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LON/00BK/OCE/2007/0375

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE
LEASEHOLD REFOR, HOUSING & URBAN
DEVELOPMENT ACT 1993, CHAPTER 1**

Address: 20 Hamilton Terrace, London, NW8 9UG
Applicant: Northway Management Limited
Respondent: John Lyons Charity
Intermediate Landlord: The Trustees of the Arrow Film Distributors
Pension Fund
Application: 15 November 2007
Inspection: 30 April 2008
Hearing: 8-9 April 2008

Appearances:

Tenant
Mr P. Rainey Counsel
Mr Mead Jaffe Porter Crossick, Solicitors
Mr P. Beckett FRICS Beckett & Kay, Surveyors
For the Applicant

Landlord
Mr M. Pryor Counsel
Mr D. Greenish Pemberton Greenish, Solicitors
Mr J.P. Hamilton BSc FRICS Cluttons, Surveyors
For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr C. White FRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BK/OCE/2007/0375

**IN THE MATTER OF SECTION 24 OVER THE LEASEHOLD REFORM,
HOUSING & URBAN DEVELOPMENT ACT 1993**

AND IN THE MATTER OF 20 HAMILTON TERRACE, LONDON, NW8 9UJ

BETWEEN:

NORTHWAY MANAGEMENT LTD

Applicant

-and-

**THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES
AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON**

Respondent

-and-

THE TRUSTEES OF THE ARROW FILM DISTRIBUTORS PENSION FUND

Intermediate Landlord

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 24 of the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) ("the Act") to acquire the freehold interest in the property known as 20 Hamilton Terrace, London, NW8 9UJ ("the property").
2. The Respondent is the freehold owner of the subject property and the mews house behind ("13 Hamilton Close"). The freehold interest of the property and 13 Hamilton Close is subject to a head lease expiring on 24 December 2054,

which is presently held by Mr and Mrs Agram and Barnet Waddingham as Trustees of the pension fund, the intermediate landlord.

3. The property is comprised of three flats, and upper and lower maisonette in the main part of the building and a studio flat in the rear addition. 13 Hamilton Close is comprised of two garages with a maisonette above.
4. The Applicant holds the underleases of the two maisonettes in the property and the maisonette at 13 Hamilton Close. The Applicant is, therefore, the majority of qualifying tenants and has nominated itself as the nominee purchaser. The Applicant's underleases expire on 15 December 2054 and have unexpired term of 47.71 years as at the valuation date, being 30 March 2007.
5. The studio flat and garden (and a garage at 13 Hamilton Close) was subject to an agreement for a lease dated 28 April 1986 for a term of 21 years in favour of Mr and Mrs Henderson. It was a matter of common ground between the parties that this was not an agreement for a long lease as defined by section 7(1) (a) as it did not exceed 21 years. The term of that agreement expired on 27 April 2007. Apparently, Mr Henderson has now died and Mrs Henderson remains in occupation.
6. By an initial notice dated 29 March 2007 and served on the Respondent and intermediate landlord on 30 March 2007 pursuant to section 13 of the Act, the Applicant exercised its right to acquire the freehold interest in the property including the curtilage and garden. The proposed purchase price for the freehold interest of the property was £390,000 and a further £1,000 for the curtilage and garden area. The Applicant also proposed a purchase price of £308,000 for the interest of the intermediate landlord.
7. By a counter notice dated 18 June 2007, the Respondent counter proposed a purchase price of £ 727,100 for the freehold interest and £2,500 for the area falling within the curtilage. No purchase price was proposed by the Respondent in relation to the garden area, as it intended to retain this property under section s.1(3)(b) and to grant rights over it under s.1(4) (a) of the Act for the occupier of the studio flat to use it for peaceful recreational purposes. The

Respondent also counter proposed a purchase price of £40,825 for the intermediate interest. In addition, the Respondent also sought a leaseback of the studio flat pursuant to paragraph 5 in Part III of Schedule 9 to the Act. At paragraph 13 of the counter notice, the Respondent exercised the statutory authority granted by section 9 and Part I of Schedule 1 to the Act to act as the relevant landlord on behalf of the intermediate landlord.

8. On 15 November 2007, the Applicant made this application to the Tribunal to determine the terms on which it should acquire the freehold interest for the property.

The Issues

9. The valuation issues agreed by Mr Beckett and Mr Hamilton, the respective valuers for the parties, are set out in paragraphs 1-4 of the agreed statement annexed hereto. The issues upon which a determination was sought from the Tribunal were:
 - (a) whether the Respondent is entitled to retain the freehold of the garden and to a 999 year leaseback of the studio flat.
 - (b) the freehold vacant possession value ("FHVP").
 - (c) the value of the existing leases of the participating tenant (relativity) and whether any adjustment was required for the onerous ground rent.
 - (d) what adjustment, if any, is to be made because of the assured shorthold tenancies granted in respect of the subject flats.
 - (e) the terms of the Transfer.

Each of these issues is considered in turn below.

Inspection

10. The Tribunal inspected the property on 30 April 2008. The property comprises a terraces house on four floors including a lower ground floor. It is believed to have been built about 1830 but with a later, probably Victorian rear extension containing a studio flat. The house is constructed in brick with white stucco to the entrance porch and square first floor bay. The roof is slated. Although constructed as a house it was divided into two flats/maisonettes many years ago. The studio is built in brick with a tiled roof

and is attached to the rear of the house with access from it and is built in the rear garden with a strip of land adjoining the studio. At the rear of the studio is the main garden with 13, Hamilton Mews at the rear.

Decision

11. The hearing in this matter commenced on 8 April 2008. The Applicant was represented by Mr Rainey of Counsel. The Respondent was represented by Mr Pryor of Counsel. The intermediate landlord did not appear and was not represented. For reasons unknown, it appears that the intermediate landlord was not served with a copy of the Applicant's application and it did not become aware of these proceedings until 20 February 2008 despite, so it seems, having served a notice of separate representation on 25 September 2007. In any event, the intermediate landlord has not taken any steps, whether by itself or its solicitors, to intervene or seek an adjournment in these proceedings. In the circumstances, the Tribunal decided to proceed to hear this matter and to make its determination.

(a) Freehold of Garden & 999 Year Leaseback of the Studio Flat

12. It was a matter of common ground between the parties that these issues largely turned on whether the intermediate landlord was a qualifying tenant of the studio flat.
13. The Respondent contended that the intermediate landlord was not a qualifying tenant and relied on the authority of *Howard de Walden Estates Ltd v Aggio* [2008] Ch 26 (CA). In that case, the Court of Appeal decided that an intermediate landlord could not be a qualifying tenant for the purposes of Chapter II of the Act. However, the Applicant contended that *Aggio* had no application to Chapter II of the Act in an application to collectively enfranchise. Indeed, the Applicant further contended that this was part of the Respondent's grounds for seeking permission to appeal in *Aggio*.
14. It is not necessary to set out the Respondent's submissions in relation to whether the intermediate landlord is a qualifying tenant. At the time the Tribunal heard this matter, it was told that *Aggio* was to be shortly heard on appeal by the House of Lords. This was largely the main reason for the

Tribunal delaying its determination in this matter. The Tribunal has now learnt that the House of Lords has overturned the decision of the Court of Appeal in *Aggio* and has found that a head lessee is a qualifying tenant. It has now been conceded on behalf of the Respondent that it is no longer able to rely on the authority of *Aggio* to support the proposition that the head lessee in this instance is not a qualifying tenant of the studio flat.

15. Both parties were largely agreed as to the consequences that would flow from a finding that the head lessee was a qualifying tenant. In the light of the concession now made by the Respondent, the Tribunal fully adopts Mr Rainey's submissions. These were:
 - (i) if the intermediate landlord is a qualifying tenant of the studio flat, it is also equally a qualifying tenant of the garden, as it forms part of the demise. It also follows that the Respondent cannot retain the garden because section 1(4) only permits the grant of permanent rights in lieu of the freehold where the area in question is used in common with the occupiers of other premises. It is beyond doubt that the garden is demised to the studio flat, within the meaning of section 1(3)(a), and is not subject to common use with the other tenants in the property. As such, it is also beyond doubt that the garden is appurtenant to the studio flat within the meaning of section 1(7) of the Act.
 - (ii) it is correct, as a matter of law, that as the intermediate landlord is now to be regarded as a qualifying tenant of the studio flat, the Respondent has no right to a leaseback under paragraph 5 of Schedule 9 of the Act. This provision only applies to flats not let to a qualifying tenant.

16. A collateral issue that arose was whether the Applicant would also be entitled to acquire the headlease in relation to the studio flat as a consequence of section 2(2) of the Act, which provides that the (leasehold) interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of a flat contained in the premises shall also be required on behalf of the qualifying tenants.

17. Mr Pryor, for the Respondent, submitted that section 2(4) of the Act had the effect of disapplying section 2(2) because the lease held by a qualifying tenant

under section 2(4) must be inferior to the leasehold interest to be acquired under section 2(2). Although Mr Rainey submitted that this construction would lead to severance, he did not argue too strongly against it. He also accepted that *Hague* appear to agree with Mr Pryor's construction and the Tribunal adopted that reasoning also. Although the drafting of this section of the Act is unfortunate, nevertheless, it is clear that it was not intended to disenfranchise a headlessee who participated in an application to collectively enfranchise, as a qualifying tenant.

(b) Freehold Vacant Possession Value ("FHVP")

18. The valuers for the respective parties had, helpfully, agreed the same "basket" of comparable properties that had, in the main, been sold in Hamilton Terrace between April 2006 and August 2007. These comparable properties varied in terms of the accommodation offered and the unexpired terms of the leases. The FHVP value of the studio flat was agreed at £350,000.
19. Mr Beckett, instructed by the Applicant, had prepared a valuation report dated 3 April 2008. His valuation of the FHVP can be found at paragraph 3 of that report. At Appendix 14, Mr Beckett set out a schedule of the comparable properties considered. Dividing the purchase prices by the gross internal area of each property produced a figure expressed in pounds per square foot for each property, which Mr Beckett described as the raw rate. Mr Beckett then calculated relativity based on the raw rate using his theory of relativity, discussed below. If his figure of relativity was less than 90%, he made a 5% reduction from the price paid to reflect the benefit of the Act.
20. Mr Beckett's schedule contains two further columns, namely, FHVP rates A and B, which reflected the grossing up of the agreed time adjusted leasehold rate to FHVP. A further average actual column provided the average of the two FHVP A and B rates. Mr Beckett then adjusted accordingly for floor levels to a ground or first-floor rate in a building without a lift. This process produced a range of rates between £723 and £770 per square foot.
21. At Appendices 15 and 16 of his report, Mr Beckett, distilled his valuation in two ways. Firstly, he considered those properties with long leases where no

adjustment for relativity was required. Secondly, he considered he considered the most comparable properties to the subject flats. This process provided rates of £751-820 and £782 respectively, making no adjustment for floor levels. Mr Beckett was of the view that these rates slightly exaggerated the FHVP rate at the date of valuation. Example, he believes that some of the comparable properties have a better aspect and in better decorative condition than the subject flats. Having regard to these matters, he considered the appropriate rate to be approximately £750-800 per square foot and took the average rate of £775 per square foot. Applied to the agreed gross internal areas of the subject flats, produced FHVP values of £1,291,925 for the lower flat and £1,375,625 for the upper flat.

22. The valuer instructed by the Respondent was Mr Hamilton who had also prepared a valuation report dated 7 April 2008. Paragraph 10 of his report sets out his valuation approach to the FHVP values. Whilst acknowledging Mr Beckett's precise mathematical approach, Mr Hamilton preferred a more market evidence led approach in his valuation of the FHVP. Given that none of the potential comparable sales of flats were Freehold, Mr Hamilton adjusted from leasehold to freehold by using Savills Relativity Index 2003. By dividing the open market leasehold value by the appropriate relativity in the Index, the freehold value could be ascertained. The results are shown at Appendix 5 of his report. Inevitably, this process produced a wide range of results bearing in mind the range of floors, unexpired terms and other subjective differences between the respective flats.
23. Mr Hamilton conceded that the Index could only be regarded as a guide to the freehold value. The lower the unexpired term, the less reliable the Index was likely to be. He, therefore, refined the figures further by comparing flats with unexpired terms in excess of 100 years and sorting them by floor level. These appear at Appendix 6 of his report. Mr Hamilton did not consider that are the subject flats to have a different value per square foot because the relative advantages and disadvantages of both flats cancelled each other out.
24. In Mr Hamilton's view, when determining the freehold value of each maisonette, the sales of flats with long unexpired terms were more reliable.

Nevertheless, this still produced a range of values from £610-976 per square foot. Having personally inspected each of the flats in Appendix 6, having either been involved in the lease extension, collective enfranchisement, negotiated the settlement or appeared before the LVT as the Respondent's expert, Mr Hamilton considered that Flat 2,106 Hamilton Terrace to be the best comparable property. This was also accepted by Mr Beckett. This property was sold on 30 August 2007 for £1,100,000. Applying the Savills Relativity Index 2003 produced a freehold value of £976.40 psf as at the valuation date. This flat had been acquired by the lessee of the lower ground floor who had a lease a similar length and who intended to combine the two flats into one maisonette. In his opinion, Mr Hamilton believed this property to be better than the subject property. Although the purchase price may have reflected an element of special purchaser's bid, the purchaser would incur considerable costs in merging and refurbishing the two flats including the installation of a staircase between them. He, therefore, made a downward adjustment of 10% to reflect this which produced a rate of £878 per square foot. Mr Hamilton considered this the appropriate rate to be applied to the subject flats to ascertain the FHVP.

25. By way of a cross check, Mr Hamilton went on to consider the adjusted sales of shorter leases. He had inspected all but one of the remaining flats in Appendix 6.. His analysis appears at paragraph 10.15 of his report. Having done so, he concluded that these sales also supported his figure of £878 per square foot. Applying this to the gross internal areas of the lower and upper maisonettes produced FHVP values of £1.46M and £1.56M respectively.
26. Both values had agreed that Flat 2, 106 Hamilton Terrace was the best comparable to the subject property. However, both had analysed this property at different rates per square foot. Mr Beckett analysis produced a figure of £775 per square foot whereas Mr Hamilton had adopted a figure of £878 per square foot. Mr Beckett had produced, in effect, a desktop valuation whereas Mr Hamilton had had the benefit of personally inspecting nearly all of the comparable properties. It is for this reason, on balance, that the Tribunal preferred the evidence of Mr Hamilton. Indeed, Mr Beckett at paragraph 3.1.1 of his report, concedes that Mr Hamilton was more experienced than he in

relation to Hamilton Terrace. Mr Beckett further conceded that he had not seen flats in Hamilton Terrace, other than the subject once, for some time and not in sufficient quantities to be able to give direct evidence on them. In the Tribunal's view, this concession was material as to whose evidence is preferred on this issue.

27. The tribunal considered the adjusted figure of £878 by Mr Hamilton and £775 of Mr Beckett which averaged £826. They considered all the evidence and doing the best they could decided on a rate of £840 psf which moved the figure towards Mr Hamilton's figure as they considered he had more knowledge of the area. Having inspected both flats, the Tribunal concluded that the first-floor maisonette was superior generally to the ground floor/lower ground floor maisonette and they should be reflected in a downward adjustment of 5% for the latter, thereby producing a figure of £798 per square foot. Accordingly, the FHVP values for the ground floor/lower ground floor and first floor maisonettes are £1,330,266 and £1,491,000 respectively before any adjustments for the assured shorthold tenancies

(c) The Value of the Existing Leases - Relativity

28. On the issue of relativity, Mr Beckett propounded his (radical) theory on this matter. He summarised this theory at paragraph 2 of his report and expanded upon it at Appendices 2, 3 and 10. It seems that Mr Beckett's theory was first advanced by him in the matter of 62 Cadogan Square and rejected by the Tribunal in that instance. That case is subject to an appeal to the Lands Tribunal on 16 June 2008.
29. The rationale behind Mr Beckett's theory on relativity is to provide a more predictive, reliable and objective way to determine this matter without reference to Tribunal and Lands Tribunal decisions, settlements, opinions and other subjective material.
30. Mr Rainey, conveniently, had set out in summary Mr Beckett's theory on relativity as follows:

"Stage 1

- (a) The first step is to treat the right of a tenant, T, to possession of a flat for a term as a right of economic value capable of being expressed as a yearly sum. When T pays a premium for a 44 year lease, that premium represents the economic value to him of the right to exclusive possession of the flat for that term. That premium can be decapitalised to produce an annual sum, £ X.
- (b) It is not necessary to decide what £ X is, nor even how one would go about assessing £ X. It is unnecessary because £ X is common to both sides of the equation explained below.

Stage 2

- (c) The next step is to value the lease by capitalising £ X. This is done using a dual yield. This is a conventional valuation technique, employed by valuers when valuing intermediate leases at a profit rent. It is explained in *Modern Methods of Valuation* (9th ed.) Chapter 9. The dual yield approach that deals with the fact that the lease is a wasting asset by treating part of the income as set aside to accumulate in a sinking fund which over the term will produce a sum equal to the purchase price. This produces a YP figure.
- (d) Then, the freehold is valued by capitalising £ X at a single rate in perpetuity, also producing a YP figure. The two YP's are then compared, and this provides the relativity of a leaseholder of the given length to the freehold.
- (e) This method provides the valuer with the ability to compare the values of leases of different lengths and to compare leases with freeholds. One does not need to know what £ X is, as it is a constant in the valuations. The only thing one needs to consider is the relative values of the YP produced by the dual yield calculation.
- (f) The variable is the capitalisation rate chosen. Mr Beckett chooses a conservative 5% rate. Higher rates produce high relativities."

31. Mr Beckett then went on to contend that his theory could be shown to be consistent with market evidence in one of four ways:
- by reference to the extensive analysis of comparable evidence in Cadogan Square (Appendices 7-9).
 - by reference to other uniform blocks of flats where he had made comparisons (Appendix 10).
 - to the LVT decision in Montagu Square.
 - perhaps less so, to Hamilton Terrace itself.
32. Having regard to this body of evidence, Mr Beckett concluded that the appropriate relativity for the subject flats was 81%, which then required a further downward adjustment of 1.5% to reflect the onerous ground rent thereby resulting in a relativity figure of 79.5%. This produced existing lease values for the lower/ground floor and upper maisonettes of £1,227,329 and £1,375,625 respectively. Applying the same relativity figure to the studio flat produced a figure of £283,500.
33. By contrast, Mr Hamilton's approach to relativity was perhaps more conventional. At paragraph 11 of his report, he stated that he used a graph (Appendix 7) showing the settlements on the Eyre Estate and John Lyons Charity Estate. Each spot on the graph was the existing lease value as a percentage of the extended lease value. He had also included settlements where there was or likely to be an onerous ground rent, as was the case here. Mr Hamilton also stated that he was involved in settling about two thirds of the cases shown on the graph.
34. On the basis of his graph, Mr Hamilton calculated that the unexpired term of 47.71 years for the subject flats provided a relativity range of 69-76%. When settlements with shorter and longer unexpired terms are considered, this range narrows to 70-73%. He, therefore, adopted a relativity of 72%, assuming a nominal ground rent. Mr Hamilton also agreed with Mr Beckett that a downward adjustment was necessary to reflect the onerous ground rent and adopted a figure of 3% to arrive at a relativity of 69%. This provided a value

for the existing leases of the lower/ground floor and upper maisonettes of £997,000 and £1,070,000 respectively.

35. Whilst the Tribunal could understand Mr Beckett's wish to have a theory on relativity that was objective, predictable and verifiable, it did not consider his theory as presently propounded accurately reflected healthy market operated. It did not operate in the linear way that Mr Beckett's theory suggested. The Tribunal rejected his theory on the basis of the evidence given by Mr Hamilton and the submissions made by Mr Pryor on this issue. These were:

- (a) purchasers made bids on the basis of the purchase price achieved for comparable properties and upon the advice received from agents. It was not a scientific approach, but was essentially based on the price paid by other purchasers.
- (b) from time to time there was a market correction based on the prevailing economic conditions.
- (c) capital values of leases are not derived from the rental value. The market is driven by capital values and not rental values.
- (d) if leases have an annual value, it could not be decapitalised from the capital value and that process would remain at a constant amount.
- (e) that Mr Beckett's theory, to the extent that it was correct, was limited to Cadogan Square, as it was almost exclusively based on market evidence in that location.
- (f) that Mr Beckett's relativity graph derived from his theory was self-serving because the assumptions made in his theory would invariably result in that graph being produced.
- (g) that Mr Beckett's assumptions that the annual (unknown) amount did not vary was incorrect and, therefore, relativity could not be expressed as a mathematical formula.
- (h) Mr Beckett accepted in evidence that his theory did not work in a market dependent upon mortgages and the Tribunal had clear evidence before it that several of the comparable properties were in fact subject to mortgages.

36. Accordingly, the Tribunal considers Mr Hamilton's market-based approach in determining relativity to be preferable even though that evidence may not be perfect. In the circumstances, the Tribunal found it difficult to disagree with Mr Hamilton's relativity figure of 72% and found in those terms. The Tribunal also had regard to the 'Graph of Graphs', which generally supported this figure as being the correct average relativity. This provided a relativity of 70% between freehold and short lease values.
37. As to the onerous ground rent, Mr Beckett discounted 1.5% to reflect this whereas Mr Hamilton discounted by 3%. Neither party advocated that their approach was based on any compelling evidence either way. In the circumstances, the Tribunal determined that the best approach was to deduct 2% from the short lease values to reflect the onerous ground rent. Accordingly, the Tribunal determined that the short lease values should be adjusted by a further 2% to allow for onerous ground rents

(d) The Assured Shorthold Tenancies

38. The Claimant contended for a discount of 10% to be applied to the FHVP. The Respondent contended for none. Again, in the absence of any compelling evidence either way, the Tribunal determined that a discount of 5% should be applied to the FHVP. The Tribunal considered 10% to be too high because the subject flats were, in its view, lettings in the higher end of the market. Accordingly, the FHVP for the lower/ground floor and upper maisonettes should be reduced by 5% to allow for the assured shorthold tenancies.

(e) The Valuation & Terms of the Transfer

39. At the conclusion of the hearing, it was agreed by the parties that the respective valuers would submit a joint valuation and draft Transfer (if not agreed) within 14 days of this Decision being handed down, based on the Tribunal's findings. Accordingly, the parties are so directed.

Dated the 16 day of July 2008

CHAIRMAN..... *I. Mohabir*
Mr I Mohabir LLB (Hons)

In the Leasehold Valuation Tribunal

Case no: LON/00BK/OCE/2007/0375

in the matter of

20 Hamilton Terrace, London NW8

AGREED STATEMENT

of

Peter Beckett and Philip Hamilton

Northway Management Ltd

("The Claimant")

-v-

**The Keepers and Governors of the Possessions Revenues and Goods
of the Free Grammar School of John Lyon**

("The Respondent")

-v-

Mr and Mrs N Agran

("The Intermediate Landlord")

***Beckett and Kay LLP
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Agreed statement

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20 Hamilton Terrace, London NW8

Agreed statement

Appendices

- A. Location plan
- B. Ordnance sheet extract
- C. Photographs
- D. Summary of the Flat(s)
- E. Schedule of transactions
- F. Savills PCL North Flats Index

1 INTRODUCTION

- 1.1. This is an agreed statement jointly prepared by the Valuers including the "memorandum of agreed facts" and details of comparables" mentioned in direction number 7 of the Leasehold Valuation Tribunal dated 10 December 2007.
- 1.2. The present case arises under Leasehold Reform Housing and Urban Development Act 1993 as amended ("The Act").
- 1.3. The Flats in the case are the upper and lower flats, and the Studio ("The Flats") in 20 Hamilton Terrace, London NW8 ("The Building").
- 1.4. The parties in the case are:
 - Nominee Purchaser: Northway Management Ltd ("The Claimant")
 - Freeholder: The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon ("the Respondent")
 - Intermediate landlord: Mr and Mrs N Agran and Barnett Waddingham ("the Intermediate Landlord")
- 1.5. The parties' valuers ("The Valuers") are:
 - for the Claimant: Peter Beckett FRICS of Beckett and Kay
 - for the Respondent: Philip Hamilton BSc MRICS of Cluttons
 - for the Intermediate Landlord: VALUER of FIRM
- 1.6. The Claimant served notice under s13 of the Act on 30 March 2007. The Respondent served Notice admitting the claim, but making different proposals in relation to aspects of it, on 18 June 2007. The Intermediate Landlord served notice of separate representation on 25 September 2007. The Claimant made application to the Leasehold Valuation Tribunal for a hearing on 15 November 2007. The Tribunal gave Directions on 10 December 2007.
- 1.7. The Valuers have agreed as follows. All appendices are bound in with this document.

2 THE FLATS

2.1 LOCATION

2.1.1 A location plan is at Appendix A, and an extract from the Ordnance sheet at Appendix B.

2.1.2 Hamilton Terrace is a highly regarded residential street at the south-west edge of St John's Wood. It runs parallel to Maida Vale. It consists of a variety of residential properties, including many detached and semi-detached houses of the 19th Century; some converted into flats, and some relatively recently reconverted into houses. There are also some blocks of flats. Number 20 is at the south-east end of Hamilton Terrace, close to its junction with St John's Wood Road, and on the north-east side of Hamilton Terrace.

2.2 THE PROPERTY

2.2.1 Photographs are at Appendix C.

2.2.2 The Property, as a whole, stretches the whole way between Hamilton Terrace and Hamilton Close, though the building on the Hamilton Close frontage, 13 Hamilton Close ("The Mews House"), is not included in the present claim.

2.2.3 The Property was originally an end of terrace house with a later addition of a studio at the rear. The house is built in brick, under a pitched, slated roof. It is arranged at lower ground, ground and two upper floors. There is a garden stretching between the main house and the mews house. Attached to the rear of the main house at garden level, between ground and lower ground floors, is the studio, built considerably later than the main house. The studio is single storied with a pitched, tiled roof.

2.2.4 At some time, long after the original construction of the house, the main house was divided into two duplex flats: the lower flat on lower ground and ground floor level; and the upper flat at first and second floor level but with its entrance on the ground floor.

2.3 THE FLATS

2.3.1 The Flats and agreed gross internal floor areas ("GIA") are summarised at Appendix D.

IMPROVEMENTS

2.3.2 No relevant improvements are claimed by the Claimant.

3.1 THE FLAT LEASES

- 3.1.1 The Leases of the upper and lower flats in the Building are dated 7 September 1987 and 19 December 1986 respectively, for a term of 69 years [less 10 days] beginning on 25 December 1985 - expiring therefore on 14 December 2054: an unexpired term at the date of valuation of about 47.71 years.
- 3.1.2 These Leases have rent reviews to 52.50% of the rent payable on review under the Headlease.
- 3.1.3 At the date of valuation, there was also an underlease dated 28 April 1986 held by Mrs DK Henderson. This lease expired on 27 April 2007 - shortly after the date of valuation.

3.2 THE HEADLEASE

- 3.2.1 The intermediate Landlord holds a lease ("The Headlease") dated 28 April 1986, for a term of 69 years beginning on 25 December 1985 - expiring therefore on 24 December 2054: an unexpired term at the date of valuation of about 47.74 years.
- 3.2.2 The headrent at the date of valuation was £700 per annum, subject to rent reviews on 25 December 2008. Further rent reviews take effect on 25 December 2031. The Valuers agree that £72 per annum of this rent is attributable to the Mews House.
- 3.2.3 The Headlease provides that the headrent on review shall be 0.25% of the value of the Property as if held on a 69-year lease at a peppercorn. The Valuers agree that 10.33 per cent of this rent is attributable to the Mews House excluding the amount attributable to the one garage included in the demise of the studio.

3.3 OCCUPATION OF THE STUDIO

- 3.3.1 At the date of valuation, Mrs DK Henderson held the Studio pursuant to a lease dated 28 April 1986. This lease expired on 28 April 2007. Mrs Henderson remains in occupation.

4.1 GENERAL MATTERS

- 4.1.1 The Flats are to be valued in accordance with Schedule 6 to the Act.
- 4.1.2 The date of valuation is the date of service of the Claimant's s13 Notice: 30 March 2007. The terms unexpired at those dates are set out above.

4.2 FREEHOLD AND LONG LEASEHOLD VALUES

- 4.2.1 Freehold values are to be derived from comparable market transactions, properly adjusted. A schedule of such transactions is at Appendix E.
- 4.2.2 Where time adjustment is required, the Savills PCL North flats index is used, as attached in Appendix F.
- 4.2.3 Long leasehold unimproved values with vacant possession and in compliance with covenants are found by multiplying the freehold vacant possession value of the Flats by 99%.

4.3 TREATMENT OF THE RESPONDENT'S INTEREST IN THE FLATS

- 4.3.1 The Respondent's interest in the Flats should be valued as follows.

DEFERMENT RATE

- 4.3.2 The deferment rate for the landlord's reversion to FHVP is 5.00%

CAPITALISATION RATE

- 4.3.3 The capitalisation rate for the income from the Headlease is 5.50%
- 4.3.4 The capitalisation rate for the Headlease profit rent is 7.0% with a 2.5% sinking fund

4.4 LEASEHOLD RELATIVITY ("RELATIVITY"):

- 4.4.1 The relativity appropriate to the hypothetical 69-year term required for the rent review in the Headlease is 88.5%.

5. VALUATION ISSUES

The positions of the parties on the remaining issues are as follows:

5.1 FREEHOLD VACANT POSSESSION VALUE OF THE FLATS ("FHVP"):

5.1.1 The FHVPs of the Flats are:

Flat	Claimant	Respondent	Intermediate Landlord
Lower flat	1,291,925	1,460,000	
Upper flat	1,375,625	1,560,000	
The Studio*	350,000	350,000	

5.2 RELATIVITY:

5.2.1 The Relativity appropriate to the actual term unexpired at the date of valuation (about 48 years) is:

Claimant: Normally: 81% of FHVP. Subject to onerous ground rent ("OGR"): 79.50%.
 Respondent: Normally: 72% of long leasehold value. Subject to onerous ground rent ("OGR"): 69%.

5.3 VALUE OF THE CURRENT LEASES:

5.3.1 The values of the current leases of the Flats with vacant possession are:

Flat	Claimant	Respondent	Intermediate Landlord
Lower flat	1,227,329	1,460,000 997,000	
Upper flat	1,375,625	1,560,000 1,070,000	
The Studio*	283,500	243,000	

5.4 TREATMENT OF THE INTEREST OF THE INTERMEDIATE LANDLORD:

5.4.1

Respondent: Adjustment for relativity: 35%. Adjustment for the occupation of Mrs Henderson: 25%. Adjustment for the substandard condition: £50,000.

Claimant: *adjustment for* The Claimant adopts the Respondent's valuer's figures, excepting only *the 75*
 Relativity: 81% 199.

Intermediate Landlord:

5.5 DISCOUNT FOR AST

5.5.1 At the date of valuation, the two Flats in the main house were occupied on tenancy agreements. The discount to FHVP to reflect this, in the marriage value section of the statutory valuation should be:

Claimant: 10%.

Respondent: None.

Intermediate Landlord:

We certify that the above is agreed.




Signed

Peter Beckett for Claimant

Date 8 April 2008.

Signed



Philip Hamilton for Respondent

Date 8.4.08.

Signed

VALUER for Intermediate Landlord

Date