[2001] EWLands LRA_48_2000 (31 October 2001)

LRA/48/2000

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – valuation date – discount for risk of assured tenancies – uplift to reflect value of owning freehold – marriage value - comparables – value - Leasehold Reform, Housing and Urban Development Act 1993 Schedule 6 – price increased from £450,000 to £519,000

IN THE MATTER of an APPEAL from a DECISION of the LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

BETWEEN **WEST HAMPSTEAD MANAGEMENT COMPANY LIMITED** **Appellant**

and

PEARL PROPERTY LIMITED **Respondent**

Re: 41 Priory Road, London, NW6 4NS

Tribunal Member: P R Francis FRICS

Sitting at: 48/49 Chancery Lane, London, WC2A 1JR
on
27 September 2001

The following cases are referred to in this decision:
Cadogan Estates v Shahgholi [1999] 1 EGLR 189
Goldstein v Conley [1998] 03 EG 137
Rushton v Howard de Walden Estates Ltd (14/2/00, LVT)

Michael Murray, a director of West Hampstead Management Company Limited for the appellant, with permission of the Tribunal.
Anthony Radevsky of counsel, instructed by Marshall, Ross and Prevezer, solicitors of London EC2, for the respondent

DECISION

1. This is an appeal by West Hampstead Management Company Limited ("the appellant"), a nominee company set up by three of the lessees of flats at 41 Priory Road, London NW6

4NS ("the subject property"), and a cross-appeal by Pearl Property Limited ("the respondent"), freeholders of the subject property, against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Committee ("the LVT") determining the price to be paid for the freehold interest under the provisions of Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") at £450,000 based upon a valuation date of 22 February 2000.

2. By order of this Tribunal the appeal and cross-appeal were consolidated.

3. Mr. Michael Murray, who appeared for the nominee purchaser (of which he is a director) with permission of the Tribunal, called Mr. Bruce Maunder-Taylor FRICS, MAE who gave valuation evidence. Mr. Anthony Radevsky of counsel appeared for the respondent and called Mr. Ian Asbury BSc (Hons) MRICS who gave valuation evidence.

4. I inspected the subject property externally together with the internal common parts and the interior of flats 1,2,4 and 5 with the parties' experts on 9 October 2001. I also carried out external inspections of various properties that had been referred to as comparables.

FACTS

5. The parties had failed to provide a statement of agreed facts and issues in accordance with the directions of the Tribunal. However, from the evidence, and my inspection of the subject property and comparables, I find the following facts:

5.1 The subject property is located within the Priory Road Conservation Area in South Hampstead, and occupies a corner position in a mature residential street at the junction of Priory Road and Abbot's Place. It comprises a substantial mid 19th Century semi-detached house constructed of brick with part stucco finished front elevations under pitched and slated roofs that have been re-covered in recent years. The accommodation is principally on four storeys and there is a single turret/tower room accessed from the second floor.

5.2 As with many of the other properties in the locality, it was converted into 5 self contained flats in the late 1950's or early 1960's. There is a small front garden with a walkway to the side and a narrow concreted strip of land with a retaining wall to the rear, the former rear garden having been sold off for redevelopment some years ago. All the garden areas go with the lower ground floor flat. There is no garage or on site parking, but roadside parking is available for which residents parking permits are required.

5.3 The occupiers of flats 1, 4 and 5 are qualifying tenants under the 1993 Act. The leases in respect of all 3, which were originally for terms of 26 years and 9 months expired on 15 December 1996 and the tenants are holding over. No ground rent has been demanded or paid since the expiry date. Flats 2 and 3, upon which vacant possession was obtained by the respondent, have been sold on long leases to third party purchasers. For valuation purposes, it is agreed that they are leased back to the freeholder, under the provisions of Schedule 9 of the 1993 Act, at a peppercorn ground rent. The accommodation of each flat comprises:

Flat 1 (Lower Ground Floor) (Miss Southwood)

Separate entrance from side passage to Hall, Living Room with recessed alcove and bay window, Kitchen/Breakfast room, 2 Bedrooms, Bathroom. Approximate gross internal area 81 sq.m. (868 sq.ft.).

Flat 2 (Upper Ground Floor) (Modernised and sold)

Entrance Hall (approached off Communal Hallway), Living Room/Kitchen with contemporary fittings, Bedroom 1 with en-suite bathroom, Bedroom 2, Shower room. Approximate gross internal area 67 sq.m. (722 sq.ft.)

Flat 3 (First Floor – Front) (Modernised and sold)

Entrance Hall off communal 1st floor landing, Open Plan Sitting Room/Kitchen, 1 Bedroom, Bathroom. Approximate gross internal area 37 sq.m. (400 sq.ft.)

Flat 4 (First Floor – Rear) (Mr. Murray)

Entrance Lobby off communal landing, Bedsitting Room, Kitchen, Bathroom. Approximate gross internal area 36 sq.m. (390 sq.ft.)

Flat 5 (Second Floor) (Mr. Edwards)

Entrance Hall, Sitting Room, Kitchen, Bathroom, 2 Bedrooms. Narrow staircase from hall to third floor Bedroom3/Study. Approximate gross internal area (including stairway to turret room) 83 sq.m. (897 sq.ft.)

5.4 The exterior of the property was redecorated in 1999, and the internal common parts were also refurbished and redecorated. Flats 2 and 3 were extensively modernised and refitted by the freeholder prior to their sale to include new and contemporary kitchen, bathroom and shower suites, provision of good quality flooring finishes, re-plumbing, rewiring and redecoration.

5.5 The three qualifying flats are all dated and in need of extensive modernisation and refurbishment. Whilst the tenant of flat 1 carried out a number of improvement works when she acquired the flat some 30 years ago, including provision of concrete floors, installation of gas fired central heating and some re-alignment of the accommodation, it now requires further updating, including attention to rising damp problems.

5.6 The appellant had served on the respondent a notice under s.13 of the 1993 Act on 3 December 1996.

5.7 The LVT hearing, to which this appeal relates, commenced on 22 February 2000. Notice of appeal to this Tribunal was given by the appellant on 18 September 2000.

ISSUES

6. In the original appeal to the LVT the appellant had sought a determination of the collective enfranchisement price at £390,000 based upon a valuation date of 5 May 1999, and a 13 per cent discount to take account of the risks of assured tenancies. The respondent landlord sought an enfranchisement price of £605,000 including a 3 per cent uplift between leasehold and freehold value to reflect the relative desirability of owning the freehold, and based upon a valuation date of 22 February 2000. The LVT determined an enfranchisement price of £450,000 at the later valuation date, this figure reflecting the 13 per cent discount that the appellant had argued for.

7. In its initial and revised statements of case relating to this appeal, the appellant sought to challenge only the valuation date on the grounds that the LVT had relied upon factually inaccurate submissions by the freeholder, and had based its decision on material errors and omissions of fact relating to evidence and the history of the case. In its cross-appeal and statement of case, the respondent sought to challenge the LVT's valuations of each of the qualifying flats and contended for a price of £584,250, this figure being based upon the freehold open market value, adjusted upwards by 3 per cent to reflect the benefits of owning the freehold, and allowing for a 5 per cent discount on Flat 1 (risk of assured tenancy) and 72.5 per cent of marriage value to the freeholder. In response to the cross-appeal, the appellant's expert submitted that the correct valuation at 5 May 1999 was £350,000 or, in the alternative, if this Tribunal upheld the LVT's determination on valuation date, the value was £410,000.

8. The parties have agreed that the general increase in market values between May 1999 and February 2000 was 17.5 per cent.

9. In determining the enfranchisement price, the issues for me to determine, therefore, are:

1. The valuation date.

2. The discount, if any, to be applied to take account of the risk of assured tenancies.

3. Marriage value (if (2) applies).

4. The uplift, if any, from long-leasehold to freehold value.

APPELLANT'S CASE

10. Mr. Murray referred to the appellant's written statement of case and reply to the respondent's cross-appeal. He explained that the initial notice under s.13 of the 1993 Act was served by the appellant on 3 December 1996 together with a valuation, but the respondent had not served a counter-notice by the deadline of 5 February 1997. It was only on that date that access was requested by the respondent for valuation purposes, and this was carried out on 10 February, with a further valuation, by another firm, undertaken on 1 April 1997. The appellant contends that it did not see the counter-notice that the respondent alleges it served on 19 May 1997 until June 1999, and even then the document that was produced by the respondent's solicitors was unsigned and undated. The respondent did

advise the appellant that it was reserving its position regarding the appellant's right to collective enfranchisement, and made an application to the County Court in July 1997 seeking a declaration that the appellant's claim was invalid. In response, the appellant applied to the Court for a declaration that the claim was valid, and the consolidated case was heard on 4 November 1997.

11. Directions were given by the Court for affidavit evidence, and this was produced by the tenants to prove they were qualifying tenants under the 1993 Act. Despite this, Mr. Murray said that the respondent made further applications (without evidence) to have the appellant's claim struck out but none of these were successful. However, on 5 May 1999 a Consent Order was made, declaring that the appellant had the right to collective enfranchisement. Mr. Murray said that by its involvement in the production of this Consent Order, the respondent acknowledged the appellant's rights, thus serving to put the appellant back into the position it was at the time of the first application to the County Court in July 1997. Hence the argument for a valuation date of 5 May 1999, the date of the Consent Order.

12. On 26 November 1999 the respondent made a further application to the County Court for the consent order to be varied so as to comply with s.22(3) of the 1993 Act. This required an Order to be made (a) declaring that the reversioner's counter-notice shall be of no effect and (b) requiring the reversioner to give a further counter-notice to the nominee purchaser by such date as specified in the Order. Whilst the Court ordered the reversioner to give a further counter-notice, it also ordered the participating tenants to give access to a third firm of valuers. Mr Murray said that there was no requirement in s.22 for further valuations in addition to the two that had already been carried out, and also that the Court did not make an Order declaring the reversioner's counter-notice to be of no effect.

13. S.22(5) of the 1993 Act provides, Mr. Murray said, that subsections (3) to (5) of s.21 shall apply to any further counter-notice required to be given by the reversioner under subsection (3) as if it were a counter-notice under that section complying with the requirement set out in subsection 2(a). This was distinct, he said, from a counter-notice not complying with subsection 2(a). This could be translated as "the counter-notice shall be given as if it had been done correctly in the first place". If this were not so, it would be open for an unscrupulous landlord to prolong proceedings artificially in a rising market.

14. That, Mr. Murray said, was precisely what had happened here. The respondent had artificially prolonged this matter since 1997 with a series of unfounded and unsuccessful proceedings in an attempt to deny the right to collective enfranchisement. It was agreed that property prices had risen by some 17.5 per cent in the period between May 1999 and the respondent's contended valuation date of February 2000, and, he said, it would not be in the interests of natural justice if the appellant was forced to pay a higher price because of the respondent's intransigence.

15. **Mr. Maunder-Taylor** is a chartered surveyor, and a partner in the firm of Maunder-Taylor, Chartered Surveyors, of London N.20 where he has been practising for some 30 years. He is a member of the Academy of Experts and has been involved with leasehold reform matters since the 1993 Act was enacted, including appearances before this Tribunal. His

report included his opinion of values of the three qualifying flats at 5 May 1999 and 22 February 2000, but did not seek to comment upon the dispute over the relevant date.

16. His report, which followed inspections of the subject property on 3 March 2000 and 6 July 2001 served as a commentary upon the report prepared for the respondent by Mr. Asbury. Mr. Maunder-Taylor said he agreed Mr. Asbury's description of the property, the size, extent and condition of the accommodation, its location and details as to tenure. However, regarding Flat 1 (lower ground floor) it was his opinion that the improvements which had been carried out by the tenant had served to increase the value, and as such, should be ignored.

17. Regarding the comparables that had been used by Mr. Asbury, Mr. Maunder-Taylor agreed that Flats 2 and 3 at the subject property had each been sold with the benefit of 999 year leases at peppercorn rents in September 2000, following modernisation and improvement for £250,000 and £155,000 respectively. No. 21 Priory Road was a detached house converted to 4 self-contained flats, each with vacant possession and requiring modernisation, that had been sold by Mr. Asbury's firm in May 1999 for £660,000. It was his view that the fact it had a conventional rear garden would add £60,000 to the value of whichever flat had the benefit of it. Therefore, the average value of each of the other flats would have been £150,000, with £210,000 applicable to the 'garden' flat. Mr. Maunder-Taylor said he was not aware of the amount of modernisation or refurbishment that was needed to each flat, or the fabric of the building as a whole.

18. Whilst accepting that Flat 6, 105 Priory Road had been sold by auction leasehold, with 109 years remaining, by Allsop & Co in September 1999 for £83,000, Mr. Maunder-Taylor said there was no evidence as to the condition of the property at the time of sale. Mr. Asbury had also referred to the sale by private treaty in November 1999 of a first floor flat that had a share of the freehold in the same building, and had stated that the price achieved of £89,500 represented an increase of 8 per cent over Flat 6, attributable as to 5 per cent market rise, and 3 per cent for the benefit of a share of the freehold. There was, Mr. Maunder-Taylor said, insufficient evidence for those assumptions to be made, as neither he nor Mr. Asbury had made an internal inspection, it was not known if the flats were the same size or condition, and the ground rent payable on the leasehold flat was not known.

19. The information that Mr. Asbury had provided on the ground floor flat at 75 Compayne Gardens, 37D Priory Road, 17A Priory terrace, 25D Priory Terrace, 37 Priory Terrace and 61 Priory Road gave no source details and, as no internal inspections could be made, Mr. Maunder–Taylor said he was unable to agree these comparables. Also, some of the information provided was, he said, too vague to be meaningful.

20. On the basis of the evidence that had been provided by Mr. Asbury, Mr. Maunder-Taylor said that he assessed the value of Flat 1 at the subject property at £165,000 (as at February 2000). This compared with Mr. Asbury's opinion of £206,000 and the LVT's determination at £180,000. He said that if the modernised upper ground floor flat (Flat 2) which was smaller, but better than a 'below stairs' unit, had been sold for £250,000 in September 2000, a figure of £80,000 should be deducted (£50,000 for required modernisation

and £30,000 for the fact that it was a basement unit), giving £170,000 for Flat 1. Allowing for price inflation between February and September 2000, and also considering the prices achieved for the 'block sale' of the four flats at 21 Priory Road, (at say £140,000 for the basement and attic units, and £160,000 for the raised ground floor flats) he thought that, in the round, £165,000 was the right figure, particularly bearing in mind his opinion that the restricted garden areas at Flat 1 were of little if any value.

21. As to Flat 4 at the subject property, Mr. Maunder–Taylor's figure was £106,000 against Mr. Asbury's £110,000 and the LVT's determined figure, taken by splitting the difference at £108,000.

22. There was a much greater difference of opinion over Flat 5, where Mr. Maunder-Taylor thought £200,000 to be appropriate (increased, upon reflection, from his earlier valuation before the LVT of £188,000), whereas Mr. Asbury had valued it at £260,000 and the LVT had determined £230,000. Mr. Maunder-Taylor did not agree that Flat 5, being the largest, and occupying the upper floor plus the feature turret room, was the best unit in the building. Also, the fact that there was no lift, and the accommodation was split across two floors, was a disadvantage. Looking again at the sale of Flat 2, and making allowances for the need for modernisation of Flat 5, the disadvantages he had referred to, and the sales of the flats at 21 Priory Road he felt that, on balance, £200,000 was the right figure.

23. Mr. Maunder-Taylor said that in his opinion there was no additional value, as had been contended by Mr. Asbury, in owning the freehold. This was especially so as flats 2 and 3 were non-participating, and it was known that there had been management problems with the building in the past. In his view, it was only well managed properties with no history of problems or disputes where any additional value might be perceived. Furthermore, he said that whilst Mr. Asbury had applied an uplift to reflect the additional value for ownership of the freehold in regard to the subject property, he did not appear to have made any adjustments in respect of his comparables, other than the two flats at 105 Priory Road, the evidence for which was inconclusive.

24. In contending that there should be a 13 per cent discount for the risk of assured tenancies being claimed at the expiration of the terms of the current leases of the qualifying tenants, Mr. Maunder-Taylor said that the respondent's contentions that there were no tenancy rights in respect of Flats 4 and 5 would not affect the way a hypothetical investor calculated value. Whether or not either Mr. Murray or Mr. Edwards occupied their flats as their sole or main residences, a prospective purchaser would take into account the fact that the flats were not vacant, the tenants were claiming that they did have rights of occupancy, and there was a potential for protracted and costly litigation. It was accepted by the respondent that Flat 1 had tenancy rights, but Mr. Asbury's 5 per cent discount was too little. Mr. Maunder-Taylor's 13 per cent deduction for risk was assessed on the basis of 10 per cent profit and 3 per cent purchase costs.

25. Finally, as to Mr. Asbury's contention that there was a marriage value element to be considered in respect of any flat for which there may be a discount for the risk of an assured tenancy, Mr. Maunder-Taylor said he was unaware of any authority that supported that claim.

He said it was his understanding that a marriage value arises only where there are two or more interests to be married. In this case, the participating tenants' leases had expired and an assured tenancy could not be transferred. However, he said, if this Tribunal found that there was marriage value, the proportion should be split 50/50 as both parties were equally willing, and not, as Mr. Asbury contended, 72.5 per cent to the freeholder.

26. In summary, Mr. Maunder set out his valuation as:

Flat 1	£165,000
Flat 4	£106,000
Flat5	£200,000
	£471,000
Less discount for risk of assured tenancies at 13 per cent	(£61,230)
	£409,770

Say £410,000 at 22 February 2000

If the earlier date of 5 May 1999 were taken, based upon the agreed 17.5 per cent rise in values over the period, the value became £409,770 / 117.5 x 100 = £348,740 – say £350,000.

27. In cross-examination, Mr. Maunder-Taylor accepted that he had not provided any comparable evidence of his own, and had merely sought to comment upon the information provided by Mr. Asbury. He also accepted that no efforts had been made to agree a statement of facts. All three of the subject flats were acknowledged to be dated and in need of refurbishment and modernisation, and any valuation should reflect the tenants' repairing obligations under their leases. Many of those obligations had not been complied with, including redecoration. Whilst contending that the improvements to Flat 1 would add value, Mr. Maunder-Taylor agreed that any prospective purchaser would consider that the flat required complete modernisation.

28. Responding to a question concerning what attempts he had made to verify Mr. Asbury's comparables, Mr. Maunder-Taylor said that he had knocked on the doors of each of the properties, but had been unable to gain access. Accepting that the evidence relating to the two modernised flats at the subject property, which had been sold after the LVT hearing, was new, Mr. Maunder-Taylor agreed they were good comparables, subject to any necessary adjustments. He did not agree that his £50,000 estimated modernisation costs were too high. Likewise, he did not accept that his assessment of the additional value of the right to use a normal sized garden was excessive.

29. As to the suggestion that a 13 per cent discount for the risk of an assured tenancy was far too high, against the risk of, say, a statutory tenancy, he accepted that there was no actual evidence to support that figure. Mr. Maunder-Taylor said he could not comment upon the legal ramifications of whether or not the tenants of flats 4 and 5 were not in occupation on either or both of the two dates. He accepted that there were no Lands Tribunal decisions that

had included a percentage for purchase costs, but said that the 10 per cent profit allowance was a realistic figure.

30. Despite it being pointed out that in the Lands Tribunal decision on *Cadogan Estates v Shahgholi* [1999] 1 EGLR 189, where the leases had expired, as in this one, the marriage value had been determined at 72.5 per cent to the freeholder, Mr. Maunder-Taylor said he did not consider that figure appropriate.

RESPONDENT'S CASE

31. **Mr. Asbury** is a chartered surveyor, and an Associate with Allsop & Co of Knightsbridge, London SW1 which he joined in 1995 after 7 years with the Valuation Office Agency. He is a member of Allsop's Residential Valuation and Investment Department and has experience in leasehold enfranchisement valuations and those required for investment and development purposes.

32. Details of the subject property, its location, accommodation and condition were agreed with Mr. Maunder-Taylor. Mr. Asbury noted that, as part of the refurbishment of the 2 flats that had been sold in September 2000, the communal hallway and stairs had also been refurbished to include a wood-strip floor to the hall, new carpeting to stairs, and redecoration. It was his view that all three of the qualifying flats were in need of extensive modernisation. The tenant's improvements to Flat 1, which had included installation of gas central heating, rewiring and the refitting of kitchen and bathroom and were carried out some 30 years ago by the current lessee added no value, as all now required renewal to bring the flat up to an acceptable modern standard.

33. The valuation date was defined in para 1(1) of Schedule 6 of the 1993 Act as "the date when it is determined either by agreement or by a Leasehold Valuation Tribunal what freehold interest in the specified premises is to be acquired by the nominee purchaser". The LVT decision was dated 22 February 2000, and Mr. Asbury said that he was correct to assess his valuations at that date.

34. Mr. Asbury said he had calculated his valuation in accordance with the provisions of Schedule 6 (part II) of the 1993 Act (as amended) and by reference to recent decisions of the Lands Tribunal, and that in his opinion the price to be paid for the freehold should be £584,250. [See **Appendix 1** to this decision].

35. He said that at the time of the tenants' initial Section 13 Notice dated 5 November 1996, each lease had a term of approximately three weeks remaining. However, the valuation date had been determined as 20 February 2000, and by then the leases had long since expired, and the tenants were holding over. As they were claiming that their leases were not deemed to have expired, Mr. Asbury said he had assumed they would continue for a term of three months following the Lands Tribunal hearing. Therefore, there being no equitable or financial interest in the building accruing to the tenants (if the existence of the Section 13 notice is ignored, as the Act requires), no value had been attributed to their existing interests.

36. Nevertheless, he said that he had attributed an uplift of 3 per cent to reflect the relative desirability of ownership of the freehold in contrast to merely holding a long lease. This was in accordance with the recent Lands Tribunal decision in *Shahgholi*.

37. In considering whether or not a deduction should be made from the freehold vacant possession value of the participating flats to reflect the risk of security of tenure being claimed under Part 1 of the Landlord and Tenant Act 1954 ("the 1954 Act"), or assured tenancies in accordance with the provisions of the Local Government and Housing Act of 1989 ("the 1989 Act"), Mr. Asbury pointed out that the provisions of the 1954 Act had been replaced by the 1989 Act by the valuation date. In *Shahgholi*, where the tenant was able to claim security of tenure under the 1954 Act, the Lands Tribunal had applied a 15 per cent discount. However, he said that in this case where, at best, the tenants would only be able to claim assured tenancies at market rents, the freehold reversion would be much less adversely affected.

38. It appeared that the tenants of flats 4 and 5 were not in occupation of them as their principal homes, and may not, therefore, be able to claim even assured tenancies. In any case, Mr. Asbury said, there was always a possibility that one or more of the tenants would choose not to remain in occupation as assured tenants, and would vacate rather than pay a market rent. In most recent LVT cases where the landlord's reversion would be subject to an assured tenancy, rather than a Rent Act protected tenancy, no discount had been made to reflect the risk that such an assured tenancy might arise. That was the position that had been adopted in his valuation in the instant case in respect of those two flats.

39. Mr. Asbury said that the LVT's decision to adopt a 13 per cent discount was contradictory. Whilst agreeing that the potential risk was small, it went on to say that "it did not seem that the risk is negligible and can be ignored". The LVT appeared not to have considered the actual status of the participating tenants, and had failed to make a distinction between Flat 1, which was the tenant's principal residence, and Flats 4 and 5 which were not. As there appeared to be no risk of assured tenancies arising in the case of Flats 4 and 5, for the reasons he had given, Mr. Asbury said that a consequential discount to reflect risk was inappropriate.

40. Even if the tenant of Flat 1 were to claim an assured tenancy, it was not considered that this would adversely affect the freehold vacant possession value to a serious degree. Many landlords and property investors consider assured tenancies to be an attractive form of investment, as these tenancies are at market rent and could be granted initially for longer periods than is customary. The relative ease with which vacant possession can be obtained, together with the reduced risk of void periods between tenancies, the resulting savings in letting and management fees and reduced management problems generally all point to a much reduced risk and therefore, in Mr. Asbury's opinion, a 5 per cent discount on a flat where an assured tenancy could be claimed, might be appropriate.

41. However, as all three leases had now expired, they were not saleable and had no value. If no discount was applied, Mr. Asbury said there could be no marriage value. The tenants, in order to acquire the freehold interest, must pay the full freehold vacant possession

value (together with the freehold reversionary value of the two long-leasehold flats which was assessed to be nil). Nevertheless, if the Tribunal was to find that there should be a discount to reflect the assured tenancy risk on Flat 1, Mr. Asbury said that in accordance with the decision in *Shahgholi* and also in *Goldstein v Conley* [1998] 03 EG 137, 72.5 per cent of any such marriage value should be awarded to the freeholder. He had set his valuation out on that basis.

42. Mr. Asbury produced a schedule of those properties in the vicinity that he considered to be comparable, and which had led him to his conclusions [see **Appendix 2** to this decision]. In connection with the sales of Flat 6 and 'the First Floor Flat' at 105 Priory Road, he said the latter was almost 8 per cent higher than the former, which had been sold 2 months earlier, although the flats were virtually identical. Some of this differential may have been due to market movement (possibly 5 per cent in the period) but the balance of the uplift (3 per cent) demonstrated the desirability of a flat with a share of the freehold over one which was merely held on a long lease.

43. Applying the same uplift to the subject flats gave figures of £206,000 (Flat 1), £113,300 (Flat 4) and £267,800 (Flat 5) – a total of £587,100. By taking account of the 5 per cent risk factor for Flat 1, that flat's value was reduced to £203,168, producing a price payable by the nominee purchaser of £584,268 – say £584,250.

44. In cross-examination, Mr. Asbury explained that the calculation of marriage value was something that would be taken into account by an investor in formulating his offer, and he might discuss it with the vendor. As to his assessment of the marriage value on Flat 1, he said that he had not taken into account the tenant's age – that being only one of many factors to be considered.

45. As to the reason why he had not allowed any discount for the risk of an assured tenancy being claimed on Flats 4 and 5, he said that he did not think that either Mr. Murray or Mr. Edwards satisfied the occupation criteria. Mr. Murray's flat, at the time of his original inspection was not capable of occupation, there being no gas connected and therefore no means of heating or cooking were evident. Also, he was aware that Mr. Murray was living with friends. Mr. Edwards had told Mr. Asbury that his flat was being occupied by his two sons and a friend, and as there were only three beds, Mr Asbury had assumed that Mr Edwards was not living there.

46. In closing, Mr. Radevsky said that the appellant's sole ground of appeal as set out in both its original and amended statements of case related to its disagreement with the LVT's adoption of 22 February 2000 as the valuation date. No other points were raised. He said he was at a loss to understand the basis of the appellant's argument that 5 May 1999 should have been the date, and pointed out that, as far as he was aware, this was the first case to be brought before the Lands Tribunal on this point. The provisions within the 1993 Act, he said, were clear, and there was no basis in law for overturning the LVT's decision.

47. It was submitted that a counter-notice disputing the tenants' right to enfranchise was served by the respondent on 19 May 1997. Although it was accepted that this was late, Mr.

Radevsky said that the tenants did not proceed in accordance with s.25 of the 1993 Act. The appellant did commence proceedings in the Central London County Court on 17 July 1997, and the respondent defended the claim. There were various applications and orders, and the whole procedure became extremely protracted mainly due, Mr Radevsky said, to the appellant's delaying tactics designed to preserve its position in the building.

48. Eventually, on 5 May 1999, an Order was made by consent declaring that the appellant had the right to collective enfranchisement. In error, that Order failed to provide for service of a further counter-notice by the respondent, as required by s.22(3) of the 1993 Act, dealing with the proposed terms of acquisition. Apparently, he said, the clause which had appeared in the draft consent order had been deleted by the appellant's solicitor, for reasons unknown. In circumstances where the landlord admits the applicant's right to a collective enfranchisement, the counter-notice, in accordance with s.21(2)(a) of the 1993 Act must:

> "state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises".

It must, in addition, include those matters set out in s.21(3)(a), (b) (d) and (e) and, by not doing so, was defective.

49. Mr. Radevsky said that the appellant had refused to agree to an amendment to the Order by consent, and it had therefore been necessary for the respondent to make a further application to the Court. The defect was duly corrected by an Order dated 26 November 1999, providing for the respondent to serve a further counter-notice by 14 January 2000. The Order also provided for access to be made available to the respondent's valuer, requests for such access having previously been refused.

50. The respondent's further counter-notice was duly served on 12 January 2000, and in addition to quoting the required purchase price, it sought lease-backs of the two non-participating flats. Mr. Radevsky said that, until that matter was resolved, the valuation date under Para 1 of Schedule 6 to the 1993 Act could not arise. The LVT has jurisdiction under s.24(1) of the 1993 Act to determine items in dispute relating to the terms of acquisition and following an application by the nominee purchaser dated 5 November 1999, the first date of the hearing was 22 February 2000.

51. The LVT approved the terms of the proposed lease-backs on Flats 2 and 3 in the form submitted and, Mr. Radevsky said, that was the first time that the quality of the interest being acquired was known. The first day of the LVT hearing was, therefore, the valuation date in accordance with Para 1 of Schedule 6 to the 1993 Act.

52. As to the respondent's cross-appeal, Mr. Radevsky said in respect of the vacant possession values of the qualifying flats, that the LVT's figures were too low and, based upon the comparable evidence they should be: Flat 1 £200,000, Flat 4 £110,000 and Flat 5 £260,000. He said that even if I did not accept the respondent's evidence, and even if I were to prefer Mr. Maunder-Taylor's figures (and he had produced no comparables of his own), I should not determine a figure less than the LVT's, as the appellant had not sought to appeal

the valuation aspects in its original appeal. It should also be noted that Mr. Asbury had not been cross-examined on his comparables, and therefore, it was submitted, I should accept that unchallenged evidence.

53. Mr. Asbury's figures should then be adjusted upwards by 3 per cent as per *Shahgholi* and also *Rushton v Howard de Walden Estates Ltd* (14/2/00, LVT) where it was held that the 3 per cent uplift determined by the Lands Tribunal was a principle of general application.

54. Mr. Radevsky submitted that the overall discount of 13 per cent, as sought by the appellant, was unjustified. The only flat against which there was a risk of an assured tenancy being claimed was Flat 1 and in the circumstances, 5 per cent was the right discount to apply. The other two flats were not being occupied by the appellant nominee purchasers at either of the claimed valuation dates.

55. Finally, as to the marriage value element in flat 1, Mr Radevsky submitted that the appellant's contention that, if it did apply, it should be split 50/50 would only be appropriate if there was a level playing field, or both landlord and tenant were in an equal bargaining position. In this case, as with *Shahgholi* and *Goldstein* the landlord was in a stronger position, so it was entitled to the higher 72.5 per cent claimed.

56. Mr. Murray, for the appellant, said the history of the claim for collective enfranchisement spoke for itself. It was the respondent who had dragged matters out, firstly by claiming that an insufficient percentage of the occupiers were qualifying tenants under the 1993 Act. It had eventually accepted that the tenants did qualify, and the Consent Order of 5 May 1999 proved the point. There were subsequently problems with the wording of that Order, hence the decision of the LVT to apply the first date of its hearing as the relevant date for valuation purposes. There was no reason, he said, why the appellants should be penalised in a rising market by having to pay 17.5 per cent more than would have been the case if the date of the original draft consent Order, which Mr. Murray considered was a contract, had been taken.

DECISION

57. I deal firstly with the valuation date. It was evident from the papers and at the hearing that this has been a particularly acrimonious dispute, and it was clear that neither party could be totally absolved from blame over delays. There is no doubt in my mind that the copy correspondence produced in evidence has been selective on both sides, and this has not assisted me in building up a full picture of the background and history of the dispute. Mr. Radevsky's submission that the clause in the draft Consent Order relating to the requirement for the respondent to serve an amended counter-notice was struck out by the appellant's solicitors was not backed up by evidence. Nevertheless, it was clear that the respondent's attempts to agree an amended Order were thwarted and it became necessary to make further application to the Court.

58. The dispute over valuation date involves a choice between the date of the first Consent Order, and the first day of the LVT hearing. Whatever went on before 5 May 1999 is not

relevant to this appeal, because an earlier valuation date than that is not being sought. I am satisfied that if the appellant had co-operated with the respondent over the necessary amendments to the Consent Order, it might have been possible to agree an earlier date than 22 February 2000 as the valuation date – such date being some time between the two, possibly July or August 1999.

59. "The valuation date" is defined by para 1(1), as amended, of Schedule 6 to the 1993 Act to mean:

> "(a) the date when it is determined either by agreement or by a leasehold valuation tribunal under this Chapter, what freehold interest in the specified premises is to be acquired by the nominee purchaser".

As *Hague, Leasehold Enfranchisement*, 3rd edition, para 27-02 says, this definition is not entirely clear. It refers to the determination of "what freehold interest in the specified premises is to be acquired". But the freehold interest in the specified premises that is to be acquired is, necessarily, the freehold interest in the specified premises since "the specified premises" are defined (in s.13(12)) as the premises specified in the initial notice or such less extensive premises as it may subsequently be agreed or determined should be acquired. Para 1(1) might simply have said "…when it is determined what are the premises the freehold in which is to be acquired". That it does not say this suggests that the words "what freehold interest" are intended to have some wider meaning. Since the value of the freehold interest may depend upon the terms of acquisition (as, in the present case, it does depend upon the leasebacks of flats 2 and 3), it would be surprising if the date of valuation could ante-date the determination of those terms.

60. Under Chapter II the valuation date for a new lease is the date when all the terms of the acquisition have been determined, and it is to be expected that the same would be so under Chapter 1. In my judgment, the words "what freehold interest in the specified premises is to be acquired" are intended to imply that a determination both of the extent of the premises to be acquired, and the terms of the acquisition of the freehold is needed. I accept the respondent's submission that it was only at the LVT hearing, when the issue of the leasebacks was determined, that such a determination was complete. Accordingly the LVT was correct to decide that the valuation date was 22 February 2000.

61. Whilst the appellant has been disadvantaged by the rise in property values, there is no flexibility under the 1993 Act as to determination of the valuation date in the event of parties failure to agree. I am sure that if property prices had been falling, the appellant would not have been arguing for an earlier valuation date.

62. Regarding whether or not there should be a discount from the freehold value for the risk of assured tenancies, and the arguments relating to the occupation status of the tenants of flats 4 and 5, the relevant provisions of s.6 of the 1993 Act state:

> "(1) For the purposes of this Chapter a qualifying tenant of a flat satisfies the residence condition at any time when the condition specified in subsection (2) is satisfied with respect to him.

(2) That condition is that the tenant has occupied the flat as his only or principal home

(a) for the last twelve months, or

(b) for periods amounting to three years in the last ten years, whether or not he has used it also for other purposes"

Whilst the tenants may not have actually been in occupation on any of the relevant dates, there was no evidence adduced to suggest that they had not occupied their flats for periods amounting to three years in the last ten. Under those circumstances I have no alternative but to assume that the residence condition has been met, and that all of the qualifying lessees thus have the right to claim assured tenancies. Even if such evidence had been forthcoming, and I had determined that the lessees of flats 4 and 5 had no right to claim assured tenancies, I accept Mr. Maunder-Taylor's arguments [see para 24 above] that a prospective purchaser would take into account the fact that the flats were not vacant, and protracted and costly litigation to fight off a claim could therefore be a risk factor.

63. Mr. Maunder-Taylor assessed the risk factor at 13 per cent, to include 3 per cent for purchase costs. I accept Mr. Radevsky's submission that purchase costs are not a relevant factor to be taken into account in assessing such risk, and that Mr. Maunder-Taylor had produced no evidence to support his figures. Mr. Asbury had assessed the risk factor at 5 per cent of the freehold value on one flat only on the basis that risks associated with assured tenancies were far less than those that applied when statutory Rent Act protected tenancies could be claimed, and gave reasons why investors would not necessarily look at the prospects of assured tenancies in a particularly negative light. In referring to *Shahgholi* where a 15 per cent discount was applied to the risk of statutory tenancies being claimed, he said that because some investors were attracted by assured tenancies, any risk factor would be very substantially less.

64. Whilst I prefer Mr. Asbury's arguments, I do not believe that an investor would see assured tenancies as being particularly attractive, although they are, of course, much less risky than 1954 Act tenancies. In my judgment, a 10 per cent discount is fair in all the circumstances. However, that discount, in the light of my finding above, must apply to each of the three qualifying flats, and not just Flat 1. I conclude therefore that the LVT was wrong to apply a 13 per cent discount.

65. The subject of marriage value thus falls to be considered. Mr. Maunder-Taylor said that if that became relevant to the valuation it should be assessed at 50 per cent. Referring again to *Shahgholi*, and to *Goldstein*, which were both cases in which the tenants' leases had expired, Mr. Asbury said in this case, where the circumstances were the same, the proportion payable to the freeholder should also be 72.5 per cent.

66. In *Goldstein* that post-dated, and referred to, *Shahgholi* HH Judge Michael Rich QC said (at p 100):

" In his evidence before me Mr. Silver again approached the matter by reference to the fact that the tenant had no saleable interest and concluded that the only reason why the

landlord should not get 100 per cent of the marriage value is because the Act deems him to be willing. He was therefore prepared to accept the 72.5 per cent arrived at in the *Shahgholi* case. It was, however, essential to this assessment that the tenant should also be deemed to be 'willing' and so this kind of analysis is, in my judgment, unhelpful, unless one brings back into mind what it is that he is willing for and what he is bargaining about.

If the tenant were able to purchase the leasehold interest worth £215,000 for the amount of the diminution in the value of the landlord's interest, namely £128,500, he would get a windfall of £86,500. This is a sum that could be realised on the open market by the parties jointly agreeing to grant such an interest with vacant possession. The tenant must be seen as having that opportunity to turn an interest without value into a share of such figure whereas, as I think the willing landlord may bargain for his share on the basis that he would retain at any rate the present value of his interest, namely £129,000 if no transaction proceeded. The deal would add about two-thirds to the present value of the landlord's interest by, in effect, allowing its immediate realisation, but any share that the tenant obtained would, on this analysis, be pure windfall. Trying to imagine the haggle between such parties, I can see a bracket being arrived at of a share in say 2:1 or 3:1 proportions. A mean figure between those round figures corresponds closely with the 72.5 per cent figure for which Mr. Silver now contends and, using my own judgment as best I may, without further assistance either as to relevant market practice, which probably does not exist, or as to market valuation practice, I adopt that figure".

67. I see no reason to differ from that judgment. With the circumstances of this case being broadly similar, and in the absence of any better information, I conclude therefore that the marriage value shall be split on the basis that the landlord shall be entitled to 72.5 per cent.

68. I turn now to the question of whether there should be an uplift to reflect the value of owning a share of the freehold as against a long lease at a peppercorn rent. Mr. Maunder-Taylor was quite prepared to accept that there should be an uplift in cases where the occupiers of all the flats in the building qualify, and elect to collectively enfranchise, and where the block is, or has historically been well managed. However, in this case two of the flats have been sold on long leases and the property had a history of management problems. Mr. Asbury again referred to *Shahgholi* and to *Rushton*, an LVT decision in which the tribunal said it was: 'especially influenced by the decision…in *Shahgholi*' and concluded that the differential in value (or uplift) should as a rule be taken to be 3 per cent irrespective of market evidence, as a principle of general application.

69. On the basis of the evidence in this case, which was limited, and bearing in mind the decision in *Shahgoli*, I therefore accept the respondent's argument that 3 per cent uplift is appropriate, and conclude that the LVT was wrong not to determine such.

70. Finally, the evidence regarding the values of the individual flats. Flat 1 is a basement/lower ground floor unit. Whilst it has an attractive sitting room, with bay window to the front, and overall it offers reasonable accommodation, it is somewhat dark and the windows to the two rear bedrooms overlook a retaining wall rather than gardens. I accept Mr. Asbury's evidence that the modernisation and improvement works that were effected some 30

years ago are all now dated and fall below acceptable modern standards. Complete modernisation will be required, and a prospective purchaser would, undoubtedly in my view, adjust his bid to reflect the need for this.

71. Mr. Maunder-Taylor contended for £165,000 and Mr. Asbury sought £200,000 (prior to the uplift he had applied). The LVT found the value to be £180,000. Mr. Maunder-Taylor said he thought that the bulk-sale of the four flats at 21 Priory Road was no different to the bulk sale of three of the five flats in the subject property, together with the nil-value benefit of the freeholds in flats 2 and 3. Although he had not seen inside them, and was unaware of the precise extent of the accommodation, he assessed the average value of the basement flats at 21 Priory Road at £164,500 (ignoring any increase for the benefit of the garden there), after allowing for inflation between May 1999 and February 2000. This, he said, supported his proposed figure for Flat 1 at the subject property. Mr. Asbury had said it was possible that the purchase price of the whole building at 21 Priory Road with 4 vacant possession flats for modernisation and resale might have included some bulk discount. His analysis of that sale, adjusting for price inflation on the same basis was an average of between £190,000 and £197,000 per flat, although he had not differentiated between basement and first or second floor flats.

72. I agree with Mr. Asbury's comments regarding discount. In my judgment, a developer or speculator buying a whole building as a refurbishment project would build in an element of profit whereas an individual purchaser, buying an unmodernised property for his own occupation, would take into consideration the likely refurbishment costs, but would not be allowing for profit. Therefore the analysis of the freehold sale of 21 Priory Road is not, in my opinion, particularly helpful.

73. Mr. Maunder-Taylor also considered the prices achieved for the modernised flats at the subject property and made adjustments for the anticipated cost of modernisation of Flat 1 (£50,000) and the fact that the basement flat would be less desirable in terms of location within the building. Mr. Asbury considered the sale of a refurbished lower-ground floor flat at 17 Priory Terrace at £252,000 and, allowing about £35,000 for refurbishment and an allowance for the fact that Flat 1 was in worse overall condition, he said £200,000 was the right figure.

74. My external inspection of 17 Priory Terrace revealed that a single storey rear extension had been added in recent years. Although being described as having similar accommodation, the experts agreed that it was probably larger than Flat 1, and it did have a second bathroom. The sale of the raised ground floor flat (Flat 2) at the subject property, fully modernised and not much smaller than Flat 1, at £250,000 in September 2000, by which time prices would have risen somewhat from levels at the valuation date, suggests to me that £200,000 for Flat 1 was somewhat optimistic.

75. I therefore agree with the LVT that Mr Asbury's valuation, certainly on this unit, was on the high side, but equally, I think Mr. Maunder-Taylor has placed too much reliance on 21 Priory Road, and has been too pessimistic. Taking the evidence 'in the round' I conclude that the right figure falls somewhere between the two valuations, hence I see no reason to disturb the LVT's figure of £180,000 (prior to adjustments).

76. As to Flat 4, the difference between the experts is only £4,000 and at a value range of £106,000 to £110,000 that represents less than 4 per cent. That is well within accepted valuation tolerances and, in my judgment, the LVT was right to 'split the difference' at £108,000.

77. Flat 5 was worth £200,000 according to Mr. Maunder-Taylor and £260,000 in the opinion of Mr. Asbury. The LVT again split the difference, but upon the evidence rather than because the figures were close. The only additional evidence now to hand is the sale prices of flats 2 and 3. Flat 2 is the most comparable, as Flat 3 is extremely small. In my view, Flat 5, although requiring extensive modernisation and updating, has the potential to be by far the best flat in the property. I do not agree with Mr. Maunder-Taylor's criticisms of the turret or tower room, although I accept that the staircase leading to it is somewhat narrow. That room can be used as a third bedroom or, more likely in my judgment, an office or study. I also accept that the living room in Flat 2, being on the front rather than rear elevation, is architecturally better.

78. On the basis of the comparables that Mr. Asbury produced, he thought Flat 5 would have an end-value of about £310,000 after expenditure of around £35,000 on modernisation. In my view, if Flat 2 was worth £250,000 in September 2000, Flat 5, modernised, would have been about £290,000. Allowing for modernisation costs and the time difference, I conclude that the LVT's figure of £230,000 fairly represented the value.

79. Having concluded that, in its assessment of the total gross value of the three qualifying flats at £518,000 the LVT was correct, it is necessary then to apply the discount for the risk of assured tenancies which I have determined at 10 per cent, the marriage value which I have determined should be split as to 72.5 per cent to the landlord and 27.5 per cent to the lessees, and the uplift for the benefit of owning a share of the freehold at 3 per cent.

80. My valuation on the basis of these findings is set out at **Appendix 3** to this decision, and I therefore determine that the price to be paid by the appellant for the collective enfranchisement of the subject property is £519,000.

81. This decision concludes my determination of the substantive issues raised in this appeal. It will take effect as a decision when the question of costs has been decided and at that point, and not before, the provisions relating to the right of appeal in section 3(4) of the Lands Tribunal Act 1949 and order 61 rule 1(1) of the Civil Procedure Rules will come into operation. The parties are invited to make submissions as to the costs of this appeal and a letter accompanies this decision which sets out the procedure for submissions in writing.

DATED 31 October 2001

(Signed) **P R Francis FRICS**

ADDENDUM ON COSTS

82. I have received submissions on costs from the parties. The appellant said that as neither party had succeeded, there should be no order as to costs – the respondent suffering a reduction of £65,250 on what it had sought, and the appellant having to pay £69,000 more than had been determined by the LVT.

83. The respondent said that, in accordance with the normal rules, costs should follow the event. The appellant's appeal had been dismissed, and the respondent's cross-appeal had been allowed. Whilst the respondent had not achieved the figure contended for by its valuer, it had been open to the appellant to make a sealed offer to protect its position, and it had not done so.

84. The parties agreed that the interest to be paid on the enfranchisement price for the period 29 August 2001 to the first day of the resumed hearing (27 September 2001) at 8 per cent p.a. (as ordered by the Tribunal on 29 August) amounted to £3,298.85 and the Final Order should include that sum.

85. The appellants sole ground of appeal related to the valuation date and on that issue it failed. The other issues that were determined, and the appellants evidence and arguments relating to them, arose from the cross-appeal. As to the discount to be applied I found that the LVT was incorrect to apply 13 per cent. Although the figure I determined at 10 per cent was more than the respondent's suggested figure of 5 per cent, it was nevertheless a finding for the respondent in that it succeeded in getting the LVT's decision on that aspect overturned. The matter of marriage value had not been determined by the LVT, but on that point I preferred the respondent's evidence and determined that 72.5 per cent should go to the freeholder. Similarly, in respect of the uplift, I found for the respondent.

86. In overall terms, therefore, the appellant failed in its appeal and the respondent succeeded in its cross-appeal. Having concluded from the evidence that there was no reason to disturb the LVT's findings as to the values of the individual flats, the reason my determination was higher than the LVT's was due to the factors for which I found in favour of the respondent.

87. In the light of the above, I can see no reason to depart from this Tribunal's normal approach to the matter of costs, and determine that the appellant shall pay its own costs, and those of the respondent in both the appeal and cross-appeal, such costs to be the subject of a detailed assessment by the Registrar if not agreed.

DATE: 19 November 2001

(Signed) **P R Francis FRICS**

APPENDIX 1

RESPONDENT'S VALUATION

41 Priory Road, London, NW6

Lease Summary

Flat 1 **Lower ground floor flat**
Lease dated 5th March 1970
Term expiring 15th December 1996 at a fixed rent of £70 pa
Tenant: Eve Elizabeth Southwood

Flat 2 **Raised ground floor**
Not participating

Flat 3 **First floor (front)**
Not participating

Flat 4 **First floor (rear)**
Lease dated 3rd February 1970
Term expiring 15th December 1996 at a fixed rent of £56 pa
Tenant: Michael Patrick Murray

Flat 5 **Second & third floor**
Lease dated 19th March 1970
Term expiring 15th December 1996 at a fixed rent of £80 pa
Tenant: John Bertie Edwards

Collective Enfranchisement Calculation

Valuation Date is 22nd February 2000

Open Market Value of freeholder's existing interest

Rents Received		£0 pa
Reversion to FH VP value of Flats 2 & 3 in 999 years time is negligible		£0
Val of 90 yr leases @ peppercorn	Flat 1:	£200,000
	Flat 4:	£110,000
	Flat 5:	£260,000
Total		£570,000
FH equiv @ 3% uplift	Flat 1:	£206,000
	Flat 4:	£113,300
	Flat 5:	£267,800
Total		£587,100

Allowance for risk of tenants claiming
Assured Tenancies under Local Government & Housing Act 1989

Flat 1	Flat 1: £206,000	
Flat 1, with 5% discount for risk of Assured tenancy arising	£195,700	
Flat 1, Marriage Value	£10,300	
72.5% of Marriage Value awarded to freeholder	£7,468	
Flat 1, with 5% discount for risk of Assured tenancy rising	£195,700	
Flat 1, with 5% discount for risk of Assured tenancy plus marriage value payable		£203,168
Flat 4, Lessee not in occupation, so no entitlement to Assured tenancy	Flat 4:	£113,300
Flat 5, Lessee not in occupation, so no entitlement to Assured tenancy	Flat 5:	£267,800
Total		**£584,268**
Price Payable by nominee purchaser for freehold interest	Say	**£584,250**

APPENDIX 2

41 Priory Road Comparable Transactions

Address	Date	Tenure	Accommodation	Floor	Condition	Area (sq ft)	Sale Price	£/sq ft
2 @ 41 Priory Road	29/09/00	new 999 yr lease	2 beds, 1 bath/wc, 1 shwr/wc, open-plan kitchen/sitting rm	ground	good newly refurbished	722	£250,000	£346
3 @ 41 Priory Road	22/9/00	new 999 yr lease	1 bed, 1 bath, sep wc open-plan kitchen/ sitting room	first	good newly refurbished	400	£155,000	£388
21 Priory Road	26/05/99	Freehold full vacant possession	4 x 2 bed flats	Bst-2nd	poor, unmodernised	n/k	£660,000	
6 @ 105 Priory Road	Sep-99		Bedsitting room kitchenette, shwr/Wc	1st (front)	poor unmodernised	240	£83,000	£346
105 Priory Road	Nov-99	share of freehold	Bedsitting room kitchenette, Bath/Wc	1st (rear)	poor, unmodernised	240	£89,500	£373
37D Priory Road	Feb-00	share of freehold	2 beds, 1 recep, 2 baths, kit	ground	good		£290,000	
17a Priory Terrace	Dec-99	125 yrs	2 beds, 1 recep, 2 baths, kit	Bst small garden	fair		£252,000	
25D Priory Terrace	Feb-00	120 yrs	2 beds, 1 recep, 1 bath, kit	2nd	good		£257,000	
37 Priory Terrace	Feb-00	approx 90-95 yrs	2 beds, 1 recep, 1 bath, kit	2nd	fair		£210,000	
75 Compayne Gardens	Feb-00	share of freehold	Bedsitting room kitchennette, Bath/Wc	ground	v small, poor, unmodernised	200	£90,000	
61 Priory Road	Feb-00	approx 90-95 yrs	3 beds, 1 recep, 2 baths, kit	1st	good		£300,000	

APPENDIX 3

LANDS TRIBUNAL VALUATION
41 PRIORY ROAD, LONDON NW6 4NS

Valuation Dated - 22 February 2000

Value of Freeholder's existing interest

Rents received		0		
Reversion to VP value at flats 2 & 3		0		
				Nil

Value of 90 year leases at peppercorn

Flat 1	£180,000
Flat 4	£108,000
Flat 5	£230,000
	£518,000

Value of freehold (+3%)

Flat 1	£185,400
Flat 4	£111,240
Flat 5	£236,900
	£533,540

Marriage Value (Discount for risk of assured tenancies 10%)

Flat 1	£185,400			
Less 10%	£ 18,540			
		166860		
Marriage value	18540			
72.5% to freeholder		13,441		
				£180,301
Flat 4	£111,240			
Less 10%	11,124			
		100,116		
Marriage Value	11,124			
72.5% to freeholder		8,065		
				£108,181
Flat 5	£236,900			
Less 10%	23,690			
		213,210		
Marriage Value	23,690			
72.5% to freeholder		17175		
				£230,385
				£518,867
			Say	£519,000