

Leasehold Reform Act 1967Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: The Trustees of the Eyre Estate

Respondents:

17 Acacia Road: Mrs L H Townsley
19 Acacia Road: Mr and Mrs M S Bradfield

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Re 17 and 19 Acacia Road, St John's Wood, London NW8

Date of tenants' notices and valuation dates:

17 Acacia Road: 9 June 1994 (unexpired term 39½ years)
19 Acacia Road: 5 January 1994 (unexpired term 40 years)

Applications to tribunal:

17 Acacia Road: 6 September 1996
19 Acacia Road: 29 July 1996

Heard:

23 May 1997, (inspections 7 October 1997)

Appearances:

Mr A Radevsky (counsel)
Mr J E C Briant BA ARICS and
Mr T A Stotesbury BSc ARICS (Daniel Smith, chartered surveyors)

for the applicant

Mr N Taggart (counsel)
Mr G Aylott (Paisner & Co, solicitors for Mrs Townsley)
Mr P Freedman (Mishcon de Reya, solicitors for Mr and Mrs Bradfield)
Mr K G Buchanan BSc ARICS (Conrad Ritblat, chartered surveyors)

for the respondents

Members of the leasehold valuation tribunal:

Lady Wilson
Mr J A Pickard FRICS IRRV
Mr D Myer-Smith

Date of the tribunal's decision: 6 November 1997.

The facts

1. 17 and 19 Acacia Road are substantial three storey detached houses built in the nineteen thirties. Each is held on a 99 year lease, dated 31 October 1938 and 3 September 1936 respectively, at fixed ground rents of £122 for 17 and £118 for 19, the lease of 17 having approximately 39½ years and the lease of 19 having approximately 40 years unexpired at the valuation dates. The cases were heard together with the consent of the parties.
2. It was agreed that the marriage values should be shared equally and that a capitalisation and deferment rate of 6% should be adopted. The issues were the values of the existing leases and the values of the freeholds.
3. Valuations prepared by Mr Briant for the freeholder are attached to this decision as appendix A, and valuations prepared by Mr Buchanan for the tenants are attached as appendix B. Mr Briant's proposed enfranchisement prices are £565,540 for 17 and £562,651 for 19. Mr Buchanan's proposed prices are £363,527 for 17 and £360,237 for 19.
4. On 7 October 1997, regrettably some 4½ months after the hearing because of difficulties in obtaining access to the interiors of the properties, we inspected both properties internally, and we inspected externally all the comparables relied on by the parties' valuers, details of which are set out in an agreed schedule which is attached to this decision as appendix C.

Decision

The values of the existing leases

Mr Briant said that the lease of each property was worth £1,400,000 at its valuation date. He reached this figure by comparison principally with:

- (a) 25 Queen's Grove NW8, a 42 year lease of which was sold in September 1994 for £1,400,000 with the benefit of a notice of claim under the Leasehold Reform Act 1967, ("the Act"), a transaction which he adjusted downwards to reflect the notice of claim, (section 9(1A) of the Act requiring the valuation assumption that Part I confers no right to acquire the freehold), and the fact that the lease term was about two years longer than those of the properties which are the subject of the present proceedings, and upwards to reflect the fact that the comparable is slightly smaller than the subjects and that its location is less good. He made no adjustment for condition because the property was sold in a tired condition and been refurbished since the sale;
- (b) 19 Acacia Road, one of the properties which is the subject of these proceedings, which was sold leasehold, only a week after the notice of claim had been served, for £1,825,000. He discounted the sale price by £425,000 to reflect the combined effects of the notice of claim and of the improvements made since the lease was granted in 1938, which included increasing the size of the kitchen, installation of two new bathrooms, and replacement of fittings, central heating and electrical wiring;
- (c) he also relied on sales of 29 Henstridge Place (sold with the benefit of a notice of claim under the Act) and 44 Avenue Road, details of which are listed in appendix C and which he adjusted to reflect the notice of claim, improvements, location and size, and, in the case of 44 Avenue Road, market movement.

He did not accept Mr Buchanan's across-the-board adjustment of £75,000 for the benefit of a notice of claim. He was reluctant to commit himself to a figure but in his view it could be much higher than £75,000, because of the assumption that had to be made for the purpose of the enfranchisement that the leases were unenfranchisable.

Mr Briant also relied on differentials between leasehold and freehold values, particularly that which, he said, emerged from the settlement of a claim under the Act in respect of 25 Queen's Grove which he had reached on behalf of the Eyre Estate shortly before the present hearing, with Mr Buchanan acting for the tenant, where the differential between the value of the 42 year lease and the value of the freehold was accepted to be 63.5%. He said that this, and differentials shown on a graph prepared by Savills, suggested that the differential between a 40 year, unenfranchisable lease and a freehold should be 61 or 62%, and the 78% differential suggested by Mr Buchanan's values was inconsistent with the settlement evidence.

Mr Buchanan proposed a leasehold value of £1,750,000 for each property. He relied principally on:

(a) the sale of the lease of the lease of 19 Acacia Road in January 1994 which he adjusted only for the benefit of the notice of claim. He did not adjust for improvements since the grant of the lease because he said, he did not know that there were any, and the tenants had removed them all when they renovated it. He had adopted a standard £75,000 adjustment for the notice of claim in respect of every transaction where there was one because, in his view, at the valuation date, which was not long after the Leasehold Reform, Housing and Urban Development Act 1993 had extended enfranchisement rights to higher value properties, the perception was that a notice of claim added a relatively nominal amount to the price to reflect only the fact that a

purchaser did not have to wait three years to enfranchise;

(b) 25 Queen's Grove, which he adjusted downwards by £75,000 for the notice of claim, but upwards to reflect what he considered to be the larger garden, better location and better condition of the subject properties. He considered that the purchaser had paid a very high price for the comparable;

(c) he also relied on 41 Queen's Grove, 44 and 47 Avenue Road, and 29 Henstridge Place, all of which he adjusted for factors such as notice of claim, market movement, size, layout, condition, parking, location and rent review. In some instances his adjustments were very substantial (£500,000 for size and a staff cottage, for example, in the case of 47 Avenue Road).

In our view the value of a notice of claim under the Act is very subjective: some purchasers will pay more than others, depending, for example, on whether they perceive the market to be likely to rise, whether they themselves wish to sell on, and whether they would themselves qualify to enfranchise. A purchaser wishing to buy in the name of a company might well pay more for a notice of claim than a purchaser buying in his own name. Moreover, we agree with Mr Radevsky that the value of a notice of claim is likely to vary according to the value of the freehold and the unexpired term of the lease, so that a standard deduction, of whatever figure, is unlikely to be accurate.

The best comparable for the value of the short leases is clearly the sale of 19 Acacia Road, very close to the valuation date, for £1,825,000, with the benefit of the notice. Taken alone, it suggests a higher value than we believe to be appropriate, but taking into account the other comparables, the most helpful of which we consider to be 25 Queen's Grove and 29 Henstridge Place, and having regard to the likely relationship in the market between the value of a 40 year, unenfranchisable lease, and the value of the freehold, we have concluded that the value of each lease, unimproved, was, at the

valuation dates, £1,500,000.

The values of the freeholds

Mr Briant proposed unimproved values of £2,300,000 for each property, and Mr Buchanan proposed £2,250,000. In our view, where the difference between values is so small, and well within what is commonly known as "valuation tolerance", it is normally appropriate for the tribunal to take a value between the two, provided that seems a reasonable course to take on the evidence, and that is what Mr Radevsky invited us to do. We accept his invitation and accordingly determine that the freehold value of each property at the valuation dates is £2,275,000.

Determination

We accordingly determine that the price to be paid for the freeholds in possession of 17 and 19 Acacia Road are, respectively, £502,250 and £498,950, in accordance with our valuations which are attached to this decision as appendix D.

CHAIRMAN.....

DATE.....

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993.

Property: 17 Acacia Road

Valuation Date: 09/06/94

LEASE TERMS:

Lease commenced: 25/12/34
Lease to expire: 25/12/33
Unexpired Term: 39.57
Ground rent (pa): £122

FHVP £2,300,000
Value of Underlease: £1,400,000

FREEHOLD PRESENT INTEREST:

Term:

Ground Rent: £122
YP 39.57 @ 6% 15.01

£1,831

Reversion:

FHVP £2,300,000
PV £1 39.57 @ 6% 0.10

£229,250

£231,080

LESSEES INTEREST:

£1,400,000

MARRIAGE VALUE:

FHVP: £2,300,000
Less
Landlords Present Interest: £231,080
Leasehold Interest: £1,400,000

Total Marriage Value: £668,920

Take 50% MV £334,460 £334,460

Leaseholders interest: £1,734,460

Freeholders interest: £565,540

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993.

Property: 19 Acacia Road

Valuation Date: 05/01/94

LEASE TERMS:

Lease commenced: 25/12/34
 Lease to expire: 25/12/33
 Unexpired Term: 40.00
 Ground rent (pa): £110

FHVP £2,300,000 £2,300,000
 Value of Underlease: £1,400,000 £1,400,000

FREEHOLD PRESENT INTEREST:

Term:
 Ground Rent: £110
 YP 40.00 @ 6% 15.05 £1,655

Reversion:
 FHVP Less improvements: £2,300,000
 PV £1 40.00 @ 6% 0.10 £223,647 £225,302

LESSEES INTEREST: £1,400,000

MARRIAGE VALUE:

FHVP: £2,300,000
 Less
 Landlords Present Interest: £225,302
 Leasehold Interest: £1,400,000
 Total Marriage Value: £674,698
 Take 50% MV £337,349 £337,349

Leaseholders interest: £1,737,349

Freeholders interest: £562,651

17 ACACIA ROAD, LONDON NW8

Valuation as at 9th June 1994

Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as amended by the Leasehold Reform Housing and Urban Development Act 1993

1. **Value of Freeholders Interest**Term I

Ground Rent	£122 pa	
YP 39½ yrs @ 6%	14.99	£1,829

Reversion

Unimproved Open market	£2.25m	
Freehold value		
PV £1 39½ yrs @ 6%	.1001	<u>£225,225</u>
		£227,054

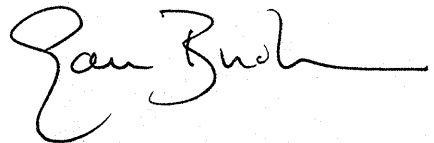
Marriage Value

Open market Freehold Value	£2.25m	
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Less (i) Freeholders Interest	£227,054	
(ii) Unimproved Open market	<u>£1.75m</u>	
Leasehold Value		
Marriage Value	£272,946	

Freeholders share at 50%		<u>£136,473</u>
		£363,527

In my opinion, the price payable for the Freehold under Section 9(1)c of the Leasehold Reform Act 1967 as amended should be determined at £363,527 (Three hundred and sixty three thousand, five hundred and twenty seven pounds).



K G Buchanan BSc (Est Man) ARICS
Conrad Ritblat

Valuation as at 5th January 1994

Under the provisions of the Leasehold Reform Act 1967 Section 9(1)c as amended by the Leasehold Reform Housing and Urban Development Act 1993

1. Value of Freeholders Interest

Term I

Ground Rent	£118 pa	
YP 40 yrs @ 6%	15.04	£1,774

Reversion

Unimproved Open market	£2.25m	
Freehold value		
PV £1 40 yrs @ 6%	.0972	<u>£218,700</u>
		£220,474

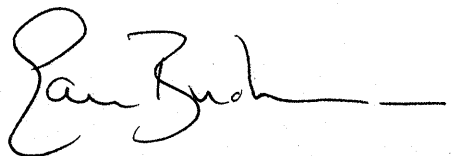
Marriage Value

Open market Freehold Value	£2.25m
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Less (i) Freeholders Interest	£220,474
(ii) Unimproved Open market	<u>£1.75m</u>
Leasehold Value	
Marriage Value	£279,526

Freeholders share at 50%	<u>£139,763</u>
	£360,237

In my opinion, the price payable for the Freehold under Section 9(1)c of the Leasehold Reform Act 1967 as amended should be determined at £360,237 (Three hundred and sixty thousand, two hundred and thirty seven pounds).



K G Buchanan BSc (Est Man) ARICS
Conrad Ritblat

17 & 19 ACACIA ROAD, LONDON NW8

Statement of Agreed facts Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
17 ACACIA ROAD	3 storey double fronted detached red brick property under a pitched tiled roof.	304 m ² 3267 sq. ft	INTERNAL: 7 bedrooms, 2 dressing rooms, 4 bathrooms (2 en suite), dining room, drawing room, study, maid's room, kitchen/ breakfast room, utility room, separate WC, cloakroom. Store room. EXTERNAL: Rear garden, In Out driveway, off street parking for 4 cars.	99 years from 25/12/34, expiring 25/12/2033. Unexpired term 39 1/2 years.	£122 during the residue of the term.		Valuation date: 9 June 1994
LEASEHOLD COMPARABLES							
44 AVENUE ROAD	Detached double fronted period house with stucco elevations.	347 m ² 3735 sq ft	INTERNAL: 5 bedroom, 4 bathrooms (2 en-suite), 2 en-suite shower rooms, 4 reception rooms, kitchen/breakfast room, conservatory, utility room, guest cloakroom EXTERNAL: Single garage, U-shaped driveway with standing for at least 6 cars, rear garden	99 years from 25/12/34, expires 25/3/2034 Unexpired term 38 3/4 years.	Initial rent £1,000 p.a. Rent review 24/6/1987 to £14,000 p.a. Further reviews in 2001, 2015 and 2029.	£1,550,000	June 1995
47 AVENUE ROAD	Detached double fronted house on a corner plot.	338 m ² 3642 sq ft	INTERNAL: 10 bedrooms, 5 bathrooms (2 en-suite), 4 reception rooms, kitchen/breakfast room, pantry, cellar, study, playroom, store room, utility room, guest cloakroom, staff cloakroom. EXTERNAL: Single garage, U-shaped driveway with standing for at least 6 cars, rear garden	99 years from 25/12/306, expires 25/12/2035 Unexpired term 38 3/4 years.	£100 p.a. during the residue of the term.	£2,250,000	November 1994
19 ACACIA ROAD	3 storey detached 1930's town house of brick construction under a tiled mansard roof.	282 m ² 3035 sq. ft	INTERNAL: 6/7 bedrooms, 2 dressing room, 3 bathrooms (1 en suite), double reception room, study, kitchen/ breakfast room, utility room, 2 WCs/ cloakroom. EXTERNAL: Rear garden, In Out driveway, off street parking for 4 cars.	99 years from 25/12/34, expires 24/6/2033. Unexpired term 39 1/2 years.	£118 during the residue of the term.	£1,825,000 + Benefit of the Notice.	January 1994
29 HENSTRIDGE PLACE	2 storey brick built 1950's detached house under a tiled mansard roof.	196 m ² 2105 sq. ft	INTERNAL: 6 bedrooms, dressing room 4 bathrooms (1 en suite), drawing room, dining room, study, WC, kitchen/ breakfast room, utility room. EXTERNAL: Rear garden, In Out driveway, off street parking for 4 cars.	95 3/4 year lease from 25/3/38, expiring 25/12/2033. Unexpired term 39 1/2 years.	£60 p.a. during the residue of the term.	£1,275,000 + Benefit of the Notice	June 1994
41 QUEEN'S GROVE	1930's 4 storey detached house under a tiled mansard roof	287 m ² 3089 sq. ft	INTERNAL: 6 bedrooms, dressing room, 6 bathrooms (5 en suite), shower room, kitchen, study, drawing room, dining room, bar area, billiard room, family room, cloakroom, , utility room. EXTERNAL: Double garage, OSP 1, rear garden.	99 years from 24/6/35, expiring 24/6/2034. unexpired. 37 3/4 years	£90 fixed for the duration of the term.	£1,730,000 + Benefit of the Notice	October 1996

17 & 19 ACACIA ROAD, LONDON NW8
Statement of Agreed facts
Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. A' AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
17 ACACIA ROAD	3 storey double fronted detached red brick property under a pitched tiled roof.	304 m ² 3267 sq. ft	INTERNAL: 7 bedrooms, 2 dressing rooms, 4 bathrooms (2 en suite), dining room, drawing room, study, maid's room, kitchen/ breakfast room, utility room, separate WC, cloakroom. Store room. EXTERNAL: Rear garden, In Out driveway, off street parking for 4 cars.	99 years from 25/12/34, expiring 25/12/2033. Unexpired term 39 1/2 years.	£122 during the residue of the term.		Valuation date : 9 June 1994
LEASEHOLD COMPARABLES							
25 QUEEN'S GROVE	Detached 1930's low-built house.	250 m ² 2691 sq ft	INTERNAL: 7 bedrooms, 2 bathrooms, 2 WC's, 4 reception rooms, kitchen, pantry, boiler room. EXTERNAL: Small garden, OSP 4	99 years from 25/12/37, expires 25/3/2036 Unexpired term 41 3/4 years.	£90pa Fixed	£1,400,000 + Benefit of Notice	July 1994

17 & 19 ACACIA ROAD, LONDON NW8
Statement of Agreed facts
Schedule of Comparables

ADDRESS	TYPE OF PROPERTY	APPROX. AREA	ACCOMMODATION / AMENITIES	TENURE / LEASE LENGTH	GROUND RENT	PRICE	DISPOSAL DATE
SUBJECT PROPERTY							
17 ACACIA ROAD	3 storey double fronted detached red brick property under a pitched tiled roof.	304 m ² 3267 sq. ft	INTERNAL: 7 bedrooms, 2 dressing rooms, 4 bathrooms (2 en suite), dining room, drawing room, study, maid's room, kitchen/breakfast room, utility room, separate WC, cloakroom. Store room. EXTERNAL: Rear garden, In Out driveway, off street parking for 4 cars.	99 years from 25/12/34, expiring 25/12/2033. Unexpired term 39 1/2 years.	£122 during the residue of the term.		Valuation date : 9 June 1994
FREEHOLD COMPARABLES							
32 GROVE END ROAD	A low built detached double fronted property	189 m ² 2031 sq ft	INTERNAL : Drawing room, dining room, kitchen, TV room, guest cloakroom, 4 bedrooms, 2 bathrooms (1 en suite), staff bedroom, sitting room and kitchen. EXTERNAL : Garden, garage and OSP for 10 cars.	FREEHOLD	N/A	£1,900,000	October 1995
16 AVENUE ROAD	Double fronted detached house set behind a large carriage driveway.	400 m ² 4305 sq ft	INTERNAL : 3 reception rooms, kitchen/breakfast room, 8 bedrooms, 4 bathrooms, kitchenette Separate wing comprising of: laundry, bathroom, staff bedroom 8, EXTERNAL : Large carriage driveway providing ample off-street parking, extensive rear garden.	FREEHOLD	N/A	£2,400,000	August 1995
33 ELSWORTHY ROAD	Detached double fronted house built at turn of the century.	287 m ² 3089 sq ft	INTERNAL : Reception hall, 3 reception rooms, kitchen/breakfast room, master suite, 3 further bedrooms, second bathroom, WC. EXTERNAL: Front and rear garden, OSP 1 car.	FREEHOLD	N/A	£2,100,000	September 1995
9 CAVENDISH AVENUE	Detached 4 storey house.		INTERNAL : 6 bedrooms, 3 reception rooms, 3 bathrooms. EXTERNAL : Driveway, OSP, rear garden, front courtyard	FREEHOLD	N/A	£2,250,000	November 1994

17 ACACIA ROAD, LONDON, NW8

Valuation in accordance with Section 9 of the Leasehold Reform Act 1967, as amended.

Value of Freeholder's Interest

Ground Rent receivable	£122	
YP for 39½ years @ 6%	<u>15</u>	£1,830
Reversion to freehold value	£2,275,000	
(excluding tenant's improvements)		
PV of £1 in 39½ years @ 6%	<u>0.1001</u>	<u>£227,727</u>
Value of freeholders present interest		£229,557

Marriage Value

Value of freehold interest in possession (exc. tenant's improvements) £2,275,000

Less Value of:-

Freeholders Present Interest £229,557
 Lessee's Present Interest £1,500,000
 (both net of tenant's improvements) £1,729,557

Difference £545,443
 Freeholder's share of marriage value 50% £272,722
 £502,279

ENFRANCHISEMENT PRICE Say £502,250

19 ACACIA ROAD, LONDON, NW8

Valuation in accordance with Section 9 of the Leasehold Reform Act 1967, as amended.

Value of Freeholder's Interest

Ground Rent receivable	£118	
YP for 40 years @ 6%	<u>15.046</u>	£1,775
Reversion to freehold value	£2,275,000	
(excluding tenant's improvements)		
PV of £1 in 40 years @ 6%	<u>0.0972</u>	<u>£221,130</u>

Value of freeholders present interest £222,905

Marriage Value

Value of freehold interest in possession (exc. tenant's improvements) £2,275,000

Less Value of:-

Freeholders Present Interest £222,905
Lessee's Present Interest £1,500,000
(both net of tenant's improvements) £1,722,905

Difference £552,095
Freeholder's share of marriage value 50% £276,048
£498,953

ENFRANCHISEMENT PRICE Say £498,950