LRA/33/1999

LANDS TRIBUNAL ACT 1949

Leasehold Reform Act, 1967, s. 9(1A) - Appeal from Leasehold Valuation Tribunal - Observations on Evidence analysing LVT decision - LVT decision is evidence before Lands Tribunal - Allowance for ground rent in relativity of leasehold to freehold value - Compensation for severance of reversion - Section 9A - appeal allowed £680,800.

IN THE MATTER OF THE LEASEHOLD REFORM ACT 1967

BETWEEN **BERNARD CARL** **Appellants**
and
JOAN CARL

and

GROSVENOR ESTATE BELGRAVIA **Respondent**

Re: 46 Chester Square, London SW1 and Garage at 46 Ebury Mews SW1

Before :His Honour Judge Rich QC

Sitting at 48/49 Chancery Lane, London WC2A 1JR on 13,14 & 15June 2000

The following cases are referred to in this decision:

Re CastlebegInvestments (Jersey) Ltd's Appeal 275 EG 469
*Duke of Bucc*leuch v IRC [1967] AC 506
London and Winchester Properties Ltd's Appeal(1983) 45 P&CR 429
Sinclair Gardens Investments (Kensington) Ltd v Franks (1983) 76P&CR 230
Trustees of the Eyre Estate v Saphir [1999] 2 EGLR 123
Wellcome Trust Ltd v Romines [1999] 3 EGLR 229

Appearances: *Katherine Holland* instructed by Rosling King for the Appellants
Simon Burrell instructed by Boodle Hatfield for the Respondent

DECISION OF THE LANDS TRIBUNAL

1. This is the lessees' appeal against the decision of the Leasehold Valuation Tribunal ("LVT") dated 19 August 1999, whereby the LVT determined that the sum to be paid by the lessees for the freehold of the subject premises in accordance with section 9(1C) of the Leasehold Reform Act 1967, by reference to an agreed valuation date of 5th August 1996, was £767,200.

2. The subject premises consist of an end of terrace 6 storey house on the South East side of Chester Square, built in about 1835, with an agreed floor area of 5589 square feet, together with a garage at the rear which extends to a further 225 square feet. This garage is part of the property known as 46 Ebury Mews. The rest of 46, Ebury Mews (which part, as distinct from the garage, I shall call "the Mews property") is held by the appellants from the respondents under a separate lease whose expiry date coincides with the expiry in 2050 of the term of the lease of the subject premises. The Mews property is not the subject of the purchase in respect of which the sum to be paid is to be determined.

3. The parties, who have very sensibly agreed as many matters as they were able, have identified four issues for the determination of this Tribunal, subject to which they are agreed as to the appropriate calculation to determine the purchase price for the freehold. These are:

(1) the amount of the reviewed rent that would have been determined to be payable, instead of the £6,500 determined in 1986, from a review date of 25 December 1996, that is to say just over four months after the valuation date;

(2) the amount of the capital value of the freehold of the subject property with vacant possession, disregarding certain improvements (which are agreed);

(3) the value of the leasehold interest with just over 54 years unexpired: at the hearing, however, the parties, subject to an issue as to what, if any further reduction should be made to reflect a more than nominal ground rent, itself subject to imminent review, agreed this to be 77.5% of the freehold value; the issue is therefore as to the effect of the ground rent on that figure;

(4) what, if any compensation the lessors were entitled to receive for the severance of their reversion on the lease of the Mews property from the freehold of the subject property.

Scope of Appeal

4. The Lessees have appealed, and the Tribunal has heard evidence on their behalf on all the identified issues from Mr Michael Minting FRICS, a partner in George Trollope, whose office adjoins Chester Square. Evidence on behalf of the lessor as to the amount of the review rent, the relationship of freehold and leasehold values and on what I may call "the severance issue" was given by Mr Ian McPherson MA FRICS, a partner in Gerald Eve, and on the capital freehold and leasehold values by Mr George Pope FRICS, FSVA.

5. The lessors have not appealed, and accept that although the evidence called on their behalf would support a figure higher than that arrived at by the LVT, that figure should not be disturbed.

6. The lessees accept that although the appeal is by way of a re-hearing the onus is on them to show that the LVT's decision was wrong. They therefore called Mr Kevin Ryan FRICS, a director of Egerton (London Residential) Ltd, not to give his opinion of any relevant value, but to analyse the LVT's reasoning and suggest that it is not soundly based. I did not find this evidence of any assistance to me. I think it proceeded from a misconception as to the Lands Tribunal's function, to which, I fear some observations of my own in *Sinclair Gardens Investments (Kensington) Ltd v Franks* (1998) 76 P&CR 230, made in the context of an appeal in which expert evidence was given only on behalf of the appellant, may have contributed.

7. I think that I can, without spending time to analyse further the now quite numerous decisions of the Tribunal on the nature of an appeal from the LVT, say simply that the Tribunal does not fully accept what was said by Mr VG Wellings QC in *Re London & Winchester Properties Ltd's Appeal* (1983) 45 P&CR 429 at p.433 where he said:

> "It is axiomatic that an appeal to the Lands Tribunal, which takes the form of a rehearing, must be determined on the evidence presented to the Lands Tribunal, without regard to the evidence given before the leasehold tribunal."

The underlining is mine. In my judgement the decision of the LVT is part of the evidence before the Lands Tribunal to which it may properly have regard and accordingly, unless other evidence leads to the conclusion that the LVT was wrong the Lands Tribunal should follow the LVT. Where, however, full evidence is given before the Lands Tribunal which can be tested by cross-examination, it will not usually be necessary to rely on the evidence of the LVT decision.

8. Mr Peter Clarke FRICS in *Wellcome Trust Ltd v Romines* [1999] 3 EGLR 229 reviewed the cases extensively and at pp. 232-33 drew out five "principles" which provide helpful guidance. He pointed out that the Lands Tribunal must allow an appeal if satisfied that the LVT is wrong and that appeals are not limited to matters of law or valuation principle. It does not however, in my judgement follow from the Lands Tribunal's need to be satisfied that the LVT was wrong, that it should be concerned to explore the rightness of the LVT's reasoning.

What matters is whether the LVT's decision is wrong. I agree with what Mr Norman Rose FRICS said in *Trustees of the Eyre Estate v Saphir* [1999] 2 EGLR 123 namely that

> "I am not concerned to see whether the LVT was right on the evidence that it had before it, to decide as it did. That would add a very time-consuming dimension to the case and one that is unnecessary".

In so far as Mr Ryan's evidence was so directed, I have therefore concluded that it was unnecessary and unhelpful.

The Subject Property

9. I have, at the parties' invitation, spent some time inspecting the outside of the houses in Chester Square and particularly those to which reference has been made in the course of the hearing. I have also walked along Ebury Mews and indentified the garage and Mews property.

10. Chester Square is agreed to be one of the best residential locations in London. It is not a square. The houses, for the most part, are built in terraces each fronting the carriage-way which passes on either side of the attractive and well-treed gardens which run most of the length of the street. Just by No 46 the south eastern carriage-way diverts to enclose St. Michael's Church, thus leaving No 46 as the end of a terrace. The other carriage-way passes on the far side of the church. Thus numbers 40 to 45 face the Church rather than enjoying views over the gardens. Likewise, at the north eastern end of the Square the two carriage-ways are no longer separated by the gardens, and nos 81 to 86 also lack a view over the gardens, and indeed face each other across the street. The Square is crossed by Eccleston Street, a noisy and heavily trafficked street, so that the end of terrace properties fronting that street are much less favourably placed than either the group at the north eastern end of the Square, including no 80, or no 46 which appeared to me to be probably the most favourably located house in the Square.

11. I have not inspected the subject property internally. It was substantially altered in 1984 to 1985, and it is agreed that the price is to be determined on the assumption required by section 9(1A)(d) of the Act, that the price is to be diminished by the extent to which the value of the house and premises has been increased by those improvements. The extent of these improvements can be ascertained by comparing the plans of the premises as they existed in 1984 with the present, but the unimproved premises can best be ascertained by study of those plans. There has been added a lift and various internal re-arrangements made which with the addition of the lift makes it more convenient to provide, effectively self-contained staff and guest quarters. The subject property is to be valued without such advantages. The alterations included adding 345 square feet to the floor area, which therefore the agreed floor area of 5589 square feet assumes not to be included. On 23rd August 1996, that is to say within a fortnight of the valuation date, the subject property, as improved and together with the Mews property, was let furnished, to the appellants, for a term of one year at a rent of £406,153. It is accepted that the subject property is to be valued as if without the improvements, but in such state of decorative repair as is commensurate with such letting.

Rent Review

12. The rent review due on 25th December 1996 was to be to 10% of the full market rental of the subject property, let on the terms of the appellants' lease granted in 1977, other than as to rent and premium. The LVT determined this at 10% of £150,000, namely a ground rent of £15,000. Mr McPherson, giving evidence on behalf of the lessors does not seek to disturb that conclusion.

13. He supports that rental by reference to the near contemporaneous short furnished letting to the appellants themselves. Of course significant adjustment is necessary in order to derive a market rent on the assumed terms from a short letting, furnished, of larger premises in an improved condition. Mr Mcpherson however gave his opinion that the necessary adjustments are facilitated by the availability of two transactions concerning No 84 Chester Square where there had likewise been a short term letting (as it turns out unfurnished) at almost the same time as a rent review under a long lease. His calculations with the assistance of this comparable produce a market rental of £253,000 or £43.51 p.s.f. which figure Mr McPherson himself rejects as inconsistent with comparable evidence of rent reviews, even though it was not so far inconsistent with a proper return on the capital value which Mr Pope attributed to the subject property.

14. I have concluded that Mr McPherson's alternative approach of comparison with agreed rent reviews was a more reliable approach to this valuation, more particularly as the experts have been able to agree not only the facts in regard to no less than seven properties in Chester Square (including three agreed by reference to Christmas 1997 to supplement transactions either prior to or contemporaneous with the valuation date) but also their analysis in terms of rate per square foot and adjustment to the valuation date. I have set out at appendix 1, those comparables. I have not reproduced the evidence in respect of what are agreed to be inferior locations upon which Mr Minting relied before he had had an opportunity to consider what is clearly more helpful evidence in Chester Square itself. Nor have I included information as to lettings of flats in Eaton Square let on short leases, to which Mr Minting referred but which I did not find helpful owing to their marked differences in location, size and tenure.

15. Mr Minting when given the opportunity to reconsider his valuation arrived at a figure of £18.50 p.s.f. He explained that he did this by adjusting the rental value derived from comparable transactions by a proportionate discount to that which he regarded it as proper to make for the value of the agreed improvements to the capital values. That he identifed as 19.28%, so that his £18.50 equates to £22.92 for the improved premises, as compared with £23 for 65/66 Chester Square. This however involved a mistaken application of his own analysis of the sale of the subject property together with the Mews property to the appellants in May 1997 from which he derived his assessment of the value of improvements. In that analysis he had deducted (i) an assessment of the effect of the increase of floor area resulting from the improvements at £228,979 for the 54.4 year interest and (ii) £300,000 for "effect on value of lift and improvements" on the same basis. Assuming a relativity of 77% for the leasehold interest he attributed £675,000 to the improvements as representing a discount of 19.28% on his freehold valuation of £3,500,000. In order to arrive at a rate per square foot for the subject

property, whose agreed area already excludes the area added by improvement, his proper comparison would have been £300,000 @ 77%= £389,610 which is only £11.13% of £3.5m. His own methodology should therefore have led him to a figure of 88.87% of £23, that is £20.44.

16. In my judgement however the evidence of 65/66, needs different adjustment. No 65's end-terrace position fronting Eccleston Street is a clearly inferior position to that of no 46, and no 65 is combined with no 66. Consideration must also be given to the figure of £23.68 obtained at the valuation date for the mid-terrace property at no 52, and the still higher figures (even after adjustment) obtained in the mid-terrace positions beyond the gardens a year later (up to £29.06). The LVT's figure of £150,000 for the full rental value equates to £25.80 p.s.f. if one includes the garage at the same rate as the house, which applying Mr Minting's escalation for the improvements would assume a value of the improved property just fractionally less than that agreed for the vastly inferior position of no 86. I would not regard the figure there agreed as a basis for arriving at a still higher figure for no 46, but, after due allowance for its superior position as compared not only with the mid-terrace properties but also Nos 65/66, I do not think that the LVT's figure for the rent review is wrong.

Freehold Capital Value

17. As I have already noted in commenting on Mr Minting's evidence as to the effect of improvements on value, the leasehold interest in the subject property was bought by the appellants with the benefit of the enfranchisement claim in February 1997. At the outset of the hearing before me, it was agreed by the parties that that sale was not being relied upon by either party as a helpful comparable, for reasons which it is quite unnecessary for me to rehearse. I therefore disregarded that transaction although, of course, I have referred to it for the purpose of evaluating Mr Minting's opinion evidence as to the effect of improvements.

18. Mr Pope had directed his proof of evidence to establishing the unreliability of the 1997 transaction as a comparable. Accordingly in analysing other comparable transactions he had adjusted values to February 1997, rather than to the valuation date of August 1996. Appendix 2 to this decision sets out however agreed facts as to eleven transactions in Chester Square (of which only two are freehold) and five in allegedly similar locations of which four are freehold. Fortunately the distinction between freehold and long leasehold transactions is unimportant because in all these cases the experts have been able to agree an equivalent freehold value, as well as an appropriate adjustment to August 1996. The consequential rates per square foot so adjusted are shown in the appendix.

19. Mr Minting in arriving at a freehold valuation of the subject property in its unimproved condition at £2,825,000 being £2,750,000 for the house itself (or £492 p.s.f.) plus £75,000 for the garage, treated the freehold sale of No24 Chester Square as particularly helpful, both because it was the only pre-valuation date freehold sale in Chester Square and because he took the view that it best reflected the unimproved condition in which he had to value the subject property. In my judgement he was wrong in both these matters. The Tribunal has with the

benefit of the experts' agreements as to adjustments, the advantage of considering the much wider range of leasehold transactions. Mr Minting had in his proof of evidence directed himself that it was his "job .. to value the property as it was in June 1927 having disregarded the effect on value of all the alterations and high quality improvements made to the property by the lessees". Although in giving his evidence he accepted that his task was to value the property as shown on the 1984 plans in such decorative condition as would enable it to be let on a short term lease at a full rent such as was in fact agreed by the appellants in August 1996, his replies to questions constantly betrayed the fact that in truth he was envisaging the property being marketed in a tired and poorly presented condition. I have no doubt that in assessing comparables Mr Minting has exaggerated the effect of improvements, applying in practice a diminution which went beyond the figure of some £390,000 which his own analysis justified.

20. Mr Pope, on the other hand in asserting a figure of £4,268,000 in support of the LVT's figure of £4,260,000, which equates to a figure of £732.80 p.s.f. including the garage, had not reviewed the comparable evidence in terms of the rate per square foot. His view that the location of No 46 was worth 25% more than that of No 64 which fronted Eccleston Street would lead to a valuation at £660 p.s.f. rather than the figure to which his going straight to the capital figure equates. Although I accept the superiority of the position of No 46, I think, in any case, that an uplift of 25% exaggerates the difference in value.

21. I do not find the evidence of No 24, upon which Mr Minting placed reliance, to be helpful. It is a 1992 transaction in respect of a mid-terrace property with no garage or garden where the premises, which had been the vicarage for St Michael's, had been untouched for a large number of years. The figure thrown up seems to me to be quite out step with transactions of property in relevant condition, more contemporaneous with the valuation date. Nor, although both valuers referred me to such evidence, do I think that I am assisted by consideration of properties outside Chester Square when there is a multiplicity of evidence from sales of property which share that address.

22. Of these other properties I accept Mr Pope's view that the most comparable in terms of location are Nos 64 and 80. The latter was sold at a loss after elaborate renovation by an associate company of the lessor. It is a 1991 transaction, which may make it less reliable even after adjustment, than more contemporaneous transactions, but allowing for improvements it would be hard to use this comparable to justify a figure of more than £625 p.s.f.for No 46. That is broadly consistent with the evidence of No.64, after its renovation, having regard to its inferior position which I accept, but noting that the price included at least some improvements specifically required for the purchaser's own specification. I note the price achieved for No 10, a mid-terrace property, but compare it with that obtained for No.3 only two months earlier. Both had the advantage of garages at the rear. I accept Mr Minting's evidence that the price for No 10 on resale reflects the quality of the refurbishment and accept that the lay-out of No 46, as it is to be assumed, was properly described as "unimproved". On the other hand No 10 also had no lift and its mid-terrace position must be inferior to that of No 46.

23. I have come to the conclusion that a proper valuation of the freehold of No 46 would therefore be £630 p.s.f. I would apply this to the agreed area of 5589 square feet excluding the

garage, but add Mr Minting's addition of £75,000 for the garage. Mr Pope, whilst accepting that figure for the garage as such, valued it, as attached to the subject property, more highly. The rate p.s.f. at which I have arrived, however, is derived from comparables with garages attached. My valuation of the freehold is accordingly £3,596,070, say £3.6m. To that extent I think that the decision of the LVT was wrong, and I would allow the appeal.

Leasehold Valuation

24. In accordance with the agreement to which I have referred it follows that the leasehold valuation is 77.5% of £3.6m, that is to say £2.79m subject to such further reduction as reflects the liability to pay more than a nominal ground rent.

25. Mr Minting asserts that such liability does not affect the market price for a leasehold, when the market consist of wealthy purchasers to whom the sums involved are unimportant. I have not been shown any market evidence which leads me to conclude that a millionaire offered two otherwise identical properties at annual rents of £2,000 or £15,000 would offer the same sum for either. I venture to think that, on the contrary, people do not become or remain millionaires if they act in such manner.

26. Mr McPherson produced evidence of the willingness of lessees of property of this quality to buy out rent reviews by capital payments. This confirms the view of the market which I had formed without evidence. It has not been suggested that the details of these transactions assist in arriving at a precise figure of reduction to reflect the ground rental level.

27. My assessment of the leasehold value has been made by reference to the freehold value which was itself derived largely from leasehold transactions adjusted to produce equivalent freehold values by reference to a graph of relativities compiled by John D. Wood & Co/ Gerald Eve in December 1999. The notes to their graph include the explanation that it is "to provide a general guideline on the relativity of value for leases having different terms reserving small ground rents unexpired". It seems to me to be unarguable, but that when such graph is applied to a leasehold interest where the ground rent is not small, the guidance derived from it must be adjusted accordingly. I therefore requested the experts to annotate the schedule of comparables which now forms appendix 2 of this decision to give in the case of each leasehold transaction the amount of the passing ground rent and the period until review. In every case, except where the review is only an indexation there was at the date of the transaction at least 13 years until the next review. In no case did the passing ground rent exceed £3,000.

28. The LVT has made an adjustment of £130,000 to reflect the difference between a "nominal" ground rent and that which will be payable in four months from the valuation date, namely £15,000. The years' purchase is unsupported by market evidence but accords with Mr Pope's evidence save that he would apply it to the whole ground rent rather than the excess over that assumed on the Wood/Eve graph. I can see no justification for that, and would accept the LVT's approach.

29. I therefore arrive at a valuation for the leasehold interest of £2,660,000.

Severance of Mews Property

30. The lessors claim before this Tribunal and claimed before the LVT that the freehold reversion of the subject property together with the reversion of the Mews property was greater than the sum of the value of the two reversions considered separately. Thus there was a marriage value lost as a result of the purchase from them of the freehold of the subject property. The LVT in their decision accepted this in principle.

31. In their valuation the LVT followed the evidence as submitted to them by adding to the price which they assessed should be paid for the freehold of the subject property, considered without the Mews property, a sum calculated under section 9A of the Act as compensation for "other loss". Before this Tribunal Mr McPherson, with his customary care, has reconsidered this basis of assessment and suggested that either the whole or a part of this marriage value should have been assessed as part of the open market value of the subject property, rather than separately under section 9A. It makes no difference to the amount of the claim, although it makes the actual valuation more complicated. Since however it is the duty of the Tribunal to relate its award to the statutory provisions, I will explain as shortly as I can why I think that the approach adopted by Mr McPherson before the LVT is to be preferred.

32. Section 9(1A) requires an assessment of "the amount which, at the relevant time, [the subject premises], if sold in the open market by a willing seller, might be expected to realise .." Mr McPherson says that the lessors would not be willing to dispose of the reversion of the subject property except together with that of the Mews property, but, in my judgement the statutory assumption is of a willing seller of the subject property, and any such unwillingness is to be disregarded.

33. Mr. McPherson therefore draws my attention to a decision of Lands Tribunal *Re Castlebeg Investments (Jersey) Ltd's Appeal 275 EG.469* where Mr W.H.Rees FRICS held that as ground rents were normally put together in lots for the purpose of sale it should be assumed, for the purpose of open market valuation that they would be so sold. He emphasised that his decision was dependent on the particular facts as proved before him. In so holding, however, Mr Rees referred to the decision of the House of Lords in *Duke of Buccleuch v. IRC [1967] AC 506.* The conclusion in that case was that where a statute provides for the valuation of "property" on an open market basis, that property should be assumed to be sold in "natural lots". It does not require an assumption of sale together with other property which is not the subject of the valuation, and in my judgement does not support the conclusion at which Mr McPherson has arrived. Mr McPherson further suggests that, in the open market the price of the freehold of the subject property might be increased by bids from the assumed willing seller in order to realise the marriage value or by speculators. In principle, if I were satisfied that there would be bids from speculators, leading to the inclusion of some marriage value in the open market value, I would accept that the valuation should take account of this. I accept that that might arise in a case where the marriage value is a larger proportion of the value of the

subject property than in this case. I am not however satisfied on the evidence in this case that there is any such enhancement to be added to the value of the subject property, which, of course, already includes its rear garage in the Mews.

34. It appears to me that the statute makes specific provision for the circumstances of this case by providing in section 9A for compensation for:

> "(2) any diminution in value of any interest of the landlord in other property resulting from the acquisition of his interest in the [subject premises]"

35. It appears to me that the lessor's interest in the Mews property, so long as they also own the subject property, brings with it the value of the marriage of the two properties. The sale of the subject property, without such marriage value, diminishes the value of the retained reversion of the Mews property to the extent of the marriage value. I shall proceed to the assessment of such diminution accordingly.

36. Mr Minting and Mr Ryan both maintained that no compensation should be payable because events might occur before the expiry of the leases in 54 years time which might prevent its realisation. On enquiry as to the nature of these events they appeared to be either the possibility of a change in the law (Mr Ryan) or acquisition under the Act of the freehold of the Mews property, which, if it took place whilst the lessors have the reversion of the subject property would give rise to compensation, or if it is to take place hereafter, the compensation will be lost as a result of the acquisition of the lessor's interest in the subject property.

37. The LVT assessed the compensation for severance, after deferment of a sum of £150,000 at £6,300. Mr Burrell accepted that he could not, in the absence of an appeal contend for a higher figure although Mr Pope spoke to a figure of £225,000 to be similarly deferred. Mr Minting based his assessment of marriage value on the difference between the rate p.s.f. which he used for assessing the freehold value of the subject property multiplied by the area of the Mews property (namely 929 square feet) and the agreed valuation of the Mews property namely £350,000. If my assessment of freehold value namely £630 p.s.f. is substituted for his of £485.90 his assessment of marriage value would be £585,270 less £350,000 namely so much more than the LVT's assessment of £150,000 that even an apportionment such as Mr Minting would apply would still increase rather than reduce the compensation to be awarded under this head. I would not therefore disturb this part of the LVT's determination.

Valuation

38. The parties, at my request, provided a pro forma valuation into which I proposed to insert the figures at which I arrived in respect of the four matters in dispute. In preparing it they agreed the appropriate multipliers and the like where some differences had arisen either in rounding or in counting periods of time. In view of my decision as to the way in which

compensation should be awarded for the severance of the Mews property, it is not possible to use the agreed pro forma. I attach however as Appendix 3 my detailed valuation, following the pattern adopted by the LVT.

39. I therefore allow the appeal to the extent that I determine the sum to be paid for the freehold interest at £680,800 instead of £767,200.

Costs

40. The parties have agreed that there should be a further oral hearing in order to determine the appropriate order as to costs, unless either such order can be agreed or it is agreed between the parties that they will make their submissions in writing, in which case there will be one only exchange of submissions to be lodged with the Tribunal at the same date but, it is assumed, prepared after due consultation between counsel.

41. Unless there is agreement to the contrary the Tribunal will fourteen days after the issue of this decision take steps to agree with counsels' clerk a date for further hearing to determine costs.

Dated: 22 June 2000

(Signed) His Honour Judge Rich QC

ADDENDUM AS TO COSTS

42. My decision being to allow the appeal so as to reduce the sum to be paid for the freehold interest from £767,000 to £680,000, the appellant Lessees seek their costs as following the event.

43. The respondents however also seek an order for costs in their favour, on the basis that they have succeeded on three out of the four issues the subject of the appeal. They put this claim firstly on the basis of the specific circumstances of the appeal, namely that the four elements of the appeal were separate, and since the respondents did not cross-appeal they were not entitled to set off any increase in the price that might arise from the Tribunal's accepting their valuations, which in each case exceeded the LVT's, against the reduction at which the Tribunal arrived for the freehold capital value. Alternatively the respondents rely on the more

general guidance given by the Court of Appeal, in regard to cases in the Courts, in *Re Elgindata Ltd (No2)* [1992] 1 W.L.R. 1207 and *Phonographic Performance Ltd v AEI Rediffusion Ltd* [1999] 2 All E.R 299, as to the desirability in appropriate circumstances in the case of proceedings which raise a number of separate issues, of reflecting the different outcomes in respect of the separate issues in the order for costs.

44. In any case, as a ground for resisting the appellants' own application, the respondents point out the limited success of the appellants who contended for a freehold capital value of £2,825,000 against the LVT'S figure of £4,260,000 which the Tribunal reduced to £3,596,070 say £3.6m.

45. In my judgement, the award of costs in the Lands Tribunal on an appeal from the decision of the LVT with its cost-free regime, raises a number of problems, which make it inappropriate either to award costs automatically to follow the decision on the appeal or even to follow the Court of Appeal's guidance in regard to actions in the Courts, without regard to the particular nature of the appeal from the LVT. The particular problems which arise appear to me to be:

(i) how fairly to determine costs in a valuation exercise where neither party is, at least usually, wholly successful;

(ii) how to allow for the fact that the proceeding arises out of a compulsory purchase which the Lessee is entitled by Statute to make;

(iii) how to use the Lands Tribunal's power to award costs so as not to frustrate and if possible to support Parliament's intention that issues arising out of such compulsory purchases should, if possible, be resolved in the costs-free regime of the LVT.

46. The implications of the first problem may be explored by considering what would be the fair practice in regard to the award of costs if the valuation were made by the Lands Tribunal in the first instance. In the absence of a sealed or other offer, I think that the best precedent for an appropriate practice would be that followed by the Courts in regard to the renewal of leases under Part 2 of the Landlord & Tenant Act, 1954, namely to apportion costs according to the respective success of the parties. I would however think that there may well be a case for tempering such practice to allow for the fact that the Lessee is exercising a compulsory power, and should not expect to recover his costs incurred in doing so unless the Lessor behaves unreasonably or unnecessarily increases the Lessee's costs.

47. Such approach cannot however be applied without modification to the circumstances of an appeal in which the appeal involves moving from a Tribunal where neither party is on risk as to costs to one where the tribunal may award costs. Although I do not suggest that this arises in the present case, that fact may, in circumstances where resources are unequal, be a means of oppression by one party of the other. That may be a reason for withholding costs from a successful appellant, although as I held in *Vignaud v Keepers and Governors of the Free*

Grammar School of John Lyon [1996] 2 EGLR 179 the usual rule would be that an unsuccessful Lessee appellant would be liable in costs, and indeed I would not dissent from the approach of Dr Hoyes FRICS in *Maryland Estates Ltd v 63 Perham Road Ltd* [1997] 2 EGLR 198, that in the absence of special reasons the normal rule is that an unsuccessful Lessee respondent should be liable in costs.

48. Where, however, as here, the Lessee alone appeals, and the Lessor is willing to accept the LVT'S determination, I do not think that it should follow, as a matter of rule, that the costs should follow the Lessee's success on the appeal. The appropriate order as to costs must, in my judgement, depend on all the circumstances and conduct of the parties, bearing in mind the nature of the proceedings.

49. Without, therefore attempting to set out any alternative rule to the rule that "costs follow the event", I think that I would need something more than the fact of a Lessee's successful appeal to justify an award of costs in his favour. Where the Lessor does not cross-appeal, the parties would do well to consider making offers "without prejudice save as to costs". Even in the absence of such an offer it does not seem to me that it is obviously fair that the Lessor should bear the Lessee's costs of having the Lands Tribunal review the price at which the Lessee should be entitled to exercise his compulsory powers, unless the Lessor had induced the LVT to make an erroneous decision by tendering exaggerated evidence or had otherwise behaved unreasonably.

50. Considering therefore the issue upon which the appellants have been successful before me, I note (i) that the valuation of Mr Pope, at £4,268,00 was only 18.5% above the Tribunal's valuation whereas the figure to which Mr Minting spoke and for which the appellants contended was 21.5% below and (ii) I arrived at my valuation by adjustment of Mr Pope's figure because I did not think that the basis of Mr Minting's valuation was sound. As I have found therefore, the appellants' evidence was further from the proper valuation than was the respondents'. Considering these factors I do not think that it is fair to allow the appellants any of their costs of this issue.

51. I turn therefore to those issues upon which the respondents were successful. I do think that it is important that the Tribunal should reflect the appellants' failure in the other issues raised on the appeal in its order as to costs. In my judgement, the importance of doing so goes beyond the considerations which have led to the growing practice of the Courts in that direction. Parties dissatisfied with the decision of the LVT who put the respondent to cost in defending the decision of the LVT, which has no power to award costs, must expect to pay the respondents' costs of doing so if they are unsuccessful. They should not expect to be able to raise other issues without risk as to costs merely because there is one issue upon which they succeed. It is, in my judgement, essential to the proper working of the LVT's with their costs-free regime that the Lands Tribunal makes that risk of an appellant clear and effective. That involves, at least as the normal approach, the making of separate orders on issues which can be clearly separated, and the awarding of costs to successful respondents at least where there is nothing in their conduct of the appeal to make it appropriate to deprive them of their costs.

52. In this case the appellants have been unsuccessful on three out of four issues. On the "Leasehold Valuation" issue, the respondents should clearly recover the costs which they have incurred in the Lands Tribunal in defending the decision of the LVT. In regard to the "Rent Review" issue, the appellants fairly make the point that I did not accept Mr McPherson's evidence on the "relativity" basis, which I dealt with at paragraph 13 of the Decision, as persuasive. It is precisely because of its deficiencies that the respondents were put to further expense in the Lands Tribunal to uphold the decision of the LVT, which they did successfully. Again in my judgement the respondents should have their costs of this issue.

53. On the "Severance" issue, I commended Mr McPherson's diligence in reconsidering the proper basis for the LVT's award. Nevertheless I found against his revised view and upheld the LVT's award for the reasons which they had adopted. Both because of this, and because the costs involved in such further re-appraisal were not likely to be proportionate to the sum involved, namely £6,300, I think that the costs of the parties on this issue should lie where they fall.

54. In considering the proportion of costs to allow for those two issues where I would award cost, however, I am by no means clear that each of the four issues account, as alleged in the respondent's submissions as to costs, for 25% of each party's costs. I think therefore that it must be a matter for assessment if it cannot be agreed, what proportion of the respondents' costs should be recoverable in respect of those two issues where I think it fair to award costs to the respondents.

55. I, therefore, award to the respondents their costs incurred in the issues of "Rent Review" and "Leasehold Valuation" to be the subject of detailed assessment if not agreed.

Dated:

(Signed) His Honour Judge Rich QC

APPENDIX 1

RENT REVIEW EVIDENCE IN CHESTER SQUARE

								Adjust to Aug 1996	
Rent Review Date	**Property**	**GIA Sq Ft**	**Basis of Rent Review**	**FMVR Agreed £pa**	**Lease Term Unexpired in Years**	**Rent Review Frequency in Years**	**FMVR ÷ GIA £psf**	**According to Index***	**£psf**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
25.3.93	50 Chester Square	4,730	15% FMRV on same terms as lease	39,667	41.75	20	8.39	160.6 / 124.4	10.83
24.6.96	65/66 Chester Square	10,851	10% FMRV on same terms as lease	245,000	49.50	20	22.58	160.6 / 157.7	23.00
5.8.96	46 Chester Square	5,814	As above		54.00	10			25.80
25.12.96	52 Chester Square	4,939	As above	120,000	54.00	20	24.30	160.6 / 164.8	23.68
25.12.97	84 Chester Square	3,650	As above	115,000	43.00	20	31.51	160.6 / 187.5	26.98
25.12.97	86 Chester Square	3,389	As above	115,000	43.00		33.93	160.6 / 187.5	29.06
25.12.97	r/o 14 Chester Square	2,428	As above	67,000	48.00	10	27.59	160.6 / 187.5	23.63

* FPD Savills Prime Central London Residential Rental Values Index for Houses

APPENDIX 2

Capital Value Evidence for 46 Chester Square
(including both comparables to which Mr Minting and Mr Pope refer)

Property	F'hold/ Lease	Rent Payable £ p.a.	Date of next rent review	Date of sale	GIA sq ft	Price £/m	Price Adjusted Aug 1996 £/m	psf £	% L'hold/ F'hold Adjustment	Price Adjusted Aug 1996 Freehold £psf
24 Chester Square	F			May 1992	5,278	1.35	1.9	360		
83 Eaton Terrace	F			Aug 1996	2,672	1.2	1.2	449		
54 South Eaton Place	F			Dec 1996	2,431	1.09	1.015	418		
14 South Eaton Place	F			Sep 1996	3,036	1.9	1.89	519		
22 Chester Square	F			Sep 1996	4,619	2.235	2.22	480		
29 Rutland Gate	F			Nov 1996	6,058	4.5	4.28	707		
3 Chester Square	54¾	1,600	2009	Mar 1996	4,500	1.635	1,715	381	77.75	490
10 Chester Square	54½	1,700	2011	May 1996	4,543	2.35	2.41	531	77.5	685
10 Chester Square	55¾	1,700	2011	Mar 1995	4,543	1.2	1.32	290	78.5	369
22 Chester Square	13½	185	N/A	Sep 1996	4,619	1.01	1.0	217	45.2*	480
26 Chester Square	75	1,725	2001#	Jan 1996	5,419	1.65	1.76	325	88	369
49 Eaton Terrace	49½	1,050	2007	Aug 1996	3,102	1.15	1.15	371	73.6	504
64 Chester Square	88¾	3,000	2003#	Dec 1994	7,268	3.275	3.69	508	97	524
80 Chester Square	63½	3,000	2010	Dec 1991	7,630	3.2	4.39	576	83	694
21 Chester Square	71	1,800	2012	Feb 1997	4,621	2.7	2.37	512	87.6	584
64 Chester Square	89½	3,000	2003#	Jan 1994	6,250	1.1	1.45	232	97	239

* With benefit of enfranchisement claim # Rent review based on Retail Price Index

LEASEHOLD REFORM ACT 1967 AS AMENDED
Section 9(1C)
Valuation of 46 Chester Square, London SW1
at 5 August 1996

Unexpired term: 54.4 years
Valuation in accordance with Section 9(1C) of the Leasehold Reform Act 1967

Valuation of lessor's interest exclusive of marriage value		£	£	£
For remainder of term -				
Ground rent currently payable for Subject House including single garage				
Years purchase for 0.4 years @ 5.0%		6,500		
		0.376	2,444	
Reversion to rent review on 25 Dec 1996				
to 10% of full market rental value (unimproved)		150,000		
	say	10%		
	@	15,000		
Years Purchase for 54 years @ 5.5% 17.173				
Deferred 0.4 years @ 5.5% 0.979		16.812		
			252,180	
For reversion to -				
		3,600,000		
		0.042		
Value of freehold interest with vacant possession (unimproved)			151,200	405,824
Deferred 54.5 years @ 6.0%				
Add lessor's share marriage value				
Value of freehold interest with vacant possession			3,600,000	
Less				
Value of lessor's interest exclusive of marriage value		405,824		
Value of lessee's interest exclusive of marriage value (unimproved)		2,660,000		
Gain on marriage			3,065,824	
Attributed to lessor @ 50%			534,176	
				267,088
Enfranchisement price				672,560
Add for other loss				
Difference in value between 46 Chester Square and 46 Ebury Mews for sale together and separately		150,000		
Deferred as above		0.042		6,300
				678,860
			SAY	£680,000