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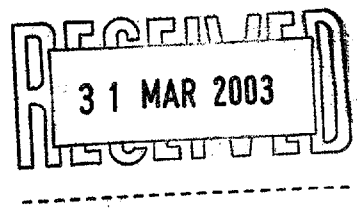
LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL
LON/LVT/1476/02
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL UNDER THE LEASEHOLD REFORM ACT 1967
95 HARLEY STREET LONDON W1



Applicant : Howard De Walden Estates Limited
Respondent : Doron Zur

Date of Application :
Hearing Date : 2nd; 5th;6th 9th December 2002 & 31st January 2003

Appearances :
For the Landlord (Applicant) :
Miss K Holland (Counsel)
Mr J Hudson (Speechly Bircham – Solicitors)
Mr I MacPherson MAFRICS (Gerald Eve)
Mr K Ryan FRICS (Carter Jonas)
Mr W H H Van Sickle BA MSC(Pl.
Mr J Godliman (Chartered Surveyor for Howard De Walden Estates Limited)

For the Tenant (Respondent) :
Mr K S Munroe (Counsel)
Mr M Martin (Brook Martin – Solicitors)
Mr E S R Marr-Johnson FRICS (Marr-Johnson & Stevens Chartered Surveyors)
Mr V Belcher MA
Mr P C Benveniste FRICS MCIArb

Members of the Tribunal :

Mr A A Dutton (Chair)
Mr D L Edge FRICS
Mrs C A Lewis FCIArb

Date of Tribunals Decision : 26th March 2003

A. BACKGROUND - GENERAL

1. This matter came before us for hearing starting on the 2 December and for a number of days thereafter in respect of the claim for the freehold by Mr Doron Zur of the property 95 Harley Street London W1. The property, full details of which will be given under the "inspection" heading, is a six-storey terraced townhouse including a basement level, built around 1911, currently in mixed residential and medical use. It is held under the terms of a Lease dated 6 March 1957 for a term of 49.25 years from the 6 July 1956 expiring on the 11 October 2005. The ground rent payable is £200.00 fixed throughout the term and the Lease includes not only the subject property but the adjoining mews house at 95 Devonshire Mews South.

2. The Lease on full repairing and insuring terms contains certain prohibitions, which we shall refer to as necessary later and in particular an absolute prohibition on assignment or parting with possession of the premises in the last seven years.

3. The property is subject to a number of medical lettings/licenses.

4. The parties had agreed certain matters. The valuation date is the 29 May 2001, at which time the Lease had 4.37 years unexpired. The freeholder's rental income is to be capitalised at 5% over the lease term unexpired and the value of the freeholder's reversion is to be deferred at 6%.

5. For our part, we are charged with deciding three matters. The first is the enfranchisement price payable by the Respondent for the acquisition of the freehold. There is considerable dispute over what constitutes improvements in this case and a good deal of evidence was heard on this point at the hearing. It involved questions of law, historical fact and valuation evidence.

6. The second matter we are required to determine is compensation payable under section 9A of the Leasehold Reform Act 1967 ("the Act"). The issue in this matter relates to the Landlord's claim for compensation for loss of the additional value

which could be realised on the sale of the freehold interest with vacant possession of the subject property together with the adjoining mews house, 95 Devonshire Mews South as opposed to the split position that will occur on enfranchisement of the subject property.

7. The last matter we required to determine relates to the Landlord's claimed entitlement to certain restrictive covenants to be included in the Transfer pursuant to section 10(4)(b)(i) and or (c) of the Act.

B. HISTORICAL FACTS

8. For the reasons stated later in this Decision, we will not go into great details with regard to the history of the property. However the evidence before us was that in 1775 or thereabouts, Mr William Thompson built the first property on the site in Harley Street. A Lease was granted to him for 99 years from mid-summer day 1774 and by various assignments passed to Mr Edwin Galsworthy. In 1866 a new Lease was granted to Mr Galsworthy and, as we subsequently discovered, his brother, and that in turn was transferred to a Mr John McDonald in 1873. Subsequently that Lease was transferred to Mr William Willett.

9. Mr Willett then demolished and rebuilt a house on the site and was granted a Lease for 75 years from the 6 July 1911 out of which he granted an Under-Lease to Lieutenant Colonel Willoughby on the 9 November 1911 and subsequently transferred to him the Head-Lease on the 29 November 1911. There were then various transfers until 1957 when the Lease was surrendered and a grant of a new Lease was made to Mr Edward Corsey on the 6 March 1957. This Lease was for 49¼ years and is the document under which Mr Doron Zur now occupies, the Lease having been transferred to him on the 18 December 1997. We understand that it was only that part of the Lease which related to 95 Harley Street and not the Devonshire Mews property, which was assigned to Mr Zur.

C. HISTORY OF THE PRESENT PROPERTY

10. We set out here what we understand are the agreed facts relating to the present property at 95 Harley Street. On the 27 July 1908 Mr McDonald entered into an

Agreement with the Landlord to carry out certain works in return for which a Lease of 75 years would be granted to him. This Agreement for Lease was transferred to Mr William Willett. It is perhaps relevant at this stage to say a little bit about Mr Willett. It appears that by common consent, he was a builder of some repute. To have a Willett built house it appears was something of a coup. The Agreement Mr Willett took on from Mr McDonald required him to demolish the existing building and to erect on the site with all new materials *"a substantial brick and stone building for a dwelling house of superior character to consist of basement ground floor and three square storeys and attic storey"*. In addition to that the Contract provided for the erection of mews buildings and set out, albeit in fairly limited detail, the general requirements with regard to the works to be carried out.

11. We believe it is common ground that during 1911 the rebuilding works were completed sufficiently so that in November of 1911 Mr Willett was able to grant possession of the property to Mr Willoughby at a price of some £11,000.00. Evidence before us indicated that Mr Willett therefore made in those times a fairly reasonable and healthy profit on the transaction.

12. There is dispute as to the internal fittings and provision of services supplied with the property which we will deal with later but we believe it is accepted that save for some small works of extension by Mr Zur's predecessors in title (about 180 square feet), the property built in 1911 is some 9100 sq.ft. or thereabouts.

13. From 1911 to 1997 certain works have been undertaken at the property. There is some dispute as to the exact extent but essentially we believe it is common ground that in the mid 1930's conversion works were undertaken to the third and fourth floors to create a maisonette with second bathroom, improved fittings and an adaptation of a room to provide kitchen facilities. There appears also to have been some extension to the central heating system. The Respondent says that a lift was installed at about this time together with an improved electrical supply and extra plumbing. The provision of the lift is an area of major dispute between the parties. It appears also that in around the early 30's a lavatory was installed on the half-landing between the ground and first floor and some false doors placed in the partition wall on the second and third floor.

14. Again in the mid 30's there were conversion works to create consulting rooms, and a larder and outside store were altered to create a boiler room. Post 1936, it is contended that there were more plumbing and other works of that nature. In 1997 it is, we believe, agreed that the central heating and hot water system was upgraded and a new bathroom and kitchen fitted to the fourth floor and a new kitchen in the basement. The Respondent argued for no further works.

D. EVIDENCE

15. We will deal firstly with the Respondent's evidence. It is the Respondent's case that the enfranchisement price should take into account and disregard improvements to the property going back to the 1800's. It was accepted by the Respondent that the building of the original house in Harley Street in 1774 was not an improvement but it is averred on the part of the Respondent that works carried out to the property in the 1800's are, and should therefore fall to be disregarded. The Respondent's case was that there were five stages, stage 1 being the works carried out to the property since the grant of the 1957 Lease; stage 2 being the works carried out during the term of the 1911 Lease; stage 3 being works carried out relating to the construction of the present property in 1910/1911; stage 4 being the works carried out during the term of the 1866 Lease, save insofar as they are covered by stage 3 and the final stage being works carried out during the terms of the 1775 Lease. The Respondent's case is that all these Leases could be linked by virtue of Section 3 (3) of the Act.

16. We heard firstly from Mr Victor Belcher who is an architectural and building historian. In his Report which was before us, he set out the details of the Leasehold continuity which we do not need to repeat in these Reasons as they are not, we believe, in dispute. The area of dispute as far as the historical evidence is concerned can, because of our findings in this case be ignored insofar as the period up to the building contract that Mr McDonald entered into in 1908. In his Report, Mr Belcher was of the view that the Contract, "envisaged the straightforward building of a good Edwardian house..." He did not think it provided for a house of the standard which was built by Mr Willett. Mr Belcher was uncertain as to when the property was actually completed but felt that it was possibly not,

even by the time Lieutenant Colonel Willoughby took possession which would have been sometime in November 1911. There was some cross-examination of Mr Belcher at the hearing on this point but he was adamant that in his view, the Lease was granted to Mr Willett before the house was finished and ready for occupation. Mr Belcher dealt with works that were carried out to the property following its rebuilding in 1911 which included, in the 1930's, the installation of a new lavatory, alterations to the drainage and the installation of a lift, the addition of a small wing to house the boiler, the extension/installation of central heating, extra w.c's, kitchens and bathrooms and the provision of consulting rooms. He felt that whilst the 1911 house would have had electricity, he doubted that it would have been of sufficient voltage to power a lift. Relying on a letter from Acker Lifts Limited, which was in the bundle before us, he was of the view that the installation of the lift was approximately 1938. In cross-examination, he accepted that he had made no detailed calculations of the floor area of the property and that in connection with the improvements, which were argued for by the Respondent post 1936, these were not within his knowledge and he felt came from personal knowledge of the Tenants.

17. The valuation evidence was given by Mr Marr-Johnson. He had prepared a Report, which was before us and attended to give evidence. Both he and Mr Ryan, who gave valuation evidence on behalf of the Applicant, had used the same comparable properties upon which to base their calculation of the enfranchisement price. Mr Marr-Johnson told us that the subject premises currently had four medical licences and two vacancies producing a gross annual income of about £95,000.00 at the date of the claim. He felt there was a potential annual income of some £150,000.00 if all available spaces were let. Apparently the Lessee paid Licence fees to the Applicant of £7,500.00 per annum. In his Report, he dealt with the improvements, but as was the Respondent's case, this went back to the building of the original property. He was of the view that the property built by Mr Willett was much larger than the property Mr Willett was obliged to build and was both more extensive and elaborate. Taking into account that two extra, small rooms had been added to the rear ground floor and basement of 180 sq.ft. the agreed (with Mr MacPherson on behalf of the Applicant) gross internal floor area was 9,280 sq.ft. or 9100 sq.ft if the improved square footage was ignored. Mr Marr-Johnson also introduced correspondence from Mr Benveniste concerning the costs of carrying

out alterations to the property to reflect the costs of the improvements, which were argued for by the Respondent. We will deal with Mr Benveniste's evidence later in this decision. Mr Marr-Johnson had agreed with Mr Ryan the necessary uplifts to reflect the differences between the dates of the comparable transactions and the subject premises by use of the Savilles Prime Central London Houses Index. He then went on to explain other allowances and deductions he had made in respect of the comparable properties that he, together with Mr Ryan, had put forward. These included for example allowances of 10% for a double unit to reflect its potential for easier management etc., 5% for a corner position; 3% for one floor less; 2% for the potential for building another storey and so on. To each individual comparable property he applied these adjustments which, in some cases were nil and in others as much as 24%, for example on the property at 112 Harley Street. Both he and Mr Ryan helpfully produced a spreadsheet setting out the comparable properties, their value with adjustments, square footage, leasehold to freehold ratio and the percentages applied under the Savilles Index. For Mr Marr-Johnson, this gave adjusted square footage figures, which he used as the basis for reaching his final value. We deal with those calculations a little bit later in this section.

18. Mr Marr-Johnson also dealt briefly with the short lease value of the property, that is to say the rump end of the lease held by Mr Zur. On the basis that he was looking at a property built in 1775, or thereabouts, he thought it might be of some historical interest. If only improvements since the building of the "new" property in 1911 were to be disregarded then he felt there was still some available worth on the basis that a buyer would pay something to get "a foot in the door" in possible negotiations for the freehold purchase

19. On the question of the valuation he calculated that the arithmetical average of all Harley Street comparables (as he did not feel that properties outside Harley Street were comparable), was £208.00 per square foot. Outside Harley Street in fact the figures were £271.00 per square foot. If he took into account, he told us, the three closer comparables outside Harley Street, namely 57 and 19 Wimpole Street and 17 Upper Wimpole Street, the average was £310.00 per square foot but he told us he could see no "compelling need" to take much notice of these but suggested a value of £210.00 per square foot as being the appropriate starting point for

calculating the enfranchisement price. Applying that to the overall square footage of the property, namely 9280 feet, it came to a figure of £1.95million at the claim date.

20. However, his view was that the property Mr Willett had to build was only 6427 square feet ("the obligated size") and that accordingly the value of the house at the date of claim would be reduced to £1.35million but without the improvement works, which Mr Benveniste said in his evidence, and relied upon by Mr Marr-Johnson, amounted to some £865,000.00. This therefore reduced the figure to be paid for the enfranchisement to £500,000.00. He accepted that some of those works related to rear wings and other unobligated parts and accordingly there could be some double counting. He therefore added back £200,000.00 and gave a figure of £700,000.00 for the value, equating to £109.00 per square foot.

21. He then made an allowance for the advantage of modernisation and attributed an extra quarter of the space between the obligated property that was required to be built by Mr Willett and the property that was actually built. Using the figure of £109.00 per sq.ft. for this, he arrived at a freehold in possession figure of £850,500.00. He then made further allowances to this to reflect the small size of the original Georgian house so that if the arguments in respect of the right to go back to the 18th century were accepted, the total freehold in possession value became £711,000.00.

22. On the question as to whether or not there was any loss to the estate being unable to sell the mews house and the main house together, he said there was not. If however he was wrong in that, taking the £711,000.00 figure, he came up with a loss of £22,000.00 by virtue of mathematical calculations, which he set out in his Report. His conclusion was that if you allowed 10% for the short-lease value, and deducted that from the £711,000.00 price under the Act for the 1774 house, the total price payable for enfranchisement would be £595,000.00. If the existing short-leasehold figure was 5% then the price became £733,000.00.

23. We were in fact subsequently handed other calculations by Mr Marr-Johnson, which tinkered with the figures, but which finally appeared to give a total price of £732,994.00.

24. In cross-examination, it was right to say that much was made of Mr Marr-Johnson's reliance on Mr Belcher's historical evidence, particularly with regard to what was considered to be the obligated house to be built by Mr Willett and not the house actually built. He also had relied on Mr Benveniste's figures in reaching the final calculation. Much was also made of the deductions he made for various allowances that we have already referred to. On the question of the locality in response to cross-examination, he was of the view that Mansfield Street was a superior residential area to Harley Street and that medically Harley Street and Wimpole Street were certainly prime areas although perhaps Wimpole Street was some 5% less than Harley Street. He was also reminded in cross-examination that he had previously accepted that there was a loss to an applicant in the present position where a mews house was sold separately to the main property.

25. We also heard from Mr P C Benveniste. We believe we can take Mr Benveniste's evidence quite shortly. He was called to provide evidence as to the cost of carrying out the improvement works contended for by the Respondent. Unfortunately he was not made aware of the documents in the case and had not seen the Reports of Mr Van Sickle or Mr Belcher. His views were based purely on drawings and on inspection and the information he was asked to provide by the Respondent. There was no expert certification to his letter of the 14 October 2002 nor to his letter of the 22 October 2002 although his Expert's credentials were attached. He told us he had treated works that were to be done as a basic refurbishment contract and had been told not to value the improvements but to cost them and to treat it as a refurbishment in 2001. All costs were estimated for entirely new work with no discount given to reflect the ageing of the works. It was also shown in cross-examination that his calculations were wrong, particularly with regard to the cost of the lift shaft. He told us he had not inspected the actual lift shaft and could not comment upon whether there were any health or safety requirements or fire insulation costs. He was also cross-examined on the costs of some of the items that were to be installed, the indication being given that they could be bought more

cheaply than the figures he had allowed for. In cross-examination from the Tribunal, he told us that he had not carried out any works in the West End and the closest works he had carried out were in Avenue Road, London NW8 and some houses in Hamilton Terrace. He told us also that he had never been involved in the building of a lift shaft.

E. THE APPLICANTS CASE

26. The Applicants case was essentially that any works before the building of the house in 1911 are to be disregarded for two reasons. Firstly, that Section 3(3) of the Act did not allow the joining together of the 1957, 1911 and 1866 Leases. Their submission was that it was not possible to join together more than two consecutive long tenancies and create a chain under Section 3(3) of the Act. In addition also, the Applicants relied upon the case of Rosen v. Trustees of the Camden Charities which is referred to later. Accordingly whilst they provided valuations for stages 1-5 there is no doubt that their case hung on works from 1911 onwards and for reasons, which we will confirm later in this Decision, we do not propose to dwell on matters prior to 1908.

27. On behalf of the Applicants, Mr Van Sickle gave evidence as to historical matters. There was little disagreement between him and Mr Belcher on the factual points. Mr Van Sickle however was firmly of the view that the lift was included in the original Willett built house in 1911. He also dealt in some detail in his Report with the following issue. *"To what extent did the works undertaken in respect of the house built in 1911, exceed the works which Mr Willett was obliged to carry out under the terms of the 1908 Agreement".* His Report dealt with the principle of the Agreement which set down minimum specifications only and that the particulars of work were not a specification of works as such. He was of the view that as the 1908 Agreement was conditional upon the production and approval of drawings and specifications, which augmented the framework and particular works and as Mr Willett produced and built in accordance with those documents, none of the works undertaken in respect of the building of a house in 1910/11 fell outside those that he was obliged to carry out under the 1908 Agreement.

28. Mr Van Sickle dealt with the various improvement works that had been carried out to the property, which apart from the question of the passenger lift were not seriously in dispute although clearly their value was.

29. Mr Ryan and Mr MacPherson were called to deal with the valuation evidence. Mr Ryan, unlike Mr Marr-Johnson, provided values for each stage of the potential development as referred to earlier in this Decision (see paragraph 15). They were however to an extent done for the sake of completeness rather than conviction. There is no doubt that he hung his hat on the freehold valuation basis 1a in his Report, that is to say 1911 onwards to date.

30. Like Mr Marr-Johnson, he had utilised comparable properties, which had been agreed between the parties. He made minimal adjustments. They reflected the difference between the freehold and the leasehold value. There was some adjustment in respect of ground rents where appropriate and alterations to allow for mews houses, again where appropriate, but as with Mr Marr-Johnson he provided a Schedule setting out the various properties, their adjusted freehold values and square footage figures. He concluded that the average medical/residential square footage figure was £265.00 and the average wholly residential figure, £398.00 giving a mean figure of £317.00 per square foot. In fact, what Mr Ryan did was to take three properties he considered to be the most appropriate residential comparables at 57 Wimpole Street, 16 Mansfield Street and 17 Upper Wimpole Street. Taking the square footage figures gave an average for those three of £324.00. He then looked at the most appropriate residential/medical properties, which were at 101 Harley Street, 97 Harley Street and 19 Wimpole Street. These gave an average of £259.00 per square foot. The average of residential and mixed residential/medical gave a figure of £291.50.

31. Before he gave his final figure as to the valuation of the freehold purchase, he dealt with the improvements. We have already commented on those to a certain extent under the history of the present property. Suffice to say, Mr Ryan made no allowance for the lift as the Applicants case is that it was in situ when the property was built. So far as any improvement to the electricity supply was concerned, based on Mr Van Sickle's evidence, he believed that mains electricity was present

and therefore no allowance should be made. So far as the central heating was concerned, he believed there may have been an upgrading but there would have been provision for hot water and some heating in a typical Willett built house. He accepted there had been a construction of a small wing achieved by converting some existing rooms which he calculated to be 65 square feet but which appeared to have been accepted by Mr MacPherson and Mr Marr-Johnson at 180 square feet. He dealt with works of conversion, which were carried out in the 1930's, which was for example the conversion of the 3rd and 4th floors to a maisonette, the consulting rooms and additional toilets and bathrooms. There was also the question of the insulation of the new central heating and hot water system in 1997, which he thought was the replacement of an older boiler with a new gas fired model. There had also been refitting to the bathroom and kitchen on the 4th floor and the kitchen in the basement. Taking these in the round, he allowed a figure of £22,500.00, which related solely to the upgrading of the central heating system both in the 1930's and in 1997. He did not believe any other allowances should be made and if any were due, they were in his words, "de minimis".

32. Accordingly, applying the gross square footage figure of 9215 square feet, to the square footage figure of £291.50, and then deducting the £22,500.00 improvement figure for the central heating gave a rounded up freehold valuation of £2,665,000.00. We do not propose to recount the evidence on the other valuations under the other possible scenarios that were put forward.

33. As to the value of the existing lease, he quite simply valued that at nil on the basis that there was an absolute prohibition against assignment in the last seven years.

34. With regard to Landlords other losses, namely the division of the subject properties in the adjoining mews, he felt it was a common feature of the London market that there was such an impact and he estimated the figure at £50,000.00.

35. Finally, with regard to the freehold and the provision of any restrictions, he was of the view that the restrictions should be included as to do otherwise would have a detrimental affect on the value of other property in the vicinity of the subject premises. He gave various examples of that which we do not need to deal with in

any great detail. In cross-examination he indicated that in his view the improvements to create the mixed use in the property had reduced the value of same and he concluded that in fact residential use only was more valuable. When questioned as to why he, unlike Mr Marr-Johnson, had considered properties outside Harley Street, he came to the view that it was reasonable to do so and that other properties close by, Wimpole Street for example, were very similar to those in Harley Street. He did accept that Mansfield Street had a different feel and was more residential. He made no adjustment for the size of the properties.

36. Mr MacPherson then gave evidence on behalf of the Applicant. He took us through his Report and set out the terms of the Act that applied to this particular case. He set out his calculations in the addendum to his Report, which gave an enfranchisement price of £2,404,500.00. This was based on Mr Ryan's freehold figure of £2,665,000.00, which was then deferred for the 4.37 years at the agreed rate of 6% giving a figure of £2,065,098.00. He calculated the ground rent for the remaining period of £576.00, capitalized, to give the total figure of £2,066,484.00. He gave no value for the residue of the existing Lease for the same reason as Mr Ryan (see para 33 before). As he gave no value for the leaseholders interest, the marriage value, being the difference between the valuation of £2,665,000.00 and the freeholders' interest of £2,066,484.00 gave a marriage value at 50% of £299,258.00 plus of course the allowance in respect of the additional loss, which deferred was £38,760.00 leading to the figure we have quoted of £2,404,500.00. He gave evidence to us with regard to planning considerations and there was some cross-examination as to the relevant planning areas applicable to the property. We noted all that was said in this regard but could not see the need to set out in any detail the evidence we received on this particular point.

37. On the question of the estimate of the effect on the value of the Howard De Walden Estate of the loss of control with regard to covenants etc., he doubted it would be possible to prove an amount of total damage. Nonetheless he still felt that damage would be occasioned and supported the Report of Mr Godliman, which we shall turn to next.

38. Mr Godliman is a Director of the Applicant Company and has over thirty years experience in managing the estate. His evidence was confined to the need, from the Applicant's point of view, of ensuring that restrictions were placed in the Transfer to the Lessee both with regard to user and to alterations. He provided a list of Transfers that had been made on the Marylebone Estate since September 1996 and in every case except one, there had been a restriction on user and on alterations. Certainly the Estate was against any allowance for use of the premises as offices. We were also told that the Applicant wished to control the external appearance of the property because relying on Mr Ryan's opinion it would maintain the value of other properties of the Applicant, and others.

39. It is right to say that the Respondent did not call any evidence to rebut the matters put forward by Mr Godliman. There was some dispute as to whether Mr Munroe should be entitled to produce evidence to rebut. However we came to the conclusion, having heard from both counsel that the Respondent could not say that he had been taken unaware by the fact that there was to be a dispute on the terms of the Transfer and indeed in Mr Munroe's opening submissions, it is accepted there was a dispute and therefore we found that the Respondent was fully aware the Transfer was to be considered and should have been dealt with. Accordingly we were not prepared to allow late evidence to be called on behalf of the Respondent in this regard.

F. INSPECTION

40. We inspected both the subject property and the vast majority of the comparable properties externally on the 16 January 2003. We viewed externally the mews house to the rear and were also afforded the ability to inspect part of the ground floor at number 97 Harley Street. We found that property was perhaps slightly more grand and that certainly the entrance hall and stairways were more imposing than the subject premises. It was however a very helpful exercise. We viewed the properties in Mansfield Street and walked the length of both Harley Street and the majority of Wimpole Street.

41. Internal inspection was made of the subject premises starting at the top floor. Before we got there we made use of the lift facility, which was dated and appeared to have a very antiquated floor indicator. The lift to the top floor opened directly into Mr Zur's living accommodation, which was an unsatisfactory arrangement. The living accommodation on the top floor consisted of a small roof terrace, which was very pleasant, a living room, with a kitchen which was semi-open-plan behind it, containing modern fittings although quite small. To the front was a bedroom with fitted cupboards and to the rear, behind the kitchen, was a playroom. There was also a bathroom with a full suite, although the bath looked to be on the small side. On the third floor mezzanine level was a bedroom which was quite small and had previously, we understand, been a bathroom. There was a separate w.c. with a high level water cistern and a large living room with rear aspect but of good size. This was the extent of the residential accommodation on the 3rd and 4th floor.

42. To the front part of the third floor were medical rooms. One was used as an office, by presumably a receptionist, and the other as a consulting room. On the half-landing there were two small rooms, one of which was a w.c. On the second floor there was the same layout as on the third floor again used as medical accommodation. There was a pleasant half-landing to the first floor that housed, again medical rooms to the front and a further large consulting room on the same level. On the mezzanine floor level between the first and ground, was a large reception room to the back with a full height bay window giving access to a flat roof. On the ground floor was a large reception room to the front of good size. Behind that was a further, presently unused, consulting room and reception area and, under the stairs, a w.c. and a store room. To the rear was another large room with side and rear aspects leading to a small room and a rear access door to the yard. In the basement area, reached externally, was a boiler room containing the hot water tank and the new boiler. To the front of the basement was a unit of residential accommodation. The kitchen had been modernised but suffered from poor natural light. Opposite the kitchen was the front living room, which again suffered from poor natural light. Between that front living room and a rear bedroom was a shower room with separate w.c. which created something of an inconvenient layout as the shower room became something of a thoroughfare. The rear bedroom was pleasant but with no views. Beyond the residential unit was the room

housing the lift and the lift motor and behind that a small scullery with a door leading to a small light well. Beyond that, was further residential accommodation which consisted of a bedroom with a bathroom en suite containing a full suite of fittings, a living room behind the bedroom with kitchen off, which surprisingly had quite good natural light both because the window was quite extensive and the white glazed tiles to the exterior reflected daylight. Beyond the living room was a rear lobby with storeroom and access to the rear yard.

F. COUNSELS SUBMISSIONS

43. Both counsel very helpfully submitted written submissions and indeed Mr Munroe even provided comments on the Applicants closing submissions. The arguments were therefore fully put to us and we were left in no doubt as to both party's views with regard to the issues for us to be decided. It was interesting however to note that Mr Munroe accepted that if Mr Willett had not carried out the works as provided for in the Building Agreement in 1908, he would not have been granted the new Lease.

G. DECISION

44. The first element of the Decision we will deal with is perhaps fundamental to the case and relates to the improvements that have been carried out to the property and in particular whether or not a number of leases can be linked under Section 3(3) of the Act. The answer to this, we believe, is to be found in the case that has been cited by both parties, of Rosen v. Trustees of Camden Charities a Court of Appeal case heard towards the end of 2002. Briefly the facts of that case were that in January 1850, the Trustees of the Charity put up for sale a site. A bidder entered into an agreement with the Trustees to construct 29 houses on the site and upon completion to be granted a 99-year lease. Mr Rosen was the successor in title to a lease that had been granted in 1937 and sought to have the freehold transferred to him under the Act. The amount payable by Mr Rosen to the Trustees was to be calculated pursuant to Section 9 (1)(A) of the Act. The price was determined by a Leasehold Valuation Tribunal but challenged and came before the Lands Tribunal and subsequently the Court of Appeal. The contention by Mr Rosen to the Court of

Appeal was that the original construction of the property before the grant of the 1852 Lease was capable of constituting an improvement to the house and premises within the meaning of the Act and therefore could be disregarded.

45. The decision of the Court of Appeal was that for the purposes of Section 9 (1)(A)(d) of the Act the building of a new house on a bare site (whether a green field site or a site on which a previous building which was not a house had been demolished), was not an improvement of the house and premises but the provision of the house. The decision went on to say "*moreover when considering the contents of the 1967 Act as a whole, the words "diminished by the extent to which the value.... has been increased by any improvements carried out by the tenant or his predecessors in title at their own expense" could not be taken to contemplate a situation where a tenant under a long lease had expended money on the relevant property but had received the equivalent value from the landlord in exchange i.e. a valuable lease. There could be no justification for drawing a distinction between the treatment of a tenant who had acquired his long tenancy by the payment of a premium and one who had done so by the expenditure of a similar sum in the construction of a house on his landlords land. It followed in the instant case that the building lease which I (Inderwick) had taken from the Trustees was the original bargain between them performance of which on I's part could not be treated as an improvement within section 9(1)(A)(d)*"

46. We remind ourselves that when Mr Willett took on the 1908 Building Agreement from Mr MacDonald it was on the basis that a reversionary lease would be granted on the terms set out in that Contract. That is, he had to complete the works which had been discussed previously before a lease would be granted. This is clearly the case, as the lease under which Mr Willett acquired his interest in the property is expressed to be *"in consideration of the outlay made by the said Lessee in rebuilding the messuage or dwelling house intended to be hereby demised and of the rent and covenants hereafter...."* Mr Belcher's evidence was that the property had not been completed by the time the lease was granted. This is inconsistent with the contemporaneous correspondence around May and June 1911 when Mr Willett is pressing for the lease to be granted as the property is ready to market to the public. We find that by the time the lease was granted to Mr Willett he had

complied with the terms of the 1908 Agreement. In this case therefore we are satisfied that the decision in Rosen v. Trustees of Camden Charities is binding upon us. It is quite clear that Mr Willett carried out the works as set out in the 1908 Agreement in return for being granted a lease, which he subsequently transferred at a profit. It is for that reason therefore that we find in this case, it is only improvements from 1911 onwards that are to be considered for the purposes of reaching the enfranchisement price. For the reason that we find the Rosen case applies, we do not need to consider the linkage of leases under section 3(3) of the Act.

47. We turn now to the question of improvements that have been undertaken since 1911 and the first issue is the "obligated works" of Mr Willett and the second whether or not the 1911 property was "blessed" with a lift. We prefer Mr Van Sickle's evidence on the question of the obligated property. We find that the wording of the Building Agreement is loosely drawn and there is little or no indication as to the extent of the property that Mr Willett was required to build. We accept Mr Van Sickle's evidence that the Building Agreement would have been enhanced by the plans that Mr Willett was required to draw up and that those plans formed part of the Agreement and the requirements of the landlord. Mr Willett may have chosen to, for example use stone facia to the front of the building but we cannot accept that was an improvement as such and we are therefore satisfied that the property built and in particular the extent of same was as agreed with the landlord and was as required under the terms of the building contract. We therefore find this is not a case where the obligated works are considerably less than the works actually undertaken by Mr Willett and that there is no improvement to be allowed for in connection with the square footage of the property save only for the 180sq.ft. that has been agreed between Mr MacPherson and Mr Marr-Johnson.

48. We turn now to the question of the lift. This took up a good deal of evidence and time and we have been left to make a decision based on the documents that were provided but also by our inspection. The documents conflict on the particular point. On behalf of the Respondent it is argued that for example a brief survey conducted in 1923 which refers to a dinner lift but not a passenger lift, is evidence that no lift had been included. There is also uncertainty in plans that were drawn in 1931

showing various drainage works and which certainly on the ground floor and mezzanine, do not indicate the existence of a lift shaft. The letter that was produced from Acre Lifts of the 17 October 2002 indicated that their records show a lift was manufactured and installed in 1938.

49. Against that the Applicant says the plans in 1931 are not intended to be accurate, save and except for the basement level, which shows drainage and a room comparable to the lift shaft. Further, plans drawn up in 1936 clearly show the existence of a lift shaft and indeed a letter by Lay Clarke and Partners on the 3 July 1936 refers to a passenger lift. Plans were also provided of other properties built by Mr Willett at the time where lifts are clearly shown. On inspection we found the lift shaft looked as though it had been there since the property was built. The floor indicator, in our view, appeared to be more reminiscent of 1911 than the 1930's. We find therefore on the balance of the evidence that we have been given and our inspection, that the lift was an original feature of the property built in 1911. The letter from Acre Lifts evidences the fact that the lift may well have been up graded in 1938. However we are satisfied that from 1911 onwards there has been a passenger lift at the subject premises.

50. We turn then to the question of the remaining improvements. It does not seem to us necessary to go through these in any detail. There is little dispute between the parties as to actually what was undertaken, the real question of course is the value of same. With respect to Mr Benveniste, we found his evidence unhelpful. He had valued the improvements at today's dates and made no allowances for the passage of time. His figures were shown to be inaccurate and costings also inaccurate. We preferred the evidence of Mr Ryan on the question of improvements. Evidence was give to us during the course of the hearing that properties in the area are worth more as residential units than mixed residential and medical. Our inspection of the property revealed a house that was not perhaps as grand as we might have expected. The overall feel was of a property that was in need of quite substantial modernisation works. We find that the improvements carried out to the property, with the exception of the upgrading of the central heating system and the improvements to the living accommodation do not have any value as at today's date. It is likely on the evidence we have heard, that the property could well be

returned to residential usage in which case the conversion to provide consulting rooms and the installation of various toilets would be rendered otiose when the refurbishment works were undertaken. Even if the property remained in mixed use, those improvements are now so dated as to have no worth. Insofar as the central heating is concerned, we do accept that the improvement to the system by the additional radiators that were installed, it seems during 1936, and the extension of the system at that time, as well as the improvement to the present boiler and hot water tank are matters that can be taken into account as are the recent residential improvements. We would have valued these improvements, based on our knowledge and experience, at some £30,000.00. However we believe that we must discount this in part for the passage of time. We make a discount of 66% to that to give a rounded figure of £10,000.00 as a sum that we find reasonable to allow in respect of improvements to the subject premises.

51. We must then deal with the valuation of the property to reach the enfranchisement price. Details of the calculation are set out on the Schedule attached. By way of explanation we have taken the square footage at 9100sq.ft. to exclude the 180sq.ft. representing tenants improvements which are allowed for by Mr MacPherson and Mr Marr-Johnson. We have not given any specific value to that 180 sq.ft. as an improvement worth but we have reflected same, nonetheless in the calculation of the square footage figure. We accept Mr Marr-Johnson's evidence that Harley Street does seem to have a slightly special market. Certainly from a review of the comparables, it seems that the vast bulk of mixed residential and medical usage is to be found in Harley Street. There is also evidence we find that the mixed usage does appear to reduce the value of the properties. For that reason therefore we agree with Mr Marr-Johnson that the best comparables are those in Harley Street and that the comparable properties put forward by Mr Ryan, outside Harley Street, are not to be preferred. We do however find that many of the various discounts and deductions made by Mr Marr-Johnson unhelpful. We find them in the main to be speculative and did not provide compelling evidence upon which we felt we could rely to any great degree.

52. To reach the figures shown in the Schedule we have carefully considered the evidence of the values of the various properties in Harley Street. We were

provided with no less than 23 properties that were put forward as comparables to give a flavour of the square-footage figure that was the average in the locality. As we have indicated above we do find there appeared to be a somewhat special market in Harley Street no doubt based upon the medical usage. That gave a lower square-footage figure when compared to the wholly residential properties for example in Mansfield Street. Even within Harley Street there are anomalies. For example 112 Harley Street now converted to a hospital, has a square-footage figure considerably in excess, for example, to 59 Harley Street. Taking the matter in the round, we found the most helpful comparable at number 97 Harley Street. Although this is a larger property than the subject premises internal inspection indicated to us that it was in a similar state of modernisation and repair and therefore was very helpful in assessing the value from a square-footage point of view, which appears to be the common valuing basis of both parties. Mr Ryan put forward a figure of £228.00 per square-foot for 97 Harley Street and Mr Marr-Johnson after his deductions of some 15% was just under £183.00 per square-foot. We find that the deductions made by Mr Marr-Johnson of some 15% are too great to reflect the difference between this property and the subject premises. We accept however that 97 Harley Street is more grand than the subject property and for that reason therefore in taking Mr Ryan's square-footage figure which is unadulterated by the various amendments made by Mr Marr-Johnson but making some allowance for the less grand premises we have come to the conclusion that the correct square-footage figure to be applied is £220.00 per square-foot. That gives a figure of £2,002,000.00. However, we must of course make the deductions in respect of the improvements which we referred to earlier in the Decision of a net figure of £10,000.00 which gives the figure for the reversion of the freehold interest with vacant possession of £1,992,000.00. The various calculations affecting that figure are shown in the Schedule giving the final enfranchisement price.

53. We turn then to the Landlords loss. We accept in principle this is a factor that we need to consider and we accept there have been various cases before the Leasehold Valuation Tribunal and the Lands Tribunal where the question of the sale of the main house and mews properties has been considered and allowances have been made for the Landlord in that regard. We accept in this case that there has been a loss in "dividing" the property following the sale of the freehold interest

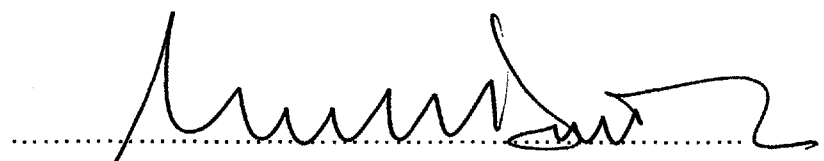
in 95 Harley Street. Mr Ryan put forward a figure of £50,000.00. Mr Marr-Johnson, whilst not conceding that any value was attributable, came to a figure of £22,000.00 by reason of various calculations which we do not need to go into. We find the figure of £50,000.00 on the high side. It may well be that in a wholly residential set up the breakage of the unit in this way would have a greater impact on the property. We find however that with a mixed user the price is perhaps not quite so sensitive. Mr Ryan's figures were estimations only and we find a figure of £30,000.00 is reasonable to allow in respect of the Landlords loss under section 9A of the Act which after deferment for the unexpired term results in a deduction of £23,256.00.

54. The other element we need to deal with is the value of the existing Lease. We heard all that was said by Mr Munroe on behalf of the Respondent but it seems to us that an absolute prohibition against an assignment of the Lease in the last seven years of the term renders the existing Lease valueless. Whether the freeholder would be prepared to grant some form of limited assignment for the remaining terms of the Lease is of course unknown. However we do not attribute any value to this element.

55. Finally the question of the terms of the Transfer. There was evidence before us from Mr Godliman that with very few exceptions since 1996, the vast majority of Transfers of properties on the Howard De Walden Estates have contained covenants similar to those they seek to impose in this matter. The main issue with regard to the covenant for usage seems to us to centre around whether or not office use should be allowed as is sought by Mr Zur. The evidence before us was that there was little, if no office use in this section of Harley Street save and except where it may be collateral to medical usage. The Respondent also sought to include usage for laboratory, and other medical professions, again something the Applicants sought to oppose. Their opposition was based partly on the possible structural consequences of allowing for mechanical equipment to be installed and also the wish to retain Harley Street as a centre of medical expertise occupied by duly qualified and fully registered practitioners. We find that the request of the Applicant in this case is reasonable and in those circumstances find the terms asked for by the Applicant to be included in the transfer and as set out in clauses 1.3-1.3.4 on pages 3 &4 of Mr Godliman's Witness Statement are acceptable.

55. We turn then to the question of alterations to the subject premises. Mr Zur seeks to rely solely upon the local authority and other planning departments to control certainly the exterior of the subject premises. The Applicant seeks to impose a restriction on extending the property and altering the external nature. It is fair to say there have already been some buildings erected in Harley Street that appear to be out of keeping with the vast majority of properties in that area. We find it reasonable for the Applicants to wish to control the external appearance of the property and not to merely rely upon the local planning authority as the guardian of the ambiance of the area. The Applicant of course does not seek any absolute prohibition against external alterations or additions but merely that those alterations or additions should be approved by the estate. We find that is a reasonable requirement to include in the Transfer and we therefore approve the wording which is set out at paragraph 1.2 on page 7 of Mr Godliman's report. We hope on that basis that the parties will be able to agree the terms of the Transfer.

56. We therefore find, by reason of the calculations set out on the Schedule, that the price to be paid for the freehold of the subject premises is £1,791,650.00.



Chairman

26 March 2003

Dated

Valuation Schedule

95 Harley Street
London W1

Leasehold Reform Act 1967 (as amended)
Valuation Date: 29 May 2001
Unexpired Term at Valuation: 4.37 years

	£	£	£
Freeholder's interest:			
Ground rent payable	150		
YP 4.37 years @ 5%	3.84		
		576	
Reversion to freehold interest			
With vacant possession	1,992,000		
Deferred 4.37 years @ 6%			
	0.7752	1,544,198	
			1,544,774
Freeholder's share of Marriage Value:			
Freehold interest with vacant possession		1,992,000	
Less:			
Freeholder's existing interest	1,544,774		
Lessee's existing interest	0		
		1,544,774	
Gain on marriage		447,226	
Landlord's share @ 50%			223,613
Freeholder's other loss			
Additional value of freehold in subject house combined with 95 Devonshire Mews South instead of separately	30,000		
Deferred 4.37 years @6%	0.7752		
			23,256
			1,791,643
		Say:	**1,791,650**