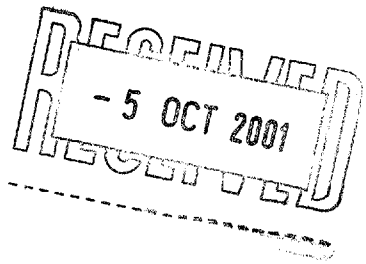
(96)

LON/LVT/1332/00

THE 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



Re **4 Cheyne Gardens, London SW3**

Applicant: Cadogan Holdings Limited (landlord)

Respondents: Mr J C A Leslie and Mrs P J Leslie (tenants)

Date of hearing: 10 and 11 July 2001 (inspections 6 August 2001)

Date of tenants' notice of claim and agreed valuation date: 18 September 2000

Appearances:

Mr Anthony Radevsky (counsel)
Mr Damian Greenish (Pemberton Greenish, solicitors)
Mr Ian Macpherson MA FRICS (Gerald Eve, chartered surveyors)
Mr Andrew McGillivray (W A Ellis, estate agents)
Mr Curnow (Cadogan Holdings Limited)

for the applicant

Mr Edwin Johnson (counsel)
Mr George Pope FRICS

for the respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mrs S F Redmond BSc(Econ) MRICS
Mrs S S Friend MBE JP

Date of the tribunal's decision: 4.10.01

Background

1. 4 Cheyne Gardens is a late Victorian red brick terraced house on lower ground, ground and four upper floors, with a four storey rear addition and a rear garden 62 ft in depth. The gross internal area of the property, net of tenants' improvements, is agreed to be 4145 sq ft. It is held on a lease dated 21 September 1982 for a term of 67 years, of which 48.27 years remained unexpired at the valuation date, which is agreed to be 18 September 2000. The ground rent is currently £1000 per annum, reviewable on 25 December 2002 and 21 years thereafter to 0.5% of the freehold vacant possession value.

2. Clause 2.3 of the lease required the lessee "at the Lessee's own expense to carry out as soon as reasonably practicable and in any event before the [25] December [1983] with the best materials and workmanship available and to the reasonable satisfaction of the [landlord's] surveyor all such repairs and other works as may be necessary to put the whole of the demised premises into a good state of repair and condition including decorative condition throughout (the colours of the external decorations to be first approved by the [landlord]) such works to include the renewal of the electrical installation internal plumbing sanitary and kitchen fittings and the installation of a central heating system." The tenant was thereafter subject to the usual covenants to keep the property in good repair.

3. The following valuation matters were agreed:

Capitalisation of initial term to review in 2.25 years:	5%
Capitalisation and deferment of rent for balance of term:	6%
Deferment of reversion:	6%
Marriage value division:	50%

4. The issues were the unimproved freehold vacant possession value and the unimproved leasehold vacant possession value. The resolution of these issues required consideration of the following:

(i) whether improvements carried out by the tenants' predecessors in title in 1984/1985 were to be disregarded, and, if so, their value,

(ii) the value of tenants' improvements carried out in 1997,

(iii) the index to be used to adjust the comparables for passage of time,

(iv) the weight to be attached to the Gerald Eve/John D Wood (1996) Graph of relativities, and

(v) the adjustment to be made to the leasehold value for the onerous rent review in 2002.

5. The hearing took place on 10 and 11 July 2001. The landlord was represented by Mr Anthony Radevsky and evidence for the landlord was given by Mr Andrew McGillivray of W A Ellis and by Mr Ian Macpherson MA FRICS of Gerald Eve. The tenants were represented by Mr Edwin Johnson and evidence for the tenants was given by Mr George Pope FRICS. On 6 August 2001 we inspected the property internally in the presence of Mr Pope, and, unaccompanied, we externally inspected 3 Cheyne Gardens, 11 Cheyne Walk, 30 Cheyne Walk, 20A Cheyne Walk, 20 Cheyne Row, 26 Cheyne Row, 13 Tedworth Square, 27 Tedworth Square, 29 Tedworth Square, 9 Carlyle Square and 9 Ormonde Gate, comparables relied on by Mr McGillivray and/or by Mr Pope.

Decision

1. Preliminary matters:

(i) should improvements carried out in 1984/1985 be disregarded

Contracts for the grant of the new 67 year lease were exchanged with a developer in early 1982 at an agreed price of £190,000. Mr Pope had inspected the property at the time for the purpose of advising the previous lessees, and he described it as in an old fashioned state of repair. The developer had plans prepared for the renovation of the property and applied for planning permission, but before the grant of the lease was completed, the developer indicated that it was unable itself to carry out the refurbishment and wished to sell the lease to a purchaser who could do so. The grant of the lease to the first purchaser was completed on 21 September 1982, and shortly afterwards its surveyors submitted the plans to the landlord for its approval. Before the landlord granted a licence for the refurbishment, the lease was sold on to another developer, the sale being completed in November 1983 at a price, according to Mr Pope, of £310,000. The new purchaser submitted a specification for works which were very similar to those approved for the first lessee. Mr Pope says that the works began on 30 May 1984, (although the landlord's licence for the works was dated 21 March 1985). They were duly completed, and the lease, which was at the time unenfranchiseable because over the rateable value limits then in force, was sold in April 1985 for £725,000.

The works carried out in 1984/1985 are listed in a schedule prepared by Mr McGillivray and attached as the revised Appendix 2 to his statement. We accept the factual accuracy of the schedule. The works include the relocation of a bathroom and the installation of a kitchen on the lower ground floor, removal of bathroom on a half landing to create a bedroom, the removal of a large bathroom to create three small bathrooms, the removal of partition walls, the provision of new windows, new central heating, re-wiring, new bathroom and kitchen fittings and complete redecoration.

Mr McGillivray said that the correspondence and other documents showed that the landlord had in mind a high calibre modernisation, and that in drafting the lease it did not specify the detail, leaving it to the purchaser to present a scheme for the landlord's approval. When contracts were

exchanged in February 1982, the scheme previously submitted for approval was what the landlord thought it was getting in return for the grant of the lease. The subsequent scheme was only very slightly modified: any differences were minor and incapable of valuation.

Mr Radevsky contended that all the works carried out at the time were part of the consideration for the lease and were thus not to be disregarded under section 9(1A)(d) of the Leasehold Reform Act 1967, which requires the disregard of an increase in the value of the property due to any improvement carried out by the tenant or predecessors in title "at their own expense". He relied on the decision of the Court of Appeal in *Rosen v Trustees of the Camden Charities* [2001] EGLR 59, which held that a new house built on a bare site let on a building lease was not an improvement to the house. Giving the judgment of the Court, Evans-Lombe J said that the words of the subsection "cannot be taken to contemplate a situation where a tenant under a long lease has expended money on the relevant property, but received equivalent value from the landlord in exchange, ie a valuable lease". Mr Radevsky said that those words formed part of the ratio of the decision and applied to the present case. The consideration for the lease was a monetary sum together with the lessee's covenants, including the covenant in clause 2.3. If the landlord had itself done the work required by that clause it would have let an improved house and charged a higher premium. The property was not improved at the expense of the tenant within the meaning of the subsection.

For the tenants, Mr Pope in his valuation contended that the value (which he considered to be £200,000) of all the improvements carried out in 1985 should be disregarded.

Mr Johnson said that it was for the tenants to persuade the tribunal that improvements had been carried out, but for the landlord to show that equivalent value had been given for the work. The facts of *Rosen* were entirely different from those of the present case, and the ratio of *Rosen* was that the construction of a house could not be an improvement to it. Evans-Lombe J's dicta about

equivalent value were not necessary to the decision, and even if they were, although he did not deny that the cost of putting the property into repair must have formed part of the consideration, the landlord in the present case could not demonstrate that equivalent value had been given. Clause 2.3 of the lease was, with the exception of the requirement for the installation of central heating, essentially a normal repairing covenant, and even if *Rosen* was not distinguishable, of all the works done in 1985 it was only the central heating which should not be disregarded in the valuation.

We are satisfied that Mr Radevsky's argument is correct. In our view the evidence suggests that all the works carried out in 1984/1985 together formed the scheme required and approved by the landlord to fulfil clause 2.3 of the lease, that the whole of their cost was part of the consideration for the lease, and that the renovation was not thus not carried out at the tenants' "own expense" within the meaning of section 9(1A)(d). We do not consider that it is necessary for the landlord to demonstrate that precisely equivalent value was given for them. In our view it can be assumed from the facts that the parties to the new lease took adequate account in the price of the lease of the likely cost of the works. We do not accept that clause 2.3 is, as Mr Johnson suggested, essentially no more than an ordinary repairing covenant. In our view it is quite different in character in that it expressly required modernisation and decoration to a specified high standard. It follows that we have not in our valuation disregarded any of the works carried out in 1985.

(ii) the value of improvements carried out in 1997

In November 1996 the lease was sold for £1,350,000 requiring, according to the selling agents, redecoration throughout. It was then completely refurbished, modernised and extended, according to the selling agents "highly decorated", and sold, newly refurbished, with fitted

carpets and curtains, in July 1997 for £1,975,000. The works done are marked on plans prepared by John Rowan and Partners which were produced, together with schedules of finishes and decorations (Mr Pope's Appendix 10), and are listed in Mr McGillivray's Appendices 3 and 4, the factual accuracy of which was agreed by Mr Johnson (although not their subdivision into improvements and other works). It is, of course, common ground that the value of improvements, but not of repairs, falls to be disregarded; and it is agreed that one of the improvements to be disregarded is a rear extension to the ground floor which added approximately 133 sq ft to the floor area. This has been excluded from the agreed floor area of the property to be valued.

Mr McGillivray said that of the works which he regards as improvements, which he listed in Appendix 3 to his statement, only the rear extension added significantly to the value of the property. He considered the items listed in his Appendix 4, which included refitting the kitchens on the lower ground and ground floors, new oak flooring in the hall, dining room and study, complete internal redecoration and re-wiring, were not improvements but replacements. He thus disregarded only the value of the rear extension, which he considered to equate to its value per square foot, and allowed, in his analysis of the price paid, an additional £30,000 for carpets and curtains.

Mr Pope arrived at his valuation of the 1997 improvements by considering the sale prices of the lease in November 1996 and July 1997, which were £1,350,000 and £1,975,000 respectively. After updating the November 1996 price according to the Savills Prime Central London South West Index (as to which, see below), and allowing £100,000 for the fact that between November 1996 and July 1997 the law changed so that the property became enfranchiseable, he concluded that improvements carried out in 1997 must have added £308,000 to the value of the property, which he updated to £428,000 as at the valuation date by reference to the Savills Index.

Mr Johnson, in his final submissions, said that if the property was not out of repair prior to the 1997 works, which it was unlikely to have been, the work done was not necessary in order to put it in repair, but was more likely to have amounted to upgrading and improvement. He invited us to accept Mr Pope's analysis, but said that, even if we did not, Mr McGillivray's adjustments for the 1997 improvements must be too low.

We agree with Mr McGillivray that the rear extension was the most significant single improvement carried out in 1997, and that its value is fairly allowed for by disregarding its floor area from the property to be valued. However, we also consider that some of the works which Mr McGillivray regards as replacements must have had some substantial element of improvement: only that explains the very substantial rise in value, well beyond that which can be attributed to inflation and the new right to enfranchise. The oak flooring, for example, is likely to have been an improvement over the previous flooring, and the re-wiring to have included an element of upgrading and therefore improvement. We do not, however, agree with Mr Pope's approach of assuming that all the otherwise unexplained increase in the price must have been due to improvements, nor have we included redecoration as part of the improvements to be disregarded. Doing the best we can, we have come to the conclusion in our valuation that, in addition to the value of the rear extension, there should also be disregarded as attributable to tenants' improvements, carpets and curtains, in the order of £120,000 from the leasehold value as at mid 1997, which, as explained below, is the date at which we have arrived at a relativity, based on the market evidence at the time, between the freehold and leasehold values.

iii) the index to be used to adjust the comparables for passage of time

In order to adjust the comparables for passage of time, Mr McGillivray used an average of Savills Prime Central London Residential Indices for Prime Central London South West

(PCLSW) and Prime Central London Houses (PCLH). PCLSW includes both houses and flats in Mayfair, Belgravia, Knightsbridge and Chelsea, and PCLH includes only houses in those areas and also in Holland Park, Notting Hill, St John's Wood, Regent's Park and Hampstead. PCLH shows greater price inflation than PCLSW over the relevant period and thus favours the landlord. Mr McGillivray said that he had in the past used PCLSW for houses in the Cadogan Estate, whereas, he said, Mr Pope had always used PCLH to value houses in Chelsea. He had now come to the conclusion that averaging the two produced a more accurate result, particularly over longer periods, because in his view PCLSW undershot the market, whereas PCLH had the reverse effect.

Mr Pope had in his valuation used PCLSW, but in his oral evidence he said that he was very firmly of the view that PCLH was the right index to use, and that he had used PCLSW in his valuation only because Mr McGillivray had in the past done so. In the light of that evidence Mr Johnson made no submissions as to the correct index to use.

We accept that PCLSW has tended to undershoot the market and PCLH has tended to overshoot it over the relevant period, and that a more accurate result is achieved by adopting an average of the two. No other method of adjusting for inflation than use of one or other or both of these indices was suggested to us.

(iv) the weight to be attached to the Gerald Eve/John D Wood (1996) Graph of relativities

No comparables for the value of the existing lease were found by either valuer other than the various past transactions in respect of the subject property, which required major adjustments. Mr McGillivray therefore, while he cross-checked his valuation by analysing past transactions affecting the subject, in fact relied exclusively on the well known Gerald Eve/John D Wood

(1996) Graph of relativities to arrive at his proposed value of the existing lease as a proportion of the freehold value, for which there was more reliable comparable evidence. He said that the evidence of the Graph was superior to the market evidence in this case because it was based on a large volume of evidence, because so many subjective adjustments to the market evidence had to be made, because the Graph had been cited to Leasehold Valuation Tribunals and relied on by them on many occasions, because Mr Pope had relied on it in many other cases, and because it was compiled in 1996 at precisely the date of the relevant market evidence in this case.

Mr Macpherson also considered the value of the Graph. Warning of the danger of overvaluing the existing lease by wrongly including the benefit of the right to enfranchise, he produced his firm's schedule of settlements of enfranchisement claims for houses on the Cadogan and Grosvenor Belgravia Estates, which showed relativities between leasehold and freehold values, (including a very recent settlement in respect of a 43 year lease at 22 Cheyne Gardens, with a lower rent on review than the subject and a rather earlier valuation date, which showed the lease as having a value of 65.1% of the freehold value). The Graph, he said, had been produced in 1996 for the purpose of advising Grosvenor on general guidelines for the values of leases without prospects of enfranchisement relative to their freehold values. It showed a 72.4% relativity for a 48 year lease, although for leases with higher rent liabilities he would generally expect lower values.

Mr Radevsky said in his final submissions that we should be wary of paying too much attention to the market evidence of leasehold values in this case in view of the major adjustments which were required to be made to it.

Mr Pope agreed that he had in other cases agreed that the Graph was a good guide to relativity, and that "under normal circumstances" he would have valued the existing lease in accordance with the Graph, but here there was good market evidence, which must rank above the Graph,

which, therefore, he had not used. He agreed that current transactions were greatly tarnished by Act rights.

Mr Johnson said that the Graph should be used only where there was no reliable market evidence. Evidence of settlements tended to be inherently unreliable guides to the component parts of the settlements because when deals were done "the cake could be sliced up in different ways". The market evidence relating to 3 and 4 Cheyne Gardens was reliable market evidence which showed that the relativities shown by the Graph were too low. Taking the sale price of the lease with Act rights in July 1997 (£1,975,000), and deducting half the marriage value, based on Mr D'Arcy Clark's valuation (£193,317), produced a figure of £1,782,000, which was, he said, the lowest value of the lease without Act rights which could be achieved. That, as a proportion of Mr McGillivray's valuation of £2,352,000 for the freehold in July 1997, showed a relativity of 75.76%. Deducting £37,500 to compensate for the rent review produced £1,744,000, 74.17% of the landlord's valuation of the freehold. A further adjustment of 2.6% for lease length produced a relativity of 71.57%, which was the lowest possible relativity to be derived from figures favourable to the landlord.

In our view market evidence of leasehold value must rank higher than the Graph in most cases. In this case the market evidence should be the first port of call because it relates to the subject house, although it does require major and difficult adjustments. Discounting for factors such as Act rights, inflation, tenant's improvements and onerous rent reviews is routine in these cases, although difficult, and cannot be avoided. Nevertheless the Graph is a useful cross-check in many cases and is particularly so in this one, where very significant adjustments have to be made, and we have had regard to it as a cross-check, remembering that the transactions upon which it is based are far from showing a smooth line on the Graph.

(v) the adjustments to be made to the leasehold value for the rent review in 2002

Mr McGillivray calculated the amount of rent due from December 2002 to be £16,750 per annum. He said that in his experience purchasers would tolerate a ground rent of 0.05% of the value of the freehold, and this level of tolerance was supported by the Lands Tribunal in *Carl v Grosvenor Estates Belgravia* [2000] 38 EGLR 195. In that case the excess ground rent above the level of tolerance was capitalised at 10 %, which he believed to be at the lower end of the scale, and he had in other cases capitalised at 6%, deferred at 6% until the date of review. In the present case he had averaged the two methods and had deducted £177,983, the average, from the capital value of the lease.

Mr Macpherson gave evidence of three cases where tenants had bought out onerous rent liabilities at equivalent yields of 5.56%, 7% and 6%. He also analysed the effect of an imminent high rent review on the leasehold value of 34 Hans Place, considered by the Leasehold Valuation Tribunal and the Lands Tribunal, and concluded that its effect was that an equivalent yield of 8.15% should be applied to the excess rent over £1000 per annum.

Mr Pope advocated what he described as the simple market approach, which, he said, was to apply a multiplier of 10 to the rent in excess of £2500 per annum (as at July 1997), with no element of deferment. That was the approach which he had suggested and which had been accepted in *Carl*. He believed that such a rent would be tolerated by the market in the present case. It was a gut feeling and was not related to the precise value of the house.

Mr Macpherson's own analysis, and the evidence of Mr McGillivray and Mr Pope, show that there is no precise formula to be applied to calculate the effect of a rent review on the market. We have decided that the most straightforward approach, and that which the market would take, is to capitalise at 10% the excess rent over £2000 per annum and deduct that sum from the

leasehold value which would be appropriate at a modest ground rent. This produces a very similar result to that obtained by capitalising the excess rent at 8% and deferring for 2.25 years at the same rate. We prefer this to Mr McGillivray's approach of averaging which we consider to be unnecessarily complex. Based on our assessment of the unimproved freehold value at the valuation date, the rent on review is likely to be £15,950 per annum, and we have therefore deducted £139,500 from the otherwise appropriate leasehold value to reflect the high rent liability.

2. The unimproved value of the freehold

Mr McGillivray considered the unimproved freehold value to be £3,350,000. He arrived at this figure (i) by analysing the sale of the freehold of the neighbouring property, 3 Cheyne Gardens, in May 1997, (ii) by analysing the sale of the lease of the subject property in July 1997, and (iii) by comparing the conclusions derived from these transactions with sales of other properties which took place within one year of the date of valuation and within one third of a mile of 4 Cheyne Gardens. He said:

(i) 3 Cheyne Gardens was sold in May 1997 for £2,390,000 (Mr McGillivray's calculations had been based on a price of £2,400,000 but he accepted that it was in fact £2,390,000). It had a floor area of 4390 sq ft as against 4145 sq ft, a lift, and was sold with carpets and curtains. He adjusted for floor area, deducted £60,000 for the lift at No 3 and £25,000 for the carpets and curtains, and updated for inflation in accordance with the Savills Indices discussed above.

(ii) When the present tenants bought the lease in July 1997 for £1,975,000, that figure must have included the full prospect of future enfranchisement because news of the imminent abolition of the low rent test was common in the market. The price they paid equated to only about £30,000

more than the value of the freehold, including all improvements, less the likely cost of enfranchisement which Mr Macpherson had calculated to be £409,250 and Mr D'Arcy Clark of Chesterfield, chartered surveyors, had, in August 1996, calculated to be £406,682 (his valuation not having been available to Mr McGillivray or to Mr Macpherson when their evidence was prepared). It was likely that Mr D'Arcy Clark's valuation had been made available to Ashdown Lyons, the surveyors who had valued the house for the present tenants, since their report stated that the probable cost of enfranchisement was just over £400,000.

(iii) He had compared his valuation (which equates to £808 per square foot) with sales of freeholds at 30 Cheyne Walk, 29 Tedworth Square, 20A Cheyne Walk, 26 Cheyne Row, 9 Carlyle Square and 9 Ormonde Gate. He considered 4 Cheyne Gardens to be superior to 30 Cheyne Walk and 29 Tedworth Square, similar to 9 Ormonde Gate and less good than 9 Carlyle Square, and that their sale prices were consistent with his valuation of the subject property.

Mr Pope considered the unimproved value of the freehold to be £2,600,000 if the improvements carried out in 1984/1985 were to be disregarded, and £2,800,000 if they were to be taken into account.

To arrive at this figure he relied on (i) sales of the lease of the subject property, (ii) the sale of 3 Cheyne Gardens, and (iii) sales of 11 Cheyne Walk, 26 Cheyne Row, 20 Cheyne Row, 20A Cheyne Walk, and 13, 27 and 29 Tedworth Square.

(i) a. He upgraded the sale price of the 56 year lease of the subject in November 1992 to £1,100,000 according to the Savills PCLSW Index for inflation and at a leasehold/freehold relativity of 87%, to give a figure of £2,920,000 for the freehold.

b. He upgraded the sale price of the 52 year lease of the subject in November 1996 to

£1,350,000, (having added £25,000 for the rent review, then 6 years distant) according to the PCLSW Index and at a relativity of 82% to give a figure of £2,700,000 for the improved freehold.

c. He upgraded the sale price of the 51.5 year lease of the subject in July 1997 to £1,975,000, (having added £37,500 for the rent review), according to the PCLSW Index and at a relativity of 87% to include Act rights, giving a figure of £3,220,000 for the improved freehold.

(ii) He updated the sale price of 3 Cheyne Gardens, in "very good condition", in accordance with the PCLSW Index to £3,400,000 at the valuation date, reduced it by a total of £200,000 for the additional floor area, for what he considered to be the superior top floor accommodation, and for the lift, giving a figure of £3,200,000 for the improved freehold.

(iii) He considered the other comparables, which he adjusted, where necessary, for time (via the PLCSW Index) and for leasehold/freehold relativity, to arrive at rates per square foot of £446 for 11 Cheyne Walk, £998 for 26 Cheyne Row, £860 for 20 Cheyne Row, £1020 for 20A Cheyne Walk (which he described as an exceptional price and a poor comparable), £581 for 27 Tedworth Square, £555 for 13 Tedworth Square and £610 for 29 Tedworth Square.

He said that, while he considered the evidence relating to 3 and 4 Cheyne Gardens to be the most important in relation to leasehold/freehold relativity, it was rather remote in time and it was therefore important to consider the more contemporaneous evidence of the other comparables. On the basis that all the improvements, whether carried out in 1984/1985 or in 1997, were to be disregarded, he considered in all the circumstances his valuation of £2,600,000 (£627 per square foot) to be correct, or £2,800,000 (£675 per square foot) taking the 1984/1985 improvements into account.

In our view the freehold sale of 3 Cheyne Gardens is by far the most helpful comparable, and the others are of relatively little help. Tedworth Square is in our view considerably inferior in location, 30A Cheyne Walk has no garden and a poor outlook, and 9 Ormond Gate is in many ways similar but has no garden of its own, 9 Carlyle Square is superior and 26 Cheyne Walk greatly superior. As for 3 Cheyne Gardens, its condition is reasonably clear from the sales particulars put before us, and broadly equates in our view to the improved condition of the subject. In our opinion the sale price of £2,390,000, in May 1997, requires to be adjusted by (4145/4390) for floor area, producing £2,256,617, by £120,000 for improvements, carpets and curtains, and for £60,000 for the lift, producing £2,076,617, say £2,077,000, and then to be adjusted by reference to the average between the PCLSW and PCLH Indices, which provides a figure of £3,190,422, say £3,190,000 at the valuation date. We see no reason to adjust for the superior top floor of 3 Cheyne Gardens as Mr Pope suggested.

3. The unimproved value of the existing lease

Mr McGillivray considered the unimproved value of the existing lease to be £2,250,000. He arrived at this figure by applying to his freehold value a relativity of 72.6%, taken from the Gerald Eve/John D Wood (1996) Graph and then deducting £177,983 for the effect of the rent review as discussed above, giving a figure of £2,254,117 which he rounded down. His rounded figure shows a relativity of 67.16% to his freehold value.

Mr Pope considered that the existing lease had a value of £2,000,000 if the 1984/1985 improvements were to be disregarded, and of £2,150,000 if they were not (76.9% and 76.8% respectively of his proposed freehold values). He arrived at these figures without reference to the Graph, but principally on the basis of the sale of the 51.5 year lease of the subject property in July 1997 as compared with the sale of the freehold of 3 Cheyne Gardens in May 1997

(adjusted to £2,400,000 in July 1997). He adjusted the price of the lease of the subject by first deducting £75,000, based 10 years' purchase on the excess over £2500 per annum of what he considered that the purchaser at the time would have regarded as the likely rent on review of £10,000 per annum. He then adjusted by £150,000 for the lift, superior top floor and additional floor area of no. 3. The relativity shown at July 1997 between freehold and leasehold values by these calculations was 87.9%. He also considered that the purchaser would in July 1997 have calculated the likely enfranchisement price, and the price for the lease would be determined by the freehold value less the costs of enfranchisement. He calculated the enfranchisement price in July 1997, based on an unimproved freehold value of £2,000,000 and a leasehold value of £1,600,000, which suggested a relativity of about 80% without Act rights. He considered that the then 51.5 year lease without Act rights had a relativity of 82% to the freehold and that the 48.27 year lease at the valuation date had a relativity of 80% to the freehold, which he then adjusted for effect of the rent review.

Our method of arriving at the leasehold value has been to take a relativity, not from the Graph, but from the market evidence in 1997, when, as both parties' valuers acknowledged, good comparable evidence is available, and then to cross-check with the Graph. The improved property was sold on a 51.5 year enfranchiseable lease in July 1997 for £1,975,000. This figure must be adjusted for floor area, improvements and prospects of enfranchisement. Adjustment for floor area produces £1,913,599, and adjustment by £120,000 for improvements produces £1,793,599.

Adjustment for lack of enfranchisement rights is difficult. Mr Pope suggested that £100,000 of the price reflected rights to enfranchise. Mr McGillivray did not address this issue directly because he relied on the Graph, which supposedly eliminates the value of rights under the Act. However, in analysing the November 1996 sale he deducted £50,000 for the prospect of future rights to enfranchise, and when comparing that with the later sale in July 1997, he considered

that the price included the full prospect of future enfranchisement at a likely cost of £409,250. In our view, doing the best we can, a deduction of £150,000 is appropriate to reflect the value of the prospect of rights under the Act as at July 1997, rather less than the 10% which is often considered appropriate. Deducting that figure from the £1,793,599 produces £1,643,599, say £1,644,000.

Our adjusted figure for the freehold value of the property as at May 1997 was £2,077,000. At July 1997, adjusted by reference to the Savills Indices, the value on that basis was £2,142,000. This shows a relativity to the freehold value as at July 1997 of 76.75% for the 51.5 year lease, which in our view suggests a relativity of 74% for the 48.25 year lease. Applying that relativity to our freehold valuation at the valuation date gives a leasehold value of £2,360,600. This requires to be adjusted for the high rent liability by deducting £139,500 as explained above, giving an existing lease value of £2,221,100, say £2,221,000. This shows a relativity to the freehold value of 69.6%, which in our view sits comfortably with the Graph.

Determination

Accordingly we determine that the price to be paid for the freehold is £690,000, according to the valuation attached to this decision.

CHAIRMAN.....

4.10.01

LEASEHOLD VALUATION - SECTION 9 (1C)
4 CHEYNE GARDENS, LONDON SW3 at September 18th 2000

		£	£	£
1. Value of Lessor's interest excluding marriage value				
For remainder of term:				
Current ground rent		1,000		
YP 2.25 years @ 5%		2.079	2,079	
Ground rent payable 25/12/02 at review:				
0.5% of FVP @ £3,190,000 reviewable every 21 years		15,950		
YP 46 years @ 6%	15.52			
deferred 2.25 years @ 6%	0.877	13.611	217,096	
For reversion to:				
Value of freehold in possession		3,190,000		
deferred 48.25 years @ 6%		0.0601	191,719	410,894
2. Add Lessor's share of marriage value				
Value of freehold in possession			3,190,000	
Less existing value:				
Lessor's interest excluding marriage value		410,894		
Lessees' interest excluding marriage value		2,221,000	2,631,894	
Gain on marriage			558,106	
50% of marriage value attributed to lessor				279,053
Enfranchisement price				689,947
			say	**£690,000**