, there were two particularly important assumptions to be made. First, that the tenant had no liability to carry out any repairs, maintenance or redecoration under the terms of the tenancy or Part I of the Landlord & Tenant Act 1954: see Section 9 (1A) (c). Secondly, that the price was to be diminished by the extent to which the value of the house and premises had been increased by any improvement carried out by the tenant or his predecessors in title at their own expense: see Section 9 (1A) (d). Improvements in this context had their usual meaning and

excluded maintenance and renewal. Mr. Briant's reliance on market reality was considered to be an attempt by the landlord to get through the back door what he could not get through the front door.

28. Mr. Johnson stated that there were four reasons to support the tenant's approach. First, the state and condition of the new house had nothing to do with the valuation. Secondly, the effect of the landlord's approach was to add back part of the value of improvements which the tenant was entitled to have disregarded. Thirdly, the landlord's approach disregarded the reality of valuing what actually stood on the site prior to the improvement works. Fourthly, the landlord's exercise assumed that the tenant would have brought the standard of the previous house up to the standard of the new house, whereas there was no reason to make this assumption.
29. Mr. Johnson stated that one did not know what the condition of the old house would have been at the valuation date. There was no justification for speculating as to what works might have been done by the tenant. It was necessary to freeze-frame the condition of the old house in the 1960's and to carry it through to the valuation date in 1999.
30. In his closing remarks, Mr. Schaw Miller for the Landlord stated that it was necessary to approach the case in such a way as adhered most closely to reality. It was agreed that one should look at the configuration of the old house, but it was otherwise necessary to value the condition of the property as it now was. That did not bring in improvements by any door.
31. Mr. Schaw Miller stated that the current property had been maintained as a matter of fact. In St. John's Wood, tenants tended to keep their properties well maintained. Improvements excluded maintenance and renewal. Maintenance and renewal were entirely legitimate inclusions. The assumption to be made under Section 9 (1A) (c) did not prevent

the Tribunal from taking into account the reality of what happened in respect of the new house, but only to value as one found the property. Mr. Briant had only assumed a standard that embraced maintenance and renewals. That accorded with reality in the landlord's view.

32. Mr. Schaw Miller agreed that the difference between the two sets of figures on an unimproved basis lay in the value of the works to be discounted. Mr. Briant's figure of £200,000 could be justified. It was nevertheless accepted that some element of the £200,000 fell to be deducted for improvements on Mr. Briant's evidence.

C. Inspection

33. The Tribunal inspected the subject property at 38 Queen's Grove on 26 June 2001.
34. In addition, the Tribunal inspected externally 32, 37, 41, 42 and 44 Queen's Grove and 29 Acacia Road, being the comparables referred to in evidence.

D. Decision

(1) The Legal Issue

35. The Tribunal agree with the Respondent tenant that it is necessary to take the old house in the condition as it was in the 1960's. The Tribunal do not accept that the condition of the old house should be treated as updated to that of the new house.
36. The Tribunal consider that in dealing with the old house, one is dealing with a different animal from the new house. The Tribunal is only concerned with the old house and the state of the old house, not the new house and the state of the new house. In the Tribunal's view, the condition of the new house is not relevant.

(2) The Valuation Issue

37. The parties were agreed that the freehold value of the old house on an improved basis as at the valuation date of 24 May 1999 was £2,100,000. The parties differ as to whether the value to be attributed to improvements which have to be disregarded should be £200,000 or some proportion of the £200,000 (Mr. Briant) or £350,000 (Mr. Buchanan). Neither expert was able to give any detailed breakdown to show how their respective figures were arrived at.
38. The Tribunal have considered the agreed statement of the expert historians and in particular the statement's conclusion that in 1965, when the decision was taken to demolish, the house was not in a bad condition at all bearing in mind its age but to contemporary eyes it must have appeared tired, unmodernised and old-fashioned (see paragraph 7.3 of the agreed statement).
39. The Tribunal consider that the tenant's figure of £350,000 for the value of improvements is on the high side. The Tribunal are of the opinion that taking a broad view of the matter and bearing in mind the condition of the original house as agreed by the historical experts the figure to be deducted for improvements is £260,000, giving the freehold value on an unimproved basis of £1,840,000.
- E. Determination
40. The Tribunal determine the enfranchisement price payable by the tenant to be £180,000 in accordance with the Tribunal's valuation annexed to the decision.

Chairman *P. Wulwik*Date **30 JUL 2001**

Peter Wulwik

LVT's Valuation

Valuation date: 24 May 1999
Unexpired term: 66.58 years

Freeholder's Present Interest

Term 1	Ground Rent	400	
	YP 0.58 years @ 6%	<u>0.55</u>	
			220
Term 2	Ground Rent	525	
	YP 33 years @ 6%	14.2302	
	Deferred 0.58 years @ 6%	<u>0.9668</u>	
			7,223
Term 3	Ground Rent	650	
	YP 33 years @ 6%	14.2302	
	Deferred 33.58 years @ 6%	<u>0.1413</u>	
			1,307
Reversion	FHVP (unimproved)	1,840,000	
	Deferred 66.58 years @ 6%	<u>0.0207</u>	
			<u>38,502</u>
			47,252

Marriage Value

	FHVP (unimproved)	1,840,000	
Less:	Freeholder's interest	47,252	
	Lessee's interest @ 83% VP	<u>1,527,200</u>	
			<u>1,574,452</u>
	Marriage Value	265,548	
	Freeholder's Share @ 50%		<u>132,774</u>
	Enfranchisement price		180,026

Say £180,000