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Residential Property
TRIBUNAL SERVICE

LON/00BK/OAF/2008/0016

IN THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM ACT 1967 (as amended)

Applicant	**THE KEEPERS AND GOVERNORS OF THE POSSESSIONS REVENUES AND GOODS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON WITHIN THE TOWN OF HARROW-UPON-THE-HILL IN THE COUNTY OF MIDDLESEX IN THE CAPACITY OF THE TRUSTEE OF JOHN LYON'S CHARITY**
Respondent	**RED EARL LIMITED**
Property	**110 Hamilton Terrace, St John's Wood, London**
Applicant's representatives	**Edwin Johnson QC of Counsel, instructed by Pemberton Earl solicitors**
Respondent's representatives	**Philip Rainey of Counsel, instructed by David Conway & Co solicitors**
Hearing dates	**9th, 10th and 17th (afternoon) September 2008**
Deliberation date	**1st October 2008**
Site visit	**17th September 2008 (morning)**
Tribunal	**Mr N. Gerald** **Mr D. Banfield FRICS**
Decision date	**13th October 2008**

DECISION

BACKGROUND

1. On 2nd November 2007, the tenant-Respondent's predecessor in title served notice ("the Notice") under Part 1 of the Leasehold Reform Act 1967 ("the Act") exercising its right to acquire the freehold of the house and premises situate at 110 Hamilton Terrace, St John's Wood, London ("No 110") which was admitted by the landlord-Applicant by counter-notice dated 8th February 2008.

2. On 18th February 2008, the Applicant applied to the Tribunal for determination of the purchase price payable for the freehold of No 110 pursuant to section 9(1C) of the Act and also for the terms of its conveyance to be determined.

3. On 3rd June 2008, the Tribunal gave directions which were amended on 3rd and 11th July 2008 ("the Directions"). They included a direction that experts of like discipline meet with a view to narrowing the issues arising from their reports.

ISSUES FOR DETERMINATION

4. The price on enfranchisement is to be calculated under section 9(1C) of the Act, which provides that it shall be determined in accordance with section 9(1A) as amended by subsection (1C).

5. The effect of these provisions is that the price payable for No 110 "shall be the amount which at the relevant time the house and premises if sold in the open market by a willing seller, might be expected to realise" on certain assumptions.

6. Two assumptions are relevant. First, that the vendor is selling for an estate in fee simple, subject to the tenancy, but on the assumption that the Act conferred no right to acquire the freehold: section 9(1A)(a). Secondly, that the price be diminished by the value of improvements carried out by the tenant or his predecessors in title at their own expense: section 9(1A)(d).

7. By the time of the hearing of the Application, four issues relating to the amount of the purchase price payable as at the 5th November 2007 ("the Valuation Date") remained in contention:

   (a) Whether there are tenants' improvements to disregard;

   (b) The freehold value with vacant possession;

   (c) The leasehold value with vacant possession; and

   (d) The deferment rate.

8. The parties were as far apart as they could be. It was the Applicant's case that the price to be paid on enfranchisement was £11,466,982 whereas the Respondent contended for a price which was almost exactly one-half, namely, £5,721,599. The principal difference lay within their respective valuations of the freehold with vacant possession.

SUMMARY CONCLUSIONS

9. The Tribunal determines that the price to be paid on enfranchisement is £9,046,185 for the reasons set out below. In summary:

   (a) The Tribunal prefers the Applicant's approach to valuing the freehold but concludes that it understates the differences between the key comparable of No 68 Hamilton Terrace ("No 68") and overstates the increase in market values to Valuation Date. The Tribunal values it at £10,062,187.

   (b) The Tribunal prefers the Applicant's approach to valuing the leasehold but concludes that it is slightly understated and values it at £300,000.

(c) The Tribunal accepts the Respondent's submission that there is no break in the chain to defeat tenants' improvements, but they do not impact the preferred freehold valuation method and do not materially impact the preferred leasehold valuation method.

(d) The Tribunal agrees with the Applicant Hamilton that the 4.75% deferment rate for houses applies but prefers the Respondent's evidence that that should be adjusted by 1%, and determines the rate to be 5.75%.

10. The calculation of the £9,046,185 price is set out in the Appendix hereto.

EVIDENCE

11. The Tribunal heard expert valuation evidence from Mr J.P. Hamilton BSc MRICS of Cluttons ("Mr Hamilton") for the Applicant and from Mr K.G. Buchanan BSc (Est Man) MRICS ("Mr Buchanan") for the Respondent. Mr Hamilton produced a report dated 7th August 2008 and a final report dated 1st September 2008 and attended to give oral evidence. Mr Buchanan produced a report dated 14th August 2008 and supplementary report dated 5th September 2008 and also gave oral evidence.

12. Before the hearing commenced, Mr Hamilton and Mr Buchanan had signed a Statement of Agreed Facts dated 4th September 2008 which served to remove from contention basic issues such as the floor areas of No 110 and No 68, and of the tenants' improvements, the Valuation Date and the capital value of the ground rent (£573).

13. The Tribunal also heard expert planning evidence from Mr N. Sharpe ("Mr Sharpe") a Chartered Town Planner and Partner of Montagu Evans LLP for the Applicant and from Mr J. Drew MRTPI ("Mr Drew") and a partner of DP9 Planning Consultants for the Respondent. Mr Sharpe produced a report dated 8th August 2008 and Mr Drew's was dated 8th September 2008. Both gave oral evidence.

14. A historical report relating to the development of Hamilton Terrace and in particular tracing the devolution of title of and tenants' improvements to No 110 dated 4th August 2008 by Mr V.R. Belcher MA was produced on behalf of the Respondent and not contested by the Applicant. This enabled agreement to be reached as the factual issues relating to tenants' improvements, but not as to the question of law as to whether or not they should be included or disregarded.

INSPECTION

15. The Tribunal carried out an extensive inspection of No 110, the exteriors of Nos 68 and 100 Hamilton Terrace and 2A and 2B Abercorn Place and also the general surrounding area on the morning of 17th September 2008.

No 110 HAMILTON TERRACE

Location

16. Hamilton Terrace is a wide tree lined road which is one of the premier residential locations within St John's Wood. It has been developed since the

1820s and now comprises substantial detached, semi-detached and terraced houses and also blocks of flats. Some of the houses have been converted into flats, but many have been or are now being converted back into single dwellings.

17. No 110 is a substantial detached villa on the north-east side of Hamilton Terrace about twenty metres from the junction with Abercorn Place. It was developed pursuant to a building agreement granted by the then trustees of the Applicant charity (which generally is referred to as "the John Lyon's Charity") on 11th March 1840 relating to what is now 92-112 (even) Hamilton Terrace, 2A, 2B, 4A and 4B Abercorn Place and the whole of Abercorn Close ("the 1840 Building Scheme").

18. The whole of Hamilton Terrace, including No 110, is within the St John's Wood Conservation Area. The St John's Wood Conservation Area Audit states that the detached houses at the northern end of Hamilton Terrace, where No 110 is situated, include some of the most imposing in the conservation area. The depths of the plots are among the largest in St John's Wood being up to sixty metres.

19. No 110 is recorded by the St John's Wood Conservation Area as an "unlisted building of merit". No 112 Hamilton Terrace ("No 112") to its immediate north is a Grade II Listed Building with two relatively modern dwellings built in what was its rear garden, now known as Nos 2A and 2B Abercorn Place. No 108 Hamilton Terrace ("No 108") to its immediate south is not listed but has had a rear extension.

20. Hamilton Terrace is subject to the Scheme of Management relating to the Harrow School Road Trust Estate, London which is managed by the John Lyon's Charity ("the Scheme"). The Scheme was granted under section 19 of the Act. No redevelopment can be undertaken without the consent of the John Lyon's Charity pursuant to the Scheme.

21. Thus, prior to any redevelopment of No 110, the consent of the John Lyon's Charity must first be obtained. Evidence was given in relation to the Scheme, the broad thrust of which was that the John Lyon's Charity adopts a constructive and co-operative approach to redevelopment applications. That in large measure is evidenced by the redevelopments which have already or are in the process of being carried out, such as at No 100 Hamilton Terrace ("No 100") which featured heavily in the evidence.

The Lease, and leasehold continuity

22. The first lease of No 110 was granted on 16th October 1847 and comprised what is now known as No 110 (the main house and garden) as well as mews houses at the rear which are now known as 11a and 12 Abercorn Close ("the Mews Houses").

23. On 17th February 1932, the John Lyon's Charity granted a new lease of No 110 and the Mews Houses ("the 1932 Lease") which, by 1948, was vested in Francis Dare. Between 1847 and 1932 there had been leasehold continuity in

the sense that a new lease of No 110 and the Mews Houses was granted immediately upon expiry of the previous lease.

24. On 6th October 1948, Francis Dare surrendered the 1932 Lease to the John Lyon's Charity insofar as it related to No 110 but not in relation to the Mews Houses. The 1932 Lease therefore continued in respect of the Mews Houses.

25. Also 6th October 1948, the John Lyon's Charity granted a new lease of No 110 to Francis Dare for a term of 63 years from 25th March 1948 ("the 1948 Lease") by which Francis Dare covenanted to convert No 110 into five self-contained flats and one self-contained maisonette. At the time of the Notice, No 110 still comprised those six flats which were then unlet and unoccupied

26. On 3rd April 1950, Francis Dare surrendered the 1948 Lease to the John Lyon's Charity and, on the same day, was granted a new lease of No 110 for a term (it was agreed) of 61¼ years from 25th December 1949 at an initial annual rent of £195 until 29th September 1970 when it would reduce to £190 ("the Lease").

27. At the time of the Notice the Lease was vested in Jean Valerie Reed and Nigel Alastair Reed. On 9th November 2007, the Reeds assigned the Lease and the benefit of the Notice for £1,320,000 to the Respondent Red Earl Limited, a company incorporated in the British Virgin Islands, who purchased it as a development opportunity with the intent of converting it back into a single dwelling for the super prime market.

Description, alterations and additions

28. No 110 is of London brick construction and now comprises a substantial five storey house set within a large plot. It has a large rear garden and a small front garden. The front garden is largely paved, but does not afford any off-street parking. There is access between the front and rear gardens on the southern (No 108) side of the house through a brick arch and door at the front with paved area behind.

29. No 110 is variously described as comprising a basement, ground and three upper floors *or* lower and raised ground floors with three upper floors. The Tribunal will refer to it as basement and ground with three upper floors, but in so doing will bear firmly in mind that the basement is more akin to a lower ground floor than a basement as it enjoys natural daylight at the front and also at the rear.

30. No 110 was originally constructed in 1847 as a single flat-fronted dwelling house on four floors without any front or rear bays and with a recessed part at the rear on the south (No 108) side. That would have been more or less the same as the other dwellings built in Hamilton Terrace under the 1840 Building Scheme, such as No 100 and also Nos 112 and 108.

31. In 1872, there were substantial alterations to No 110 carried out by the then tenant. Victorian bays were added to the front and rear elevations at basement and ground floor levels; the rear recess was in-filled; a set-back side addition was built on the north (No 112) side at basement and ground floor levels; and a new (fifth) floor rear extension was added. That was the accepted evidence of

Mr Belcher who also opined that the whole of the rear of No 110 would have been reconstructed to allow for the addition of the rear bays, rear in-filling and addition of the fifth floor at the rear (the front only having four floors)

32. The only other alterations made to No 110 were in 1948/49 when it was sub-divided into the six self-contained flats and maisonette by Francis Dare under the 1948 Lease at which time the rear bays were projected upwards by one floor. As presently constructed, the bays are therefore on basement and ground floor at the front and basement, ground and first floor at the rear.

Agreed gross internal floor areas

33. Having considered and accepted the content of Mr Belcher's report, Mr Hamilton and Mr Buchanan agreed that No 110's existing gross internal floor area ("gia") is 6,566 square feet which includes 1,669 square feet of tenants' improvements carried out in 1872 and 1948/9 which equates to an unimproved gia of 4,897 square feet.

34. In their Statement of Agreed Facts, Mr Hamilton and Mr Buchanan agreed that the reduction in floor space from the tenants' improvements would result in the following accommodation (as against their improved accommodation):

(a) Second floor: two bedroom flat (as against a 2nd/3rd floor four bedroom maisonette):

(b) First floor south: bedsit (as against a one bedroom flat);

(c) First floor north: two bedroom flat (as against a two bedroom flat);

(d) Ground floor south: bedsit (as against a one bedroom flat);

(e) Ground floor north: one bedroom (as against a one bedroom flat)

(f) Basement: two bedroom flat (as against a three bedroom flat).

TENANTS' IMPROVEMENTS

Issues

35. By section 9(1A)(d) of the Act, No 110 is to be valued "on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvements carried out by the tenant or his predecessors in title at their own expense".

36. Both parties agree that there have been tenants' improvements amounting to an additional 1,669 square feet were effected in 1872 and 1948/9.

37. The benefit of those tenants' improvements devolve to the benefit of the Respondent successor in title provided there is an unbroken chain of leases. Section 3(3) of the Act provides as follows:

> "Where the tenant of <u>any property</u> under a long tenancy, on the coming to an end of <u>that tenancy</u>, becomes or has become tenant of <u>the property or part of it</u> under another long tenancy, then in relation to the property or that part of it this Part of this Act ... shall apply as if there had been a single tenancy granted for a term beginning at the

same time as the term under the earlier tenancy and expiring at the same time as the term under the later tenancy" (emphasis supplied).

38. There is no dispute as to the devolution of title: it continued in an unbroken chain until, says the Applicant, it was broken on 6th October 1948 when No 110 was surrendered from the 1932 Lease and a new lease of No 110 was granted by the 1948 Lease, the 1932 Lease continuing in respect of the Mews Houses.

39. Does the part-surrender in 1948 break the chain? This depends upon the construction of section 3(3) upon which, both Counsel are agreed, there is no authority. The answer to this question is potentially relevant to both the freehold vacant possession value and the leasehold vacant possession value.

Submissions

40. Mr Rainey for the Applicant submitted that "property" in section 3(3) has its usual wider meaning and is used in contra-distinction to the phrase "house" or "house and premises" used elsewhere in the Act (*e.g.* section 3(6)). In the context of s.3(3), "any property" refers to "the property demised" by the relevant long lease, and that "the property or part of it" refers to the property so demised or any part of it. "*Any* property" does not encompass any part of the "property demised" otherwise the subsection would say so, and this is the only construction which gives effect to the reference to the tenant becoming a tenant of "the property or part of it under another long tenancy".

41. In short, submits Mr Rainey, there is nothing in section 3(3) which refers to a part-surrender. It could easily have done so by referring to the "coming to an end of that tenancy in whole or part" and to the tenant becoming tenant of that part of the property (or a part of that part).

42. Mr Rainey accepted that if the 1932 Lease had been surrendered in respect of No 110 and the Mews Houses and two separate grants had then been made in respect of (a) No 110 and (b) the Mews Houses, the chaining provisions of section 3(3) would apply to both of the new leases because the whole of the previous lease had been surrendered, and there would still be leasehold continuity given by the new leases. What broke the chain here is that the whole of the original tenancy did not come to an end as there was a part-surrender.

43. Mr Johnson parts company with Mr Rainey as to what is meant by the word "any" before "property". He submits that "any" is used to bring out the point that the premises demised by the first long tenancy do not have to be confined to the relevant house and premises. They can include other premises as well. The reference is to "any property" not "the entirety of any property". The same is true of the second long tenancy, there being express reference to "the property or part of it under another long tenancy".

Discussion

44. The purpose of sections 3(3) and 9(1A)(d) is to enable the value of any improvements carried out by previous tenants to be excluded from the calculation of the amount payable by the last tenant on enfranchisement. Provided there is a so-called chain (a seamless grant of leases following immediately upon determination of the previous one(s)), the landlord is not to

be paid for benefits effected by a tenant. That benefit is to pass to the exercising tenant. It is only improvements which affect the value of the specific premises which are carried forward: if there is no affect on value, they are irrelevant.

45. There is nothing in the Act to prevent the benefit of tenants' improvements from passing to any number of subsequent tenants of separate parts if in this case, to take Mr Rainey's example and as he accepted, there had been a surrender of the whole of the 1932 Lease and the grant of two new leases, one of No 110 (the main house and garden) and one of the Mews Houses behind ("Mews A" and "Mews B"). This makes sense: any improvements to No 110 carry forward with it; and likewise in respect of any benefits to the Mews Houses.

46. Carrying that example forward, say that there is a part-surrender and immediate re-grant of the lease of Mews A (the previous lease continuing in respect of Mews B only). If Mr Rainey is correct, on enfranchisement of Mews A this would defeat the enfranchisor's claim to the benefit of any prior tenants' improvements. The value of those improvements would "vest" in the landlord: they would not be retained by Mews B because they would not affect its value.

47. Continuing with that example, had there then been a surrender and re-grant of the lease of Mews B, would the enfranchisor have been able to claim the benefit of any prior tenants' improvements? Mr Rainey was not prepared to be drawn on this point although he was inclined to the view that Mews B could claim the benefit because "any property" would in effect mean "any remaining property".

48. If that is so, it would seem to follow that "any", as Mr Johnson submits, encompasses the whole of the house and premises originally granted and its constituent parts. The answer to that, Mr Rainey submitted, is that what is crucial is that the first tenancy of the entirety of the property comprised within it must come to an end for the chaining provisions to operate, and unless and until it did then the chaining provisions could not apply. However, it is to be noted that "any property" is not qualified by "*the entirety of* any property".

49. If Mr Rainey is correct, a somewhat absurd position would result whereby, again continuing with the above example, the main house (No 110) and Mews B can take advantage of the chaining provisions but Mews A can not. Quite why Parliament would have intended such a result is unclear, and no explanation or suggestion was forthcoming. Had separate leases of Mews A and B been granted instead of a single lease of both, then (Mr Rainey accepts) both could have claimed the benefits of prior tenants' improvements.

50. The practical effect of what is contended for here is that because of the part-surrender, No 110 loses any claim to the prior tenants' improvements even though a new lease was immediately granted. The landlord is to get the benefit of those improvements and, if they have value, be paid for them even though they were paid for by a previous tenant. Had it been the other way around so that it was the Mews Houses which were surrendered from the 1932 Lease first, the tenants' improvements would have continued to benefit No 110 and the landlord would not be paid for them on enfranchisement.

Decision

51. In the view of the Tribunal, the approach of Mr Rainey is over technical, serves to defeat the very purpose of these provisions of the Act, namely, that the value (if any) of tenants' improvements remains with the exercising tenant and does not pass to the landlord, and produces a somewhat capricious result depending upon the fortuitous timing of events.

52. The word "any" in the view of the Tribunal is intended to refer to whatever house and premises may be demised within the first long tenancy and, as Mr Johnson submitted, bring out the point that the premises demised by the first long tenancy do not need to be confined the whole of it but may be part or parts of it. This is not inconsistent with the words "the property or part of it under another long tenancy" as they refer to the second long tenancy.

53. Those words, if anything, underline the point that the intent is for the value of tenants' improvements to remain with the tenancy and not vest in the freehold. That only happens if there is in fact a gap in the chain. The landlord is no worse off on this construction, because the value of the tenants' improvements (in effect) remains with the original premises or its constituent parts. The converse would be to unduly disadvantage the tenants as all or part of the benefit of the tenants' improvements would vest in the landlord depending upon how the title devolved which, in the view of the Tribunal, could not have been the intent of Parliament.

54. In conclusion, the Tribunal rejects the submissions of Mr Rainey and determines that the value, if any, of the tenants' improvements have not been defeated by the part-surrender of the 1932 Lease but devolve to the Respondent. The Tribunal will consider the value (if any) of the tenants' improvements separately in respect of the freehold and leasehold.

FREEHOLD VACANT POSSESSION VALUE

Introduction

55. By the time of the hearing, it was in broad terms common ground between Mr Hamilton and Mr Buchanan that the hypothetical purchaser of No 110 would have purchased it on the Valuation Date with a view to developing it into what has been referred to as a "super prime" property in a manner similar to No 100. No 110 was therefore to be valued as a development opportunity.

56. It was also was common ground between Mr Hamilton and Mr Buchanan that number No 68 provides the key comparable evidence because it had been sold as a development property on the open market for £8,750,000 in March/July 2007. A central issue will be the extent to which No 68 differed as a development opportunity to that of No 110.

57. However, their conclusions differed wildly. It was Mr Hamilton's evidence that the freehold vacant possession value of No 110 was £12,500,000 (rounded); whereas Mr Buchanan put it at £7,669,244 or, if tenants' improvements are excluded, £6,683,408. The main differences related to (a) planning and development costs and risks and (b) indexation, although there were some planning issues which were more apparent than real.

Structure of this part of Decision

58. The largely undisputed facts relating to No 68 (as a valuation comparable) and No 100 (as a planning comparable) will be set out first. The Tribunal will then consider the appropriate methodologies; planning issues; planning and development costs and risks; indexation; value of tenants' improvements; and then set out its own calculation of the freehold vacant possession value.

59. Given the parties' approach, it is not necessary for the Tribunal to consider any of the other comparables referred to by Mr Hamilton or Mr Buchanan, although some reference will be made to 38/40 Avenue Road..

No 68 Hamilton Terrace – valuation comparable

60. Contracts for the sale of No 68 for £8,750,000 were exchanged in March 2007 and completed four months later in July 2007. Mr Hamilton and Mr Buchanan both agreed that it would have been purchased by a developer with the intent of converting it from flats back into a single dwelling which would have then fallen into the "super prime" bracket.

61. No 68 is a substantial property which, in its original form, would have been almost the same as Nos 110 and 100 in shape but not size. At the time of sale, No 68 had been subdivided into three flats (one of which was a substantial ground and garden maisonette) with provision for off-street parking for two cars. It has a large garden, which is roughly one-half the size of No 110's. It is on the corner of Hamilton Terrace and Hall Road . There are three relevant protected trees, one which limits the scope of developing the front and two which restrict the scope of developing the rear garden

62. At the time of sale, the agreed internal gia of No 68 was 5,435 square feet spread over four floors – basement, ground, first and second floors. As with No 110, the "basement" floor was more akin to a lower-ground floor: the ground level is lower at the front than the rear so that whilst the front basement windows have almost unobscured aspects the rear windows are somewhat more obscured and give on to a small terraced area. There was an existing rear bay extension from basement to second floor level. Plans of No 68 in its then existing state were in evidence.

63. No 68 was sold with the benefit of planning permission to convert it back into a house with five bedrooms which had been granted in 2002. That permission envisaged a relatively modest development converting part of the basement into a garage for one vehicle, changing and shower areas and the provision of an indoor swimming pool with Jacuzzi opening onto a glazed side sundeck with a rear patio and at ground floor level additional side decking with squaring of the corners of the rear bay window from basement to second floor levels.

64. No 68 was also sold with the benefit of planning permission to convert the existing roof to a mansard roof to provide further bedrooms which had been granted in 2005. Overall, there was planning permission to extend its gia (it was agreed) by 965 square feet from to 6,400.

65. Relatively shortly after purchase, the new owners applied for planning permission to radically alter the size and layout of No 68. It would appear from

the planning documents that plans were informally submitted on 14th August 2007 and revised on 7th November 2007 before formal application was made on 21st November 2007. This is consistent with the practice of the City of Westminster's Planning & City Development Department ("Westminster") to encourage pre-action discussion.

66. Planning permission was granted on 30th January 2008 to enlarge the square footage of No 68 by a further 2,308 to 8,708. The day before, the size of the ground floor rear extension had been reduced, but there was no evidence as to what the size of the original application was for. There was no evidence as to whether the reduction was to meet planning objections or to reflect changes in the applicant's requirements.

67. The whole of the rear bay extension and attendant parts of the rear wall would be removed and rebuilt so that their floor levels would be the same as the original part of the house, which would be retained (see Section drawing A-A). The remainder of the rear wall would be retained. The existing staircase would be removed and rebuilt elsewhere.

68. The basement would be converted to provide garage parking for one car and extended underneath the rear garden and also to the side to provide for an indoor swimming pool, gym, games room/cinema with steam and changing rooms and associated plant and equipment facilities. Those basement extensions would be at a slightly lower level than the existing basement, some half a dozen steps down. Most of the flank walls at basement level would be removed, which would require shoring up of the upper structure whilst reinforcement girders were installed.

69. The underground swimming pool would extend approximately two-thirds of the way down the garden but would be offset to the south-eastern side of the plot to avoid a tree preservation zone. The rear bay window corners would be squared as envisaged by the 2002 planning permission. The roof would be replaced by a new mansard roof to provide a new play room, similar to the 2005 planning permission.

70. In short, when sold No 68 had the benefit of planning permissions to increase its size by approximately 17.5% from 5,435 square feet to 6,400. Post-sale planning permission was obtained to fundamentally remodel the house which would increase its size by around 60% from 5,435 square feet to 8,708, 18.75% of which would be the underground extension.

71. Given that the purchaser applied for planning permission albeit informally very shortly after completion (July 2007), the Tribunal infers and finds that at the time of purchase (March 2007) the purchaser intended and expected to be granted planning permission in a form broadly in line with the planning permission which was eventually granted in January 2008.

No 100 Hamilton Terrace – planning comparable

72. As already noted, the original construction of No 100 was essentially the same as Nos 68 and 110. It comprised a substantial double flat-fronted villa on four floors with a basement (or lower ground floor) with three further floors above.

Victorian bay windows from basement to second floor were later added on both sides at the front at a later stage.

73. Pursuant to the planning permission, No 100 was at the time of the hearing being redeveloped by increasing its gia from 5,037 square feet to 10,836. The whole of the interior and virtually the whole of the rear wall have been removed so that only the flank and front walls remain. The roof will be replaced by a new mansard-style roof to provide accommodation. The rear wall will be rebuilt in its original position save that at basement and part of the ground floor levels there will be a substantial rear extension which is approximately one-half of the depth of the original house.

74. A completely new sub-basement which will account for 40% of the total gia of 10,836 square feet will be dug out underneath the existing house. It will extend almost to the front boundary line and a very substantial way down the rear garden to provide an indoor swimming pool, gymnasium, changing facilities and plant and utility rooms. The rear sub-basement extension continues in a straight line from the existing line of the northern flank wall but is offset from the existing line of the southern flank wall by perhaps eight to nine feet (the plans are not scaled). At basement and (part) ground floor levels, the rear extension is offset on each side by several feet.

75. Mr Hamilton produced a photograph taken on 6th December 2007 of No 100 being developed which shows the whole of the rear elevation and interior of No 100 having been removed and the whole of the front elevation being supported by steel girders and the windows breeze-blocked up to provide stability whilst the new sub-basement was being excavated. Aerial photographs show the whole, or almost the whole, of the rear garden covered by corrugated iron sheets to allow for the underground excavations.

Development of No 110 Hamilton Terrace

76. No separate plans or planning application have been prepared or made in respect of No 110. However, the Applicant asks the Tribunal to proceed on the footing that permission similar to that granted in respect of No 100 would be granted for No 110 which would have the effect of increasing its gia from 4,897 square feet without tenants' improvements or 6,566 with tenants' improvements to 10,836 and that that is what the hypothetical purchaser (and vendor) would have had in mind at the Valuation Date.

Tabulation of gias of Nos 68 and 110

77. The respective gias of Nos 68 and 110 are as follows.

	No 68		**No 110**
Existing at sale	5,435	Ex tenants' improvements	4,897
PP at sale	6,400	Plus 1,669 tenants' improvements	6,566
PP post sale	8,708	PP potential	10,836
% underground	18.75%		40%

Methodologies

Mr Hamilton's approach

78. Mr Hamilton applies No 68's rpsf to the hypothetical developable square footage of 10,836 of No 110 and then makes deductions to allow for No 110 having no off-street parking and for planning risk and then adjusts that figure from March or July 2007 to the Valuation Date by applying what has been called a Knight Frank Super Prime Index. This produces the following:

Applying No 68's rate	**Pre-sale planning consent (£8.75m ÷ 6,400)**	**Post-sale planning consent (£8.75m ÷ 8,708)**
RPSF	1,367	1,004
No 110's gia with planning p	10,836	10,836
	14,812.812	10,879,344
Less no off-street parking – 5%	(740,641)	(543,967)
Less no planning p – 5%	(740,641)	-
Sub-total:	**13,331,350**	**10,335,377**
Market uplift – 8 months @ 35%	+3,110,690	+2,411,588
Total:	**16,442,220**	**12,746,965**
Market uplift – 3 month @ 35%	+1,166,509	+904,345
Total:	**14,498,039**	**11,239,722**

79. Although Mr Hamilton puts forward two alternative calculations, he relies upon those in the last column which produces a freehold vacant possession value of £12,746,965 which he rounds to £12,750,000 from which he makes a further deduction of £250,000 to reflect his view of the extra costs of the underground excavation associated with developing No 110 when compared with No 68. His final figure before adjustment for time is, therefore, £12,500,000.

Mr Buchanan's approach

80. Mr Buchanan applies No 68's rpsf adjusted for four months by the Savills PCL North House Index but uses its actual gia at the time of sale (5,435). In Table 1, he applies that rpsf to No 110's gia without tenant's improvements (4,897) which he then adjusts to take into account of the existing size of No 110 (6,566) and to reflect the absence of off-street parking. He then isolates the development value from which he deducts 65% for planning and development risk. Table 2 is similar but on the footing that tenants' improvements are included. His calculations are as follows:

Table 1: Excluding tenants' improvements (applying No 68's rate)

No 68's rpsf indexed to November 2007 (£8,755,162 ÷ 5,435 - No 68's gia excl pp)	1,611	
No 110's gia excluding tenants' improvements	4,897	
	7,889,067	
Add – 50% of ts' impvmnts (1,669 x £1,611)	1,344,379	
Total:		9,233,446
Less no off-street parking – 2 spaces x £125k	(250,000)	
Less value of No 110 as flats	(5,444,925)	(5,694,925)
Value of potential to convert from flats to house		3,538,521
Deduct planning risk – 65%		(2,300,038)
Value of development potential:		1,238,483
Add back value of No 110 as flats		5,444,925
Value as flats with potential to convert to a house		**6,683,408**

Table 2: Including tenants' improvements (applying No 68's rate)

No 68's rpsf indexed to November 2007	1,611	
No 110's gia including tenants' imprvts	6,566	
		10,577,826
Less no off-street parking – as above	(250,000)	
Less value of No 110 as flats	(6,237,700)	(6,487,700)
Value of potential to convert from flats to house		4,090,126
Deduct planning risk – 65%		(2,658,582)
Value of development potential:		1,431,544
Add back value of No 110 as flats		6,237,700
Value as flats with potential to convert to a house		**7,669,244**

81. Only Table 1 is relevant given that the Tribunal has accepted the Respondent's submission that the value of tenants' improvements are to be disregarded. Included within Mr Buchanan's "planning risk" are the extra development costs and risks of developing No 110 as against No 68. It therefore includes the extra excavation costs, which Mr Hamilton has put at £250,000.

82. If the approach of Mr Hamilton is adopted, tenants' improvements are of no consequence as they do not affect his valuation. If the approach of Mr Buchanan is adopted, tenants' improvements make a significant impact on the ultimate result.

Mr Hamilton's evidence

83. Mr Hamilton said he disagreed with Mr Buchanan's approach because in his view the valuation exercise is not to value No 110 as flats but as a house, it being agreed that it is suitable for conversion back to a single dwelling. A developer would work out the value of the freehold to No 110 by looking at the sale price of similar properties in the area and then make the deductions in a similar way to his approach. The alternative would be to prepare a development appraisal or residual value, which had not been adopted because there were too many subjective elements involved.

84. In cross-examination, it was put to Mr Hamilton that one difficulty with his approach was that it was not known what size the hypothetical developer would develop No 110 to. Mr Hamilton accepted that the notional developer may not wish to develop to its full potential to maximise his return but that the vendor would want someone who does and will therefore pay the higher price. His experience of Hamilton Terrace is that the successful builders are not the ones in it to make a fast buck but are those who maximise the potential of the building.

Mr Buchanan's evidence

85. Mr Buchanan's focus was on isolating the value of the "bricks and mortar" from the development potential by stripping out the value of the flats and then making appropriate deductions.

86. Mr Buchanan was cross-examined about the valuation of the flats, the main difference between the two experts being that Mr Hamilton valued that flats at £850 per square feet and Mr Buchanan used a figure of £950. Neither produced any comparable or other evidence to support their conclusions.

87. Mr Buchanan was also pressed hard in cross-examination about where his 65% figure came from and how it was calculated. This figure derives from his analysis of the decision of the Lands Tribunal in *Fattal v The Keepers and Governors of the Possessions Revenues and Goods of the Free Grammar School of John Lyon* LRA/21/2002 which concerned number 81 Hamilton Terrace in which he had given evidence and also post-*Fattal* developments.

88. From his understanding of *Fattal*, which concerned a "top down" valuation (*i.e.* taking the entirety value of the finished product and working backwards), he treated it as being accepted that the development costs of a cleared site equate to 60% of the finished product, or entirety value, when compared with a conversion where the costs (in his view) equated to 75% of the finished product to reflect the additional costs of extending and altering and existing building.

89. The development potential of a cleared side was therefore 40% as against 25% for an uncleared site, producing a 15% differential. Since *Fattal*, he said that he had "been involved in other cases involving cleared sites and would now accept that the appropriate percentage is 50%". In other words, the cost of developing cleared sites is 50%, which is the same as the development potential of a cleared site. In his view, the costs of building an extension equated to an extra 15% of the entirety value which, when added to the 50% he has already referred to, equates to 65% development costs of the finished

product of No 110, or 35% development potential. He then applies that figure to his valuation of the development potential.

90. Instead of using the 35% to place a value on the development potential of increasing the gia of No 110 by the equivalent of the tenants' improvements (1,669 square feet), Mr Buchanan has applied the higher percentage figure of 50% to reflect the fact that no planning permission will be required because the extensions were made as long ago as 1872 and 1948.

Discussion

91. The effect of Mr Buchanan's evidence is somewhat startling: No 110 was worth almost £1 million less than No 68 even though it (No 110) had greater development potential because its garden was almost twice the size of No 68's and, unlike No 68, it is not affected by any protected trees. That may indicate that something has gone wrong with Mr Buchanan's approach.

92. Mr Rainey submitted that Mr Hamilton's approach must be the "right" approach because the developer is interested in development value, and if No 110 is to be gutted and a new basement dug then it does not matter much what its actual size is but what its potential size is. He will divide the sale price of No 68 by its developable gia (8,708) and than apply that rate to No 110's developable area and make any necessary adjustments to reflect its comparative advantages/ disadvantages.

93. In respect of Mr Buchanan's approach, Mr Rainey made two central submissions. First, it includes unnecessary and artificial steps – and, rhetorically, why would a developer be interested in stripping out the value of the flats when he is purchasing to convert and develop into a house. There is considerable force in this. The appropriateness of the method must be determined in context. Here, the key context is the purpose for which the hypothetical purchaser would acquire No 110. As already stated, by the time of the hearing it was common ground between all parties that the hypothetical purchaser would be a developer who would purchase with a view to converting and enlarging No 110 into a "super prime" property.

94. When viewed in that context, it is difficult to understand why the hypothetical purchaser of the freehold would be in the slightest bit concerned as to the value of No 110 as flats. In certain circumstances, Mr Buchanan's approach may provide a means of attempting to isolate the development value of a building from the "bricks and mortar", but that would be an unrealistic approach if he were buying to develop and convert it back into a house.

95. Secondly, Mr Rainey submitted that Buchanan does not take into account the greater development potential of No 110 as against No 68. There is also considerable force this point. Mr Buchanan accepted in his supplemental report that a hypothetical purchaser of No 110 "would probably assume that Westminster would permit [No 110] to be converted back to a house" and "might well have assumed by reference to [No 100] that the maximum floor area which he could construct at [No 110] would be in the order of 10,000 sq ft". If that is so, it is necessary to put a value on that development potential *i.e.* the size to which No 110 could be developed. Mr Buchanan does not do that. All he does is place a development value on the 1,669 square footage which was added in 1872 and 1948.

96. There is a similar inconsistency in Mr Buchanan's use of the pre-planning permission gia of No 68 (5,435) as his denominator. It ignores the fact that No 68 was purchased as a development property with planning permission to convert back into a house and extend to 6,400 square feet, so that he slightly overstates the rpsf of No 68.

97. Mr Rainey also submitted that Mr Buchanan's approach was unnecessarily complicated, and dependent on too many factors, such as leasehold values, which were in issue. He also submitted that the use of 65% was fundamentally flawed because it mixed two different approaches to valuation. It applied percentages applicable to a "top down" analysis when his own analysis was not "top down".

98. There is considerable force in this submission. The Tribunal found it somewhat difficult to follow the rationale behind Mr Buchanan's 65%. Not only was much of it unsupported by any evidence at all (such as the 50% cleared site development costs and the 15% uplift for extensions to existing buildings), but the resultant percentage is applied not to the entirety of the *whole* of the *finished product value* (as in *Fattal)* but to the value of the development potential which is not the entirety value but Mr Buchanan's attempt to isolate the value of the potential development from the bricks and mortar.

99. Within that is a double deduction, because the 65% is applied to the development potential of £3,538,521 which itself is calculated after a 50% deduction relating to the 1,669 extra sizes of the flats. Both the 50% and the 65% represent development costs and risks. There is therefore an over-deduction, and a mixing of different valuation methods.

100. The nub of Mr Johnson's submissions was that Mr Hamilton's approach is flawed because it depends upon two essentially subjective assumptions. First, it must be assumed that the actual purchaser of No 68 purchased it with a prescribed size of development in mind, namely, 8,708 gia. The point which is being made is that if the actual purchaser of No 68 had in mind a development of, for example, 10,000 gia, then that would produce a rpsf of £875 and result in an unadjusted freehold value of No 110 of £9,481,500 (10,836 x £875). But that is not known, so it is unreliable to use that approach.

101. There is some force in this submission given that it is known that the post-sale planning application was for more than the 8,708 square feet actually granted but the size of the development actually applied for in August 2007 or in the developer-purchaser's mind in March 2007 is not known. However, when applying for planning permission developers frequently apply for more than they want or expect to get in order to leave them some leeway to enable them to negotiate with the planners.

102. In the view of the Tribunal, it is likely that when exchanging contracts in March 2007 the purchaser of No 68 intended to make an application for planning permission in the order of 9,000 square feet but expected to get something less because, although the size of the actual application is not known, it was reduced and resulted in an actual grant 8,708 square feet.

103. Secondly, Mr Johnson submitted that Mr Hamilton's approach required that it be assumed at the Valuation Date that the hypothetical developer would be purchasing No 110 with the intent to convert and enlarge No 110 to 10,836 gia. There is limited mileage in this point given Mr Buchanan's evidence that the hypothetical purchaser would assume that planning permission for 10,000 would be granted. This is dealt with further below, but the planning experts both agreed that permission for an even larger underground development would probably be granted but that 10,836 represented the most a developer would wish to develop. It is therefore is difficult to seriously contest 10,836 as representing what a hypothetical purchaser would expect to develop No 110 to. Also, sight must not be lost (as Mr Hamilton reminded the Tribunal) of the position of the hypothetical vendor who would wish to sell to someone who would pay to maximise the development potential and, hence, pay the highest price.

Decision - methodology

104. Once it is accepted (as both valuers did) that the hypothetical purchaser of No 110 would be a developer intending to convert to a single dwelling in the order of 10,000 square feet, the Tribunal is of the view that the approach of Mr Hamilton is both more realistic and less complicated than that of Mr Buchanan.

105. The concern of the hypothetical developer is to identify the development value of No 110 which would include its development potential *i.e.* what he could do to maximise his profit. That is consistent with the concern of the hypothetical vendor. Trying to isolate the "development potential" of the "bricks and mortar" by excluding the flats is an artificial and unreal exercise which produces the quirky result of No 110 being worth less than No 68;. ignoring the value of the potential of No 110's development; and confining the development potential to 50% to the value of the 1,699..

106. In the view of the Tribunal the appropriate approach is to derive a value from No 68 and then apply that to the optimal development of No 110 and then only adjust for differences between the two development opportunities, which adjustments are only to represent the perceived differences between the two opportunities.

107. The Tribunal adopts 8,708 square foot (£1,004 psf) as the appropriate denominator for No 68 because that represents the certainty of what planning permission was actually granted for. Whilst that was not known at the time of its purchase or at the Valuation Date that is all the information there is before the Tribunal. That conclusion would be consistent with a developer applying for more than he anticipated obtaining to provide negotiating room.

108. When considering the developable square footage of No 110, the Tribunal will also have to reach a view as to the appropriate figure to use. In the real world, that figure would be likely to be less than the actual size which the developer would apply for planning permission for: as with No 68, he would want to leave some negotiating room. However, when comparing their values he would use actual anticipated optimal size for which planning permission would be granted. Provided the Tribunal uses the actual square footage granted for No 68 and the figure which the Tribunal regards as being the likely actual for No 110, there is a consistency of approach.

Decision – value of tenants' improvements

109. In his supplemental report, Mr Hamilton says that his approach to valuation is not increased by tenants' improvements because "It matters not whether the extensions are there or not. I see the property as having potential not just to be converted back to a house but to be greatly extended too. The nature of the works I envisage being undertaken are very large and are unaffected by whether the 1872 [and 1948] extensions exist or not".

110. That evidence was not challenged in cross-examination. There was no evidence from either expert that the tenants' improvements had any intrinsic value. Their only real relevance was to add certainty – or an element of certainty – to whether planning permission would be granted to encompass those extensions: indeed, Mr Buchanan accepted that 50% of their value should be included in his Table 1 valuation (which was on the footing that tenants' improvements were excluded).

111. The Tribunal accepts the approach of Mr Hamilton. In valuing No 110, the hypothetical purchaser would focus on what could be built on site, not what actually existed on site at the Valuation Date. In so doing, the Tribunal takes into account its conclusions on the planning issues referred to below.

Planning issues

Introduction

112. There were two planning issues: first, whether planning permission would be granted to convert No 110 from six flats into a single dwelling; secondly, whether planning permission would be granted to enlarge No 110 to 10,836 broadly in line with the ongoing development of No 100.

113. Whilst those were in issue on exchange of reports, by the time the planning experts had concluded their evidence, the differences between them were more apparent than real. Had Mr Drew exchanged his report timeously and these experts met in compliance with the Directions, the Tribunal has little doubt that common ground would have been reached on all or most of their differences. As that did not occur and as no formal admissions or concessions were made, the Tribunal must consider the relevant issues and make determinations as appropriate.

Issue one: conversion to a single dwelling

Introduction

114. The first planning matter in issue is whether or not planning permission would be granted to convert No 110 from six flats into a single dwelling immediately (Mr Sharpe for the Applicant) or whether a phased approach of uniting one or more of the flats and then converting into a single dwelling would be required (Mr Drew for the Respondent).

115. The principal reasoning behind Mr Drew's evidence was that he had spoken with Westminster's senior planning officer Godfrey Woods ("Mr Woods") who indicated that it would normally be acceptable to combine up to five flats to form a single dwelling and that this could be done without planning permission

but that permission would probably be required to reduce the six flats directly into one unit without taking the intermediary step of reducing them to five flats.

116. Since there were no planning controls to prevent the amalgamation of the existing flats, it was Mr Drew's evidence that all that was required was to reduce the number of flats from six to five, and then there would be no planning problems in going from five flats to one single unit.

117. Absurd as this might seem to a lay person, Mr Drew was quite confident that there would be no issue with converting into a single unit provided it was phased. In answer to questions from the Tribunal, Mr Drew said that the amalgamation of two flats into one could be as simple as opening a doorway between the two, which would be easy, cheap and very quick given the layout of the flats within No 110. Provided that was done before any development was started, it would suffice even if no-one ever actually occupied the united units.

118. In cross-examination. Mr Drew accepted that Mr Woods was not the planning officer responsible for the area within which No 110 is located. He accepted that the relevant officer responsible for No 110 was Michael Chatten ("Mr Chatten"), but he had not been able to make contact with him. Mr Sharpe, by contrast had made contact with Mr Chatten who had indicated that there would be no material planning problem with converting No 110 directly from six units into one. Ultimately, Mr Drew more or less accepted that whichever route was taken there really was no problem in converting No 110 into a single unit.

Decision

119. The Tribunal takes the view that there really was nothing of substance between the planning experts on this issue. As Mr Johnson put it in his closing submissions, this issue more or less "fizzled out" during oral evidence. To the extent that it is necessary to do so, the Tribunal prefers the evidence of Mr Sharpe who, after all, had spoken to the correct planning officer and finds that as at the Valuation Date if applied for planning permission would be granted to convert the flats back into one single unit. Further, having inspected No 110, it was clear to the Tribunal that Mr Drew was right and that there would be no material difficulties or delays or costs in uniting two of the flats into one if (which the Tribunal does not believe) a phased approach were required.

Issue two: size of enlargement

Introduction

120. The second planning matter in issue was the size and extent of the development which would be permitted on No 110. As already noted, No 110 is an "unlisted building of merit" within a Conservation Area. It neighbours No 112 which is a Grade II Listed Building. No 108, on the other side, is not listed.

121. Both Mr Sharpe and Mr Drew cited relevant planning policy documents. Policy H3 of Westminster's Unitary Development Plan ("UDP") provides that:

> "An increase in residential floorspace can be achieved by allowing suitable extensions to existing dwellings where these do not cause environmental or amenity problems and are in keeping with the character of the building or the area".

122. Both agreed that the acceptability of alterations and extensions would be dependent on the specific scale, form and design of any proposals. UDP Policy DES 5 states that permission will be granted for development where *inter alia* it is confined to the rear of the existing building; does not visually dominate the existing building; is in scale with the existing building and its immediate surroundings; its design reflects the style and details of the existing building; and the use of external materials is consistent with that of the existing building. Policy DES 5 also indicates that permission may be refused where *inter alia* the extension occupies an excessive part of the garden ground or enclosure or involves the loss of significant gaps between buildings.

123. In assessing the application, the extent to which the development preserves or enhances the character or appearance of the St John's Wood Conservation Area (UDP Policy DES 9) and the impact of the development on the setting of No 112 as a listed building (DES 10) would also be taken into account. Practical considerations such as whether the proposal would unacceptably affect the amenity of adjacent residential occupiers through restricting sunlight and daylight, affecting privacy or allowing overlooking or feeling enclosed are also relevant.

124. In his written report, Mr Sharpe concluded that although he had not seen any actual proposals for the extension to No 110, because none existed,

> "I consider it is reasonable to conclude that a scheme proposing extension to the rear of the property and/or basement for which planning would be forthcoming could be formulated, along the lines of that approved at 100 Hamilton Terrace. This view is supported by planning permission having been granted for a number of similar extensions to other properties in Hamilton Terrace. In particular, the permission granted at 100 Hamilton Terrace".

125. With those factors in mind as well as the albeit small risks inherent in the application to convert to a single unit, Mr Sharpe concluded that 5% represented a reasonable assessment of the "planning risk". That contrasted with Mr Drew who put it at 10% if permission to go straight to one unit without phasing were sought.

126. If the development at No 100 were transposed onto No 110, it would result in a new underground sub-basement floor which would stretch forward into the front garden and about one-half of the way down the rear garden and would be offset on one (the No 108) side. There would be an above ground extension which would extend from the basement to about one-half of the way up the ground floor but would not extend to the full width of the existing building. It would extend to the approximate position of the edge of the existing terrace, say, 15'.

Underground rear development - evidence

127. In his written report, Mr Drew concluded that at sub-basement level "scope exists for an extensive subterranean development but this is subject to providing sufficient space around the numerous protected tree roots on [No 110's] boundary".

128. During cross-examination, Mr Drew accepted that planning permission would be granted for subterranean development of as virtually as much of the garden as was wanted, even more than that suggested by Mr Sharpe: subject to desirability, he said, "you can go back as far as you want". In his view, the size indicated by Mr Sharpe represented as much as any reasonable developer would want because there would be no purpose of having a larger extension.

129. In short, therefore, it was common ground that No 110 could be extended at sub-basement level to the same size as No 100 except that it might be a different shape: it was not the size or the depth but the width of the development which Mr Drew challenged. The only restriction, so far as Mr Drew was concerned, therefore, was the need to preserve trees. It was common ground that there were no relevant tree preservation orders in relation to any trees in or near the rear garden.

130. In his cross-examination, Mr Sharpe accepted that even where there was no tree preservation order in place, it would be necessary to respect the roots of trees in adjoining properties and that precisely how that was done would depend upon the advice of an arboriculturist, although he accepted that building within one to two metres of the roots would not usually be permitted.

131. It was, however, Mr Sharpe's evidence that the existence of trees on or near the boundary would pose no obstacle because there are no trees in the rear garden to No 110 and there is a gap between the existing boundary walls and No 110's flank walls of about 1½ to 2 metres; that, as with No 100, the whole rear extension would be offset from the flank walls; and that the extension would only go about half way down the garden.

132. During cross-examination, Mr Drew was taken through various aerial photographs of the rear garden to No 110 and its neighbours which show that the rear garden is untreed. Despite the breadth of his conclusion cited above, his evidence was that there was only one tree in particular which would restrict the development, which was a large tree on or near the boundary between Nos 110 and 112.

133. The photographs were unclear, and there was no plan to identify the precise location of this tree. Neither was there any arboricultural evidence despite the prominence which Mr Drew attached to this tree in his oral evidence. The parties therefore left it to the Tribunal to reach its own conclusions on the available evidence after site inspection.

134. The Tribunal inspected the whole of the rear garden and also took some approximate measurements, and makes the following findings. There is a gap of approximately 5½' between the flank wall of No 110 and the boundary wall to No 108 to the south which has a brick gate at the front and paved area in between. There are no trees along any of this boundary which would pose any obstacles to development.

135. Between the flank wall of No 110 and the boundary wall to No 112 to the north there is a basement and ground floor extension which is approximately 5½' wide and, according to Mr Belcher, was added in 1872. Any new sub-basement

would, or if necessary could, follow the original flank wall of No 110, not the 1872 flank wall.

136. The tree to which Mr Drew referred is a maple tree within No 112's garden which is roughly in line with the end of the rear terrace to No 110 (about 15' from its rear flank wall and in line with the rear above-ground extension) and approximately 5'-6' from No 112's boundary wall which would be a further 5½' from the new sub-basement extension making a total distance of 10' or so.

137. There was evidence of two old tree stumps close to the boundary wall to No 112 but further down the garden. Neither was attached to any other tree so are irrelevant. There is a relatively substantial tree at the very back of the garden No 108, but this is irrelevant as the development would not extend that far back.

138. What flows from the above is that if the sub-basement were extended along the same plane as the original flank wall of No 110 it would be approximately 10' away from the trunk of the maple tree on the other side of the boundary wall to No 112. The effect of Mr Sharpe's evidence was that around 2 metres (8') distance from the root ball would be required. There was no evidence whether the actual 10' from the maple tree trunk (as distinct from its root ball) would be sufficient, or whether the presence of the existing boundary wall would alter protection requirements.

Underground rear development - decision

139. The conclusion the Tribunal has reached is that the existence of the maple tree would pose no material impediment to the size of the potential development of the new sub-basement either because it is too far away or because there is a relatively easy design solution which would result in the sub-basement extending further down the garden but being offset sufficiently from the existing flank wall, and in a manner similar to No 110's, to preserve the maple tree.

Above ground rear development - evidence

140. Mr Sharpe justified his conclusion that permission would be granted for the above ground rear extension by referring to above ground developments of a similar nature and scale that have been granted in other properties along Hamilton Terrace including significant extensions to listed buildings at number 92 and 94 and the erection of two dwellings in the rear garden of No 112 (that is, numbers 2A and 2B Abercorn Place); to the fact that acceptable design solutions had been found for those extensions; that in respect of No 100 the Planning Committee noted that

> "There is no great uniformity in the buildings along Hamilton Terrace as may of the houses have been significantly altered and extended particularly at the rear".

He also referred to the importance given to family dwellings as defining the character of the area by St John's Wood Conservation Area Audit.

141. In his written report, Mr Drew concluded that the "amount of development that is likely to be achieved at [basement] and above is limited. At [basement and ground floor] it is estimated that this would be no more then one quarter of the

existing [basement] floor space. At [ground] floor the impact of and increased envelope of [No 110] on the adjoining properties is likely to be so significant that it may not be granted planning permission"[1].

142. During cross-examination, Mr Drew modified his position to accepting that planning permission would be granted at basement and ground floor levels but that it would be restricted to one-half of the width of the existing building and confined to the south (No 108) side due to the impact on No 112 and also the rear building line of Hamilton Terrace.

143. Mr Drew laid great emphasis on the affect on No 112 and that a full width extension would significantly affect it. In cross-examination, he accepted that it does not follow from the fact that No 110 would be developed that it would adversely affect No 112. What was important, in his view, was that the development was sensitively designed and limited to a small development.

144. He also drew attention to the affect on numbers 2A and 2B Abercorn Place which had been built in the rear garden of No 112. Neither of those properties were listed, and both were relatively modern. Although neither property is within the St John's Wood Plan, it was in the draft which existed at the Valuation Date. He accepted in cross-examination, that planning permission had been granted to No 100 even though, like No 112, it was an unlisted building of merit but pointed out that that permission had been granted before certain planning guidelines had been issued.

145. It was also his evidence that the development would be restricted by what he referred to as the current or established rear building line at Hamilton Terrace. The aerial photographs of Hamilton Terrace were put to Mr Drew, who explained that whereas there were rear extensions to the properties on either side of No 100 (numbers 98 and 102), the same could not be said in relation to No 110 as there was no rear extension to the rear of No 112 and only a half-width rear extension to No 108. It was therefore his view that there would only be permission to extend the south (No 108) side of No 110.

146. When Mr Sharpe was cross-examined about Mr Drew's view that development would be confined to the southern half, Mr Sharpe said that the question was the degree of harm caused to No 112. It remained his view that provided the development was carried out sensitively, planning permission would be granted. However, if development was to be restricted, he would agree that it would be confined to about one-quarter of the existing floor space.

Above ground rear development - decision

147. The Tribunal prefers the evidence of Mr Sharpe for the following reasons. On a general level, it found Mr Drew to be a less impressive witness than Mr Sharpe. It will be apparent from the forgoing that in many key respects Mr Drew overstated his conclusions in his written reports only to abandon or substantially retract those conclusions in oral evidence. Given the apparent importance of tree preservation, it is surprising that he could give the Tribunal

[1] The bracketed alterations reflect that Mr Drew referred to the basement as the ground floor and the ground floor as the first floor.

no real assistance on the location of the maple tree. Overall, the Tribunal was left with the impression that Mr Drew had not carried out a thorough and objective analysis of the planning position and therefore did not provide wholly impartial evidence to the Tribunal.

148. More specifically, the Tribunal was unable to accept Mr Drew's evidence in relation to the rear building line. Whilst there no doubt was an established rear building line when the properties on this part of Hamilton Terrace were first built, it is clear from the aerial photographs provided that such had long disappeared as virtually every property on this side of Hamilton Terrace has had or is having a rear extension.

149. There was an inconsistency of approach in Mr Drew's evidence. If there was an established rear building line, it would follow that *no* rear development should be permitted, but Mr Drew accepted that a half-width rear development would be permitted. That half-width, in his view, would be on the south (No 108) side of the property which, if his evidence is right, would sit oddly with the rear extension to No 108 which is also on the south side of its plot so that the gap between it and the rear extension to No 110 would be overshadowed – yet Mr Drew did not regard this as being of any planning significance.

150. On analysis, therefore, only Nos 110 and 112 share a similar rear building line, but even here there has been a small extension to the rear of No 112 in addition to the erection of Nos 2A and 2B Abercorn Place.

151. The only ground of any substance, in the view of the Tribunal, was the potential impact upon No 112. However, having considered the photographs provided and also having inspected the site, it is the view of the Tribunal that this is considerably overstated. The rear extension will, if No 100 is transposed onto No 110, be slightly offset from the two flank walls so that, on the north side, there would be an additional two foot or so, in addition to the existing 5½' gap between the flank wall and the boundary wall and also the distance between that wall and the building on No 112.

152. In conclusion: there is little doubt that developments of the scale and nature carried out to No 100 will, provided sensitively designed, be permitted at No 110 by Westminster – and there is no reason to suppose that the a sympathetic development could not be achieved as there was evidence that Westminster has a constructive and co-operative approach to planning applications with an effective pre-application consultation process.

Summary of Tribunal's decision on planning issues

153. In summary, the Tribunal finds that as at the Valuation Date the hypothetical purchaser would have purchased on the footing that planning permission similar in scope and nature to that granted for No 100 would be granted for 110. No 110 is therefore to be assessed on the footing of a gia of 10,836 square feet. Applying this area to the rate per foot derived from the sale of 68 (£1,004) gives pre adjustment value for No 110 of £10,879,344

Planning and development costs and risk

Introduction

154. Both parties having agreed that No 68 was sold as a development property, it follows that certain planning and development costs and risks were implicit within its sale price. Where the parties disagreed was the nature and extent of any further adjustments to take into account of any differences between No 68 and No 110.

155. It was the Applicant's case that if the post-sale planning gia of No 68 is applied, no further adjustments were required because (apart from absence of off-street parking) all costs and risks associated with the development of No 110 were already reflected in the sale price of No 68. It was only if the pre-sale planning gia of No 68 was used that any planning risk (5%) should be deducted.

156. It was the Respondent's case that the planning and development costs and risks of No 110 were so much greater than No 68's that an overall deduction of 65% should be made. The 65% is slightly misleading because in Mr Buchanan's calculation it is applied at a later stage than Mr Hamilton's.

Mr Hamilton's evidence

157. Having reached his freehold vacant possession value of £12,750,000, Mr Hamilton recognised that the development of No 110 would be more expensive than No 68 as more excavation work and piling would be required for which he allowed a deduction of £250,000 reducing his valuation to £12,500,000. In cross-examination, Mr Buchanan said that he (like Mr Hamilton) had not had the excavation costs valued, but did felt that £250,000 was a little light and should be higher. Given that the Tribunal has adopted the post-sale planning gia of No 68, it is not necessary to consider his views as to the 5% planning risk because, on his evidence, all planning risk is implicit within that value.

Mr Buchanan's evidence

158. Mr Buchanan, however, deducted 65% for what he termed "planning risk". In fact, that was not confined to planning risk *per se* but was intended to reflect his view of appropriate deductions to take into account the fact that No 68 is a different property and adjustments must be made to reflect those differences.

159. In his supplemental report, Mr Buchanan explained that, in addition to planning risk, his 65% "includes not only the factors he has taken into consideration but also the risks/costs associated with (1) obtaining consent under the Scheme of Management, (2) the preparation of Feasibility (*sic*) studies and time element as well as (3) the additional cost factors referred to in my original report related to the development of an existing building as opposed to a cleared site. Mr Hamilton does not appear to have considered these aspects which would suggest a much higher discount than 5%" (numbers added).

160. In identifying those factors, Mr Buchanan referred the Tribunal to paragraph 48 of *Fattal.* He said that he also took into account the fact that No 68 had already got planning permission to convert back into to a house whereas No 110 had not at the Valuation Date.

161. The key difference between No 68 and No 110 was that 40% of the latter's development would be underground as against only 18.75% of No 68. This would add to the uncertainties, costs and difficulties of having to work around

the original house which would require additional strengthening of the existing foundations, higher architects and surveyors fees. Such a large underground extension had not been done before in Hamilton Terrace, and a developer might well decide not to develop to its full extent. It was still not known what No 100 would sell for as its development had not yet been completed and it was still on the market.

Mr Hamilton's response

162. In cross examination, Mr Hamilton dismissed Mr Buchanan's three factors because they were already reflected in the value of No 68. Specifically, he dismissed (1) because No 68 would have to obtain the same Scheme consent. The costs and time of (2) were in broad terms the same as for No 68. With regard to (3), this was not a new-build, so the potential development costs of No 110 were the same as No 68 except for the sub-basement extension at No 110, which would cost about an extra £250,000 which he had already deducted from his figures. No further adjustments were therefore required.

163. As a generality, Mr Hamilton accepted that underground property was worth less than space at and above ground floor but that depended on the circumstances. He did not however accept as a general proposition that basement and sub-basement space was less desirable than above ground space because it depended upon its use.

164. Mr Hamilton was taken to his written evidence where he referred to 38/40 Avenue Road which he had rejected as a helpful comparable because "much of the development will be below ground level". Its pre-sale planning permission envisaged below ground development of 43.34% of the gia compared with 61.74% of the post-sale gia. The latter was considerably in excess of No 100's 40%, but, Mr Hamilton said, "the additional costs and nature of the scheme compared to what is happening at [No 100] make 38/40 a less helpful comparable".

Other evidence

165. Mr Sharpe gave evidence as what was involved in obtaining planning permission and Mr Hamilton and Mr Buchanan also gave evidence some evidence as to their timescales. There was little of substance between them, and the Tribunal summarises their evidence as follows:

(a) Architects, engineers, landscape architects, arboriculturists and expert planning advice would be required as well as a noise survey. They would each cost around £30-40,000 each, totalling up to £200,000.

(b) The pre-planning process is likely to take between three and six months. Once permission is applied for, the decision will take between eight and twelve weeks. In total, therefore, the permission should be granted within nine months of purchase and possibly up to one year if the application proved contentious.

(c) Essentially the same documents would be used to obtain Scheme approval, although an extra £5,000 might have to be spent on additional documentation.

(d) Scheme approval would be for development to start within one year of grant and be completed within two years thereafter. The John Lyon's Trust was generally co-operative, and would be amenable to extensions

of time. They were unlikely to object to the proposal – and had approved of No 100's development.

(e) The development of No 110 would take a long time and cost a lot of money, although no-one had any idea what the cost would be or how long the development would take. The development of No 100 was still some way from completion more than three years after its purchase in, it was thought, May 2005.

(f) Taking into account the planning process, Scheme approval and build-out, the Tribunal takes the view that completion of the redevelopment of No 100 was likely to take between three and four years from purchase (Valuation Date) and possibly longer.

Discussion

166. Mr Rainey submitted that if any sums over and above the extra excavation costs were allowed there would be "double deduction" because all of those risks were contained within No 68's sale price. This was on the footing that the post-sale planning consent gia of No 68 was used, which would include the 5% planning risk referred to above.

167. If the proposed planning permission and development of No 110 were exactly the same as No 68, there would be considerable force in that submission and also to Mr Hamilton's evidence.

168. However, that is not correct if, as Mr Buchanan said in evidence, the development of No 110 is of a completely different order of magnitude, being more costly and riskier. Mr Johnson submitted that the sheer size and complexity of No 110's underground development makes it much more expensive and riskier than No 68: whatever development costs and risks were factored into the price of No 68 they are not enough.

169. The details of the planning permission of No 68 and the development of No 100 have already been set out above. The key differences are as follows:

(a) No 100 is having a whole new sub-basement extending past both the front and rear walls which will account for 40% of the final gia, whereas 68 is "merely" to have an albeit substantial rear extension at slightly lower than the existing basement level which would account for 18.75% of it final gia, most of which is not underneath the existing building;

(b) During construction, the whole of the interior, floors, walls and everything, to No 100 have been removed whereas the approved plans to No 68 indicate that the original floors will remain *in situ*, and only the bay extension floors will need to be removed to realign them with the original floor levels;

(c) The whole of the rear wall of No 100 has been removed whereas the approved plans to No 68 show that most of the rear wall will be retained and unaltered.

170. 38/40 Avenue Road is relevant here. This is the comparable rejected by Mr Hamilton because its development was of a different order of magnitude to that of No 100. Its proposed plans show excavation of a completely new sub-basement floor under the whole of the existing basement of the building and at

an even deeper level than that being carried out at No 100 and proposed at No 110 (unlike No 110,s 38/40's existing basement is fully underground).

171. If the post-sale planning plans for No 68 are compared with No 100's, it is equally plain that the development of No 100 (and thence No 110) is of a quite different order of magnitude. That is consistent with the aerial photographs supplied, the photograph referred to above provided by Mr Hamilton and also the Tribunal's site visit. If No 68 is a scale one development, No 100/110 is scale two and 38/40 scale three.

172. Whilst Mr Hamilton was no doubt right to reject 38/40 as a helpful comparable for this reason, he was, in the view of the Tribunal, somewhat unreal and lacking in objectivity in treating the scope of the development of No 100/110 as being on a par with No 68.

173. If that is so, what if any further adjustments to the sale price of No 68 are required to make it comparable with No 110? The scale of the development is unlikely to substantially affect Mr Buchanan's point (1) (Scheme approval). The expert evidence was to the effect that once planning permission is obtained, the same documents, broadly speaking, are submitted to the Scheme managers. There may be some minor additional documents, but nothing of substance. Perhaps £5,000 or so might be added to costs.

174. The difference in the scale of the development is likely to have a material affect on (2) (feasibility studies) because the nature and scope of professional services will be greater than that required for No 68 even though the range of professional disciplines involved might be the same: in short, they will have to do a lot more work on No 110 than No 68 because it is more complex.

175. Moving on to Mr Buchanan's point (3), the £250,000 deducted by Mr Hamilton (disputed as being too low by Mr Buchanan) reflected only the extra excavation work and piling costs, not the additional and more complex job of inserting a completely new underground floor underneath an existing building in a Conservation Area and the associated professional fees and contingencies. In the view of the Tribunal, it is inconceivable that a developer would view the costs and complexities involved in developing No 68 and No 110 as being otherwise broadly the same.

176. Unfortunately, Mr Buchanan did not give any evidence as to how the extra development costs might be quantified or taken into account if Mr Hamilton's approach were adopted. He did not attempt to relate this element to the overall freehold value, only to the development value element His 65% can therefore not be applied to the methodology which the Tribunal has adopted. Further, as already discussed and determined by the Tribunal, the calculation of the 65% is somewhat confused, and does not provide much insight as it mixes different methods of valuation.

177. So far as underground property being less valuable than above ground property, the Tribunal is unconvinced on this point either way. There are many instances where a property, such as a basement flat, is less valuable than property at a higher level perhaps with better light and views. However, this is not that type of property. The only reason for underground development is to provide sports and similar facilities to the owner-occupiers.

178. No comparable evidence to justify a difference in value was provided. In the view of the Tribunal, underground space for this type of property is only likely to be developed if it is perceived that it would improve the value of the development in the eyes of the end-user. It is not possible to distinguish between its value and that of any upper floors. The costs of developing a basement will be higher, but those are reflected in Mr Buchanan's point (3) to the extent that they are not already factored into the sale price of No 68.

Decision – planning risk

179. The Tribunal has already determined that it will adopt the post-planning gia of No 68 which includes planning risks implicit within No 68. The question here is whether there are any different planning risks relating to No 110 which are not already included within No 68's rpsf sufficient to require any additional adjustments to be made to the sale price of No 68.

180. The Tribunal identifies three different planning risks applicable to No 110: (i) converting from flats back into a single dwelling; (ii) extending the gia from the original 4,897 square feet to the existing 6,566 square feet; and (iii) extending the existing square fee to 10,836 square feet.

181. *Risk (i)*: Unlike No 110, No 68 already had planning permission to convert back to a single dwelling so did not reflect the risk that planning permission might not be granted. However, given the planning experts' consensus is that there would be no real difficulty in getting this planning permission, there remains a risk, albeit relatively negligible.

182. *Risk (ii)*: No 68 already had planning permission to increase its size from 5,435 to 6,400. However, there is no real planning risk that permission would not be granted to increase the size of No 110 from 4,897 to 6,566 because that has been its size since 1872 and 1948. No adjustment is required.

183. *Risk (iii)*: Whereas the rpsf of No 68 includes the planning risk of increasing the size to 8,708 it does not include any planning risk of increasing the size by an additional 2,000 square feet or so to 10,836. Whilst, as the Tribunal has already determined, planning permission would most likely be granted for a development of that size, it does not follow that a developer would regard it as being risk free.

184. The more difficult question is how a developer would quantify the difference in perception between Nos 68 and 110. It would be difficult to apply a percentage. Rather, the Tribunal takes the view that the hypothetical developer would reflect the differences by making a deduction to reflect the additional costs and complexities of obtaining planning permission inherent in the potential development of No 110 being of a quite different order to that of No 68.

185. Extra and more sophisticated plans, drawings and calculations and discussions and negotiations with Westminster in the pre-planning and post-planning application stages would be required to obtaining planning permission. There would be some extra costs, perhaps £5,000, required to obtain Scheme approval. Based on the albeit limited evidence of Mr Sharpe and Mr Drew and also on its own experience, the Tribunal concludes that an appropriate adjustment would be to a deduction of £100,000.

Decision - development costs and risk

186. The Tribunal prefers the evidence of Mr Buchanan that the scale and complexity of the potential development of No 110 is such that its development costs and risks will be higher than No 68's so that a further adjustment to the rpsf of No 68 is required.

187. The question here is what additional adjustment to the value of No 110 based on No 68's rpsf should be made to reflect those additional costs and risks. There is no direct evidence of how they are to be quantified

188. The Tribunal is of the view that the hypothetical purchaser would apply a percentage deduction of 10% the Tribunal's "top line" figure of £10,879,344, which equates to £1,087,934. This is essentially a question of judgment, based on expertise.

189. The factors pointing to this conclusion are as follows. First, this is a "scale 2" development when compared to No 68 which is a "scale 1" development, as set out above. Secondly, Mr Hamilton's £250,000 is far too low, underestimating as it does the difference in scale between Nos 68's and 110's developments, and it only accounts for digging a larger hole and additional piling.

190. Thirdly, Mr Buchanan's deduction of £2,300,038 n is far too high. See my comments on 187 above.

191. Fourthly, some support is provided by the Lands Tribunal in *Fattal*. There, the Lands Tribunal appeared to indicate that the difference in the development value between a cleared and an uncleared site was 15%, which would indicate that that was the difference between the respective costs of development. However, that figure can not be directly applied in this case because some development costs and risks are already included within No 68.

192. Given that this Tribunal is only concerned with the *extra* development costs and risks *over and above* those already included within No 68, and taking all of the above factors into account, 10% would appear to be an appropriate sum to deduct from the gross development value .

Indexation

Introduction

193. There are two issues for the determination of the Tribunal: the period of indexation (four or eight months); and the amount of indexation (super prime or other).

Issue one: indexation from March or July 2007

194. The only evidence the Tribunal heard as to whether the sale price of No 68 should be adjusted for time from exchange of contracts (March 2007) or completion four months later (July 2007) was from Mr Buchanan, who said that he usually used the completion date because the purchaser would have the use of the completion monies for four months longer than the usual one month whereas if he completed immediately he would expect to pay a lower price.

195. In the view of the Tribunal, indexation should start in March 2007 because that is when the deal was struck and the price agreed. There was no evidence as to what the terms of the deal were, and whether interest was payable on the

completion monies (which would be unusual) or not. There was no evidence that the price struck in March 2007 sought to anticipate and reflect what might be the July 2007 price – which, of course, would be unusual. Equally, there was no evidence that the price was high or low for March or July 2007. The Tribunal therefore infers that the price represented what the parties believed to be the market price in March 2007 which, of course, is how deals are usually struck.

Issue two: super prime or not

Introduction

196. It was the Applicant's case that sale price of No 68 should be uplifted by 23% from March 2007 to the Valuation Date in accordance with the Knight Frank Super Prime Index ("the Knight Frank Index") whereas it was the Respondent's case that it should be uplifted by 4.71% in accordance with the Savills Prime Central London Houses Index ("Savills PCL Index").

197. It was common ground between the parties that the Tribunal should focus on the state of the market at the Valuation Date, so that what has happened subsequently is irrelevant to its consideration. Mr Hamilton produced a considerable amount of market research and evidence relating to the post-November 2007 period: the Tribunal excludes this from its mind.

Mr Hamilton's evidence

198. Whilst he usually adopted the Savills PCL Index, it was Mr Hamilton's evidence that No 68 constituted "super prime" residential property and that the Knight Frank Super Prime Index was applicable. He accepted that this was a relatively new index and was not aware of it having been presented in evidence to or indeed applied by any Leasehold Valuation Tribunal.

199. The Knight Frank Super Prime Index relied on by Mr Hamilton is a somewhat crude bar chart which shows the annual growth for the year to November 2007 but is not accurately calibrated, in contrast with the Savills PCL Index which is clearly calibrated on a monthly basis. There are different bars for different price brackets. There is no bar for £10m+ properties. The bar relied on by Mr Hamilton is the one for £6m+ properties, the highest bracket shown. It shows that prices in that bracket increased by about 10% points faster than properties in any other bracket.

200. Mr Hamilton was a little unclear about what he meant by "super prime" property. He said that it was "£5m+ or more recently more than £10m". That gave the impression that what falls into the "super prime" bracket might have shifted. After some pressing by the Tribunal, he said that what he meant by "super prime" properties were those falling within the £10m+ bracket which, importantly, was irrespective of whether or not the property had already been converted into a house or was yet to be converted into a house, the £10m price tag being the entry threshold. In cross-examination, this was somewhat retracted. He said "I adopt the Savills definition", from which it would follow that a property was super prime if it was £5m+.

201. Mr Hamilton was asked in cross-examination about the composition of the Knight Frank Index. It was put to him that it comprised the finished, not the

unfinished, product so that it was wrong to apply it to No 68. He replied that "I do not think it is wrong to call it super prime – if the finished product increases in value then the unfinished product goes up". He agreed that there was a lot to do to convert the unfinished product into a finished product. That echoed what he had said in examination in chief: "The fact that it is driven by people who want the finished product has an effect on the unfinished product".

202. Mr Hamilton accepted that growth varied during the year, but asserted that it was simply wrong to use the Savills PCL Index. He referred the Tribunal to a graph produced by Savills Research which depicts the movement in prices in three price brackets (£1-2m; £2-5m; £5m+) by graphs set against a bar chart showing the movement of all price brackets from January 2002 to September 2007 and beyond ("the Savills Graph"). The Tribunal was told that these figures were produced as at the middle of the last month of each quarter (*i.e.* the middle of March and so on).

203. By Mr Hamilton's calculations, the Savills Super Prime Index recorded in the Savills Graph shows the following percentage increases in £5m+ properties within each of the following quarters:

Jan – March 07	14.25%
April – June 07	13.75%
July – Sept 07	8.00%
Oct – Dec 07	4.00%

That would indicate an increase of 25.75% for the last three quarters of 2007, which is not dissimilar from the 23% contended for by Mr Hamilton.

204. The Savills Graphs reveal the following trends:

(a) In broad terms, all three brackets (£1-2m, £2-5m and £5m+) followed the same trend from 2002 to the Valuation Date, which included periods of negative growth and flat, or near flat, growth, in all three brackets;

(b) There were periods when the lower bracket (£1-2m) increased at a higher rate than the other two brackets;

(c) There were periods when the middle bracket (£3-4m) increased at a higher rate than the other two brackets;

(d) From March 2006 to just September 2007 the growth of the super prime bracket (£5m+) far exceeded that of the other two brackets;

(e) During that period, the growth in the super prime bracket was vertiginous but appeared to have peaked in March 2007, which was a quarter before the other two brackets peaked in June 200: the super prime curve was therefore ahead of the other two curves;

(f) The heady rates of increase of super prime property had dropped dramatically from quarterly increases of 14.25% to the middle of March 2007 to 4% to the middle of December 2007;

(g) Growth in the super prime bracket fell slightly behind that of the middle bracket in the quarter to the middle of September 2007, but was the same as the middle bracket in the middle of December 2007.

205. In cross-examination, it was put to Mr Hamilton that when taken together the Knight Frank and Savills Super Prime Indices show that the market was by November 2007 cooling, the "credit crunch" having commenced in August or September 2007 with the collapse of Northern Rock. Mr Hamilton accepted that the rate of growth was declining, but said that the full impact of the credit crunch had not yet hit home and purchasers of properties in this bracket where still relatively optimistic.

206. Much of Mr Hamilton's evidence consisted of quotations from research information produced by various respected estate agents (Savills, Knight Frank and Cluttons) which described their view of the state of the market, in varying degrees of optimism as to the future outlook.

207. For example, in their September 2007 News Release, Knight Frank reported that:

> "The Knight Frank Prime Central London index reveals that the uncertainty in the financial markets during August has had limited immediate impact on the prime central London residential market"

and that they anticipated

> "that the price of prime property in central London will rise by 10% through 2008. Growth will be led by the super prime market (£5million+) and by the sub £1 million market, where there is a degree of "catch up" beginning to take place".

208. On 24th October 2007, Savills published its autumn Residential Property Focus in which it forecast that

> "In 2008 we expect the froth to come off the prime markets with better parity between demand and supply. The prime markets will nevertheless continue to outperform the mainstream market, particularly in London at the very top end, where overseas buyers will continue to invest".

209. In November 2007, Cluttons published its Residential Property Forecast and commented:

> "In late-2007 the credit crisis, which in truth has been brewing for some time but was triggered by sub-prime mortgage problems in the US, is casting uncertainty over several western economies and the UK and US housing markets in particular.
>
> "We believe that the most likely outcome will be a marked slowdown in the UK economy in 2008 driven by restricted and more expensive credit, but not a more protracted credit crunch. Even so we expect this to have a significant impact on UK and London housing with some price falls likely early next year.
>
> "... We 2008 as a whole we expect close to zero house price growth in London and the UK but expect both economies to recover during 2009.
>
> "...We expect Central London and Greater London house price growth of around 0% in 2008. House prices in Greater London are projected

to rise by 6-7% pa during 2008-2012 but we expect Central London house prices to rise by 8-9%.

"... Prices could easily fall during the early part of 2008 but may rise later in the year as the worst of the credit crisis is over and consumer confidence returns a little.

210. Mr Hamilton was asked whether his evidence was based on that research or from his own experience or expertise. He said: "I am not in the market as an estate agent and therefore can not give that evidence... I do not carry out valuations for any purpose other than enfranchisement. I do not do not carry out valuations for banks or building societies. I only deal with super prime properties for enfranchisement" principally within the Eyre Estate and St John's Wood. He went on to say that this did not put him at a disadvantage as to what the hypothetical purchaser would do or pay because "I have seen what they pay for this type of property".

Mr Buchanan's evidence

211. It was the evidence of Mr Buchanan that No 68 (and No 110) was not a "super prime" property because it was a development property but, once completed, would be. The "super prime" sector of the market is entirely driven by buyers who require immediate occupation and do not have to spend time making them ready for occupation which sometime include a substantial part of the contents as well as the fixtures and fittings. This market had in recent years been dominated by properties where the refurbishment and renovation works have been carried out prior to sale.

212. In cross-examination, Mr Buchanan accepted that the "super prime" bracket would include properties purchased "off plan" because it is the vendor-developer, not the purchaser, who is to complete the refurbishment: the buyer is nonetheless buying a finished, ready to occupy product. He also accepted that there is a relationship between the finished super prime market and unfinished properties which are ripe for development into what will be sold as finished super prime properties.

213. Mr Buchanan went on to say in cross-examination that a development site does not increase in value as much as the finished super prime market because of heightened risks. Whilst he had used the Savills PCL Index, which did not include development properties, he had applied its percentage growth because there is a relationship with the finished product market, but that they do not both go up and down at the same rate as there is a time lag.

214. Mr Buchanan accepted that the Knight Frank Index, perhaps ironically produced by his own firm, shows an annual growth of 35% to November 2007 but it was his evidence that the bulk of the growth had taken place in the first six months of the year (November 2006 to April 2007), so that it was wrong to simply apportion that percentage growth indiscriminately across the year: the Savills PCL Index showed growth of 15.5% for the year to November 2007, 12% points of which had occurred in the first six months of the year.

215. It was his evidence that the market had peaked by November 2007 and that it was not clear what would happen, although he accepted that the super prime

market was holding up. "Any developer", he said, "would not take the view that the market would rise but would take a more pessimistic view that the market would fall". He carried out valuations for banks, building societies and developers as well as enfranchisement valuations although he did not actually buy and sell properties himself.

Composition of indices relied upon

216. Mr Hamilton did not deal with the composition of any of the indices in his evidence-in-chief. In cross-examination, he said that he did not known whether the Savills PCL Index included any super prime property, and presumed that the Knight Frank Index was provided by their various offices and likewise with the Savills Super Prime Index.

217. In his cross-examination, Mr Buchanan said that the Savills PCL Index was readily accepted and applied by all valuers because it was well-established and the only index of its kind available. The Savills PCL Index is produced from a basket of notional houses ready for occupation which are valued periodically by various Savills offices within the relevant areas which are then collated into the various regional indices which make up the Savills PCL Index. It was his evidence that the Savills PCL Index includes some super prime properties *i.e.* properties ready for occupation – what he sometimes termed as "ready to wear" – worth £5m+.

218. By contrast, Mr Buchanan said that the Savills Super Prime Index, recorded in the Savills Graphs referred to above, is relatively new, is not well-established and also is not the only one available. This Index is produced in a similar manner to the Savills PCL Index: there is a basket of notional properties which are periodically valued by Savills' offices within the relevant area and then collated by Savills Research to form the Index.

219. It was Mr Buchanan's evidence that the Knight Frank Super Prime Index is produced in a similar way. It was not clear whether either of the super prime Indices included houses as well as flats, or whether they were only houses, but it is inferred that they would be predominately houses given the price tag.

Discussion

220. Given that both experts sought to mechanistically apply their respective Indices to adjust the price of No 68 for time, the first key question is how those Indices are compiled. Given the importance of the Knight Frank Super Prime Index to his evidence, it is surprising that Mr Hamilton could provide no assistance as to its composition or as to whether any super prime properties were included within the Savills PCL Index. The Tribunal found his evidence rather muddled in this respect, specifically, he was unclear about what constituted a "super prime" property and just assumed that if No 68 was "super prime" then it was within the Knight Frank Super Prime Index.

221. The Tribunal accepts the evidence of Mr Buchanan that the Knight Frank Super Prime Index is, like the Savills PCL and Super Prime Indices, compiled from a basket of notional *completed* properties ready for occupation which are valued at regular intervals. There was no evidence as to the valuations assumptions which are made in respect of any of those Indices, but one of the usual

assumptions is that the notional properties are in good condition. The valuations experts are usually active in the market. The Indices therefore avoid the distortions of a transaction based index caused by a varying mix of type, condition and location of properties sold and possibly special purchasers and any value included in the sale for alteration, conversion, extension or redevelopment.

222. Given that it was common ground between Mr Hamilton and Mr Buchanan that No 68 (and No 110) was a development property ripe for conversion and development into property to be sold in the "super prime" market, it follows that it did not fit into either Index the Knight Frank Super Prime Index of the Savills PCL Index. It is therefore not necessary for the Tribunal to determine whether or not No 68 could properly be called "super prime" but, if it had to, the Tribunal would prefer the evidence of Mr Buchanan because it found Mr Hamilton's evidence confused and Mr Buchanan's is consistent with the way in which that phrase is used in the Indices and also in the research papers referred to. It is also consistent with how residential markets generally operate: they deal in "finished products" not development sites.

223. If none of the Indices relied upon by either expert apply to No 68, how is its value to be adjusted for time? In this context, the Tribunal accepts the evidence of both experts that there was a relationship between the development market and the "finished product" market. Indeed, as cross-examination of both experts developed, it appeared to the Tribunal that there was no real difference of substance between them: there is a relationship between the unfinished and finished product market, but the latter is not determinative of the former, which is precisely what one would expect. Unfortunately, both experts were so wedded to their respective Indices that they did not explore how that relationship worked in practice or provide any evidence relating thereto..

224. The Tribunal therefore approaches this part of the valuation exercise as being to determine the extent to which the development market rose between March and November 2007. During the course of both Counsel's submissions, the Tribunal invited Counsel to consider that its increase was probably somewhere between the Knight Frank and Savills Super Prime Indices and the Savills PCL Index.

225. Mr Johnson made no specific submissions, but appeared to accept that it was open to the Tribunal to do so. Mr Rainey, by contrast, submitted it was not open to the Tribunal to do so as it had to choose between the two Indices contended for. He referred the Tribunal to *Arrowdell Limited v Coniston Court (North) Hove Limited* LRA/72/2005 where the Lands Tribunal was considering and appeal from the LVT which had rejected the evidence of both experts and used it's a decision based on their own knowledge and experience. In paragraph 23, it was said:

> "... It is entirely appropriate that, as an expert tribunal, an LVT should use its own knowledge and experience to test, and if necessary reject, evidence that is before it. But there are three inescapable requirements. Firstly, as a tribunal deciding issues between the parties, it must reach its decision on the basis of evidence that is before it. Secondly, it must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. Thirdly, it must give reasons for its decision. In the present case the

tribunal rejected the evidence of both experts on relativity, and it was entitled to do this provided its reasons for doing so were explained. But in basing its decision on 'its own knowledge and experience, particularly in relation to relativities which have been agreed between parties or their valuers in other similar cases' it was in error because those agreements on relativity had not been identified nor had the parties had the opportunity to comment on them. As expressed, the decision contravened the second requirement... As for the third requirement, reasons that state that the decision was based on no evidence or on evidence that was that was not disclosed to the parties are adequate in one sense: that they enable the invalidity of the decision to be established. But to support a valid decision the reasons must enable the parties to understand why it was that the tribunal reached the conclusion that it did rather than some other conclusion, so as to show that the conclusion was one to which the tribunal was entitled to come on the basis of the evidence before it."

226. If Mr Rainey is correct, it would follow that the Tribunal would have no alternative but to adopt one of two Indices which, on the evidence, did not directly apply to No 68. That would be a stark choice, which in the view of the Tribunal would be perverse and result in a decision not only not based on the evidence but divorced from reality. Whilst its decision must be evidence-based, the Tribunal is not bound to choose one or other of the Indices.

227. It was submitted by Mr Rainey that the development market "tracked" the super prime market in the sense that it followed it exactly. That submission was unsupported by any evidence. It was not Mr Hamilton's evidence: he said that No 68 was "super prime" property and therefore the Knight Frank Super Prime Index applied even thought (a) he did not know its composition and (b) it is now known that it excludes development property. The substance of his (and Mr Buchanan's) evidence was that there was a relationship between the two markets.

228. In the view of the Tribunal, it would be counter-intuitive and an over-simplification to suggest that the unfinished product market exactly tracks the finished product market which, by definition, is not available for immediate occupation and would depend upon numerous factors. Such as the development costs, which may vary at any given time and range from raw materials to labour to financing costs. The development time-frame is relevant: the longer it takes to bring the finished product to market, the greater the risks and the more concerned the developer would be as to the future direction of the market. The value and nature of the finished product – the higher the investment, the higher the risk.

229. The recent and anticipated market movements of the finished product are also relevant. At extremes, the development market might fall faster in a falling market than the finished product market and *vice versa* with a cross-over at some point. In short, the Tribunal would not expect the curve of the development market to exactly follow the curve of the super prime market. It is in contrast to the finished product market where the property can immediately be re-sold.

230. Mr Rainey submitted that future expectations were irrelevant because as at the Valuation Date any past growth was "captured" in the price increases recorded in the Indices which the development market tracked. That would be so if those Indices included or tracked development properties, but they do not.

231. Mr Johnson invited the Tribunal to place more weight on the evidence of Mr Buchanan than Mr Hamilton because his experience was close to the market than Mr Hamilton who only did enfranchisement valuations. Mr Rainey, in response, referred the Tribunal to the decision of *Arbib v Earl Cadogan* LRA/23/2004 where the Lands Tribunal rejected a submission that the evidence of an estate agent, active in the market, should be preferred to that of a valuer lacking market experience because it was concerned with a hypothetical valuation under the Act where the ability to analyse and apply the limited valuation data in the light of statutory provisions is as important as market experience.

232. In the view of the Tribunal, whilst the valuation experience of Mr Buchanan is undoubtedly wider than that of Mr Hamilton, it does not put him materially closer to the market than Mr Hamilton because neither are estate agents, active in the market. We also accept the observations of the Lands Tribunal. That said, as will be clear from the above, the Tribunal generally found the evidence of Mr Buchanan more reliable than that of Mr Hamilton who was not even aware of the composition of the Index upon which he relied. Both experts undermined their own credibility by being wedded to their respective Indices.

Decision

233. The Tribunal approaches the question on the footing that the hypothetical purchaser is a developer not a speculator. He is a purchaser of some sophistication operating in the relatively rarefied market of developing super prime properties for sale in three to four years in St John's Wood during which time he would have to fund the purchase and development costs. He would not already have found a purchaser, so would be taking a risk that he had developed the "right" product and that there would be a purchaser when it came to market.

234. He would be aware of the market movements recorded by the Indices referred to above, but would approach them on the footing that the value of No 68 did not exactly track any them. One or other of the Super Prime Indices would have a stronger pull than the Savills PCL Index because they represent the finished product market. By contrast, the Savills PCL Index might tend to skew the value downwards because super prime properties were not fully represented in that Index. He would not however dismiss the Savills PCL Index altogether, as there is a relationship between it and the super prime market.

235. He would be aware that the Super Prime Indices were relatively new and had not yet established a track record and that it was not possible to precisely calibrate the rate of increase from those Indices. He would view the vertiginous growth in the Super Prime Indices with a degree of caution, and perhaps scepticism and be wary of the effect of "credit crunch" and be concerned as to its likely course. He would conclude, as Mr Buchanan suggested, that super prime market had peaked in the first quarter of 2007 and he would be

concerned that it might be about to undergo a period of flat or possibly negative growth.

236. He might also be aware of the research literature produced by the various agencies referred to above. If he were aware of them, he is unlikely to have paid too much heed to them as he would rely upon his own interpretation of the raw data provided by the market Indices. However, whether aware of them or not, he would have been aware of some of the salient features of the super prime market. The thrust of the available evidence is that the market was largely or at any rate was increasingly fuelled by very wealthy overseas purchasers from oil and commodity rich countries such as Russia, Kazakhstan and the Middle East[2]. Viewed on a 3-4 year cycle, he might regard this as an extra element of risk justifying a lower price.

237. Taking all of those factors into account, the Tribunal concludes that No 68 increased by 10% between March and the Valuation Date, November 2007. In short, the development market would not have increased at anything like the rate of the finished product market because it was anticipating a correction in the super prime market which, when viewed on a three to four year horizon and bearing in mind the value of the properties, would have made purchasing the unfinished product a far riskier proposition. At this stage of the development cycle, therefore, the growth would have been slightly closer to the Savills PCL Index but still considerably above it (an average of the 23% and 4.7% growths being 13.85%).

Conclusions

238. The findings of the Tribunal produce the following calculation of the value of No 110 on the Valuation Date (Mr Hamilton's 5% deduction for off street parking being accepted):

Applying No 68's rate	**Post-sale planning consent (£8.75m ÷ 8,708)**
RPSF	1,004
No 110's gia with planning p	10,836
	10,879,344
Less no off-street parking – 5%	(543,967)
Less – planning risk adjustment	(100,000)
Less - dvlp cost/risk adjustment – 10%	(1,087,934)
Sub-total:	**9,147,443**
Market uplift – 10%	+914,774
Total:	**10,062,187**

[2] See page 2 column one of Knight Frank's St John'

LEASEHOLD VACANT POSSESSION VALUE

Introduction

239. The Act requires that the value of the lease with be valued with vacant possession but on the assumption that the Act conferred no right to acquire the freehold.

Mr Hamilton's evidence

240. It was Mr Hamilton's evidence that owing to the shortness of the unexpired term the best way of valuing the Lease was to capitalise its rental income by taking the deducting from the total rental values of the flats the likely costs and expected return. The letting values were based on his estimates because none of the flats had been let, and he produced no rental valuation evidence to support his estimates except for information from David Conway & Co about a possible (not actual) rental of Flat 1 for £290 per week. His calculations were as follows:

Floor	Flat	Beds	£/week	£/annum	Total
2nd/3rd	5	4	400		
FF Sth	4	1	250		
FF Nth	3	2	275		
GF Sth	2	1	250		
GF Nth	1	1	250		
Basement		3	350		
			1,775	92,300	
Unexpired term				3.38 yrs	
					311,974
Less					
Management at 5% total rent plus VAT				18,328	
Letting at 10% one year's rent plus VAT				10,845	
Insurance				20,050	
Repairs at 5% plus VAT				18,328	
Voids (one quarter)				23,075	
Common parts cleaning and electricity				2,660	
Front and rear garden maintenance				2,065	
Window cleaning				2,065	
Contingency				16,900	(114,316)
					197,658
Less return at 20%					(39,532)
Value of lease					158,126

241. Having reached that conclusion, Mr Hamilton recognized that the hypothetical developer purchasing the lease might be willing to pay more despite having no rights to demand the freehold or a new long because, by being in occupation, he would be in a better position than other developers or interested owner occupiers to discuss the purchase of the freehold or a new long lease with the

freeholder. With that in mind he adopted an existing lease value of £250,000, which produces an implicit "hope" value of £92,000.

242. Mr Hamilton's rental values are for the flats in their improved condition. He has not excluded tenants' improvements. Were he to do so, lower rental figures would have resulted as the flats would exclude the 1872 and 1948/9 improvements.

Mr Buchanan's evidence

243. Mr Buchanan took an average of three different valuation methods which equated to a leasehold value of, say, £710,000[3], having noted that each method produces widely different results.

244. First, he took the actual price at which the Respondent purchased the Lease of £1,320,000 and then deducted 25% for the value of Act enfranchisement rights which produced a value of £990,000. The 25% was based on "previous settlements and LVT decisions for large houses in St Johns Wood". Mr Buchanan did not adduce any evidence or give any details of the LVT decisions or his own settlements which he referred to.

245. In cross-examination, Mr Buchanan accepted that there was no empirical basis for the 25% deduction but said that it was based on his view of the amount appropriate for a large house in St John's Wood. Mr Hamilton was also cross-examined about this method, and said that he no longer adopted that approach but, when he did, he would have used a sliding scale of percentage deductions.

246. Secondly, Mr Buchanan applied the Graph of Graphs produced by Beckett and Kay (2008: first revision). He initially considered that the Graph showed that the expected leasehold value of the freehold was between 12% and 22% (average: 17%) but, in his second report, adopted lower values of between 9% and 15% (average: 12%) because the Graph "is not easy to read at 3.38 years".. He therefore adopted the lower figure of 12% which, when applied to his freehold value of £6,683,408 excluding tenants' improvements, produced a leasehold value of £802,000[4].

247. In cross-examination, Mr Buchanan accepted that you could not pick the relativity figure for an unexpired term of 3.38 years off of the Graph, but said that he was using it as a valuation method and that not all properties included within the Graph had development potential although some houses (but not flats) might have.

248. Whilst the Graph was not generally used where the unexpired term is only 3.38 years, it was Mr Buchanan's opinion that it was still appropriate to do so because even in a "no Act" world a developer would purchase a short lease in

[3] Being the average of £990,000 + £802,008 and 337,500, which is £709,836.

[4] The figure used in Mr Buchanan's supplemental report is £799,600 based on his freehold value of £6,663,347. In closing, Mr Buchanan revised the latter figure to £6,683,408 due to various arithmetical errors but did not carry them through to his leasehold value. The Tribunal has assumed that that was his intent, and has therefore adopted his revised figure, which results in a marginally different average of the three different methods.

the hope of being able do to a deal, which is not dissimilar from Act rights. Mr Buchanan said that the John Lyon's Charity was generally known in the market as being open to granting lease extensions, so that the possibility of doing a deal would have been in the mind of any hypothetical purchaser.

249. Mr Hamilton was cross-examined about applying the Graph of Graphs, and said that he had not because it presupposed that there remained a potential to develop the property during the remainder of the Lease, which could not apply here because the unexpired term was so short. The closer you get to zero on the Graph, the steeper the curve which reflects the fact that there the shorter the unexpired term the lower the development potential.

250. Thirdly, Mr Buchanan considered the rents for the flats and capitalised the rental income for the remainder of the Lease. His evidence and calculations were brief. In his first report, he stated: "Although not all the flats are let I would estimate that they would produce total annual rents of £168,000. Capitalising this figure over 3.38 years @ say 7% and 2½% suggests a value of approximately £450,000". In his supplemental report, he reduced that figure to £337,500 to exclude the value of tenants' improvements which had been included in the earlier figure.

251. In cross-examination, Mr Buchanan said that he had got his letting values from his firms Lettings Department which were mostly one, three and four bedroom units. He did not identify or produce the information he relied upon. He explained that his deductions in respect of the costs of renting, which Mr Hamilton had itemised, were factored into the 7% yield figure he had applied. He felt that Mr Hamilton's repair costs over a three year period were a little high, but otherwise made no comment on Mr Hamilton's specific cost figures.

Discussion

252. When considering the appropriate method of valuing the Lease with vacant possession in a "no Act" world, the length of the unexpired term is critical, because the question is what would the hypothetical purchaser be prepared to pay for (here) a 3.38 year lease producing an annual rent of £92,000 (Mr Hamilton) or £168,000 (Mr Buchanan) together with the hope that because the purchaser owned the property he might be able to do a deal with the freeholder (both experts accepting that "hope" was a relevant valuation factor).

253. Implicit within Mr Hamilton's approach and also to some extent within Mr Buchanan's is a recognition that the hypothetical purchaser would view the investment as being fairly risky, because in either case he would be spending a not insubstantial sum of money for a very short lease which of itself would be relatively "high maintenance" in the sense that it would involve quite a lot of work to keep the flats rented out to reasonable tenants, avoid void periods, ensure rental collection and generally management of the building. There would be no certainty that a deal to extend the lease could be struck on reasonable terms with the John Lyon's Charity, although the Charity is generally open to negotiation.

254. Throughout both Counsel's submissions, the Tribunal was urged to stand back and look at the figures in the round and ask whether or not they "make sense". That of course is a somewhat unscientific approach, not least because it is not

evidence-based. However, if that question is asked in respect of Mr Buchanan's figures, would the hypothetical developer-purchaser be prepared to pay either £990,000 or the £802,008 produced by Mr Buchanan's first two valuation methods?

255. The minute that question is asked, in the view of the Tribunal the answer is quite obviously "no". Again using Mr Buchanan's figures, it would amount to a purchaser being prepared to pay a premium of £652,500 (£990,000 - £337,500) or £464,500 (£802,000 – £337,500) for "hope". However amenable John Lyon's Charity is or is reputed in the market to be to doing a deal, in the view of the Tribunal it is quite unreal to suggest that the hypothetical purchaser would be prepared to pay such a high premium for hope.

256. This alone indicates that Mr Buchanan's first method of valuation is inappropriate in this case. Further, Mr Buchanan produced no evidence at all to support his 25% deduction for such a short unexpired term, so there was no proper evidence upon which the Tribunal could consider this method.

257. It also indicates that Mr Buchanan's second method of valuation is inappropriate, and is why (as Mr Buchanan recognised in cross-examination) the Graph of Graphs is not applied to such short unexpired terms. Furthermore, Mr Buchanan accepted that it is not possible to read the relativity percentage of the Graph for such short unexpired leases and himself had to review his reading of the Graph from an average of 17% to 12%. The Graph also shows a very wide divergence between the bottom and top graphs which, with such a short unexpired term, has a major impact upon values. Application of the Graph of Graphs would, in this case, be unreliable and operate to distort the valuation process.

258. If the first two methods are inappropriate, it is equally inappropriate to average the three methods out. With regard to Mr Buchanan's third method, this in principle is not dissimilar to Mr Hamilton's. However, the Tribunal prefers the approach adopted by Mr Hamilton because it its view it represents a realistic and reliable approach to valuing the Lease in a "no Act" world. The use of capitalisation and such does not really reflect the realities of renting for such a short period and, as with Mr Buchanan's approach to the valuation of the freehold, is unnecessarily academic.

259. The Tribunal has inspected each of the flats comprised within No 110. It was not possible to assess Mr Buchanan's rental values for each flat because he did not state or explain them but overall they look far too high. Although the flats are in a prestigious location, they are of a fairly basic standard and are not commensurate with the location. Mr Hamilton's rental valuations appeared to the Tribunal to be broadly appropriate, if not a little on the low side given the location and also the spacious rear garden. However, any differences are minor and are balanced out by the fact that Mr Hamilton's rental values are for the larger, post-tenants' improvements flats.

260. The only deduction which Mr Buchanan challenged was Mr Hamilton's repairs. Given the age of No 110 and the need to maintain the premises to make the flats lettable, the Tribunal accepts the evidence of Mr Hamilton. The Tribunal regards Mr Hamilton's insurance costs as being overstated by perhaps £10,000

and does not accept that any further contingency should be deducted given the exhaustive list of deductions already made and also does not accept the need to deduct a return figure because the return is the net rental income plus the hope of doing a deal with the landlord. Apart from those items, which total around £65,000, the Tribunal adopts the rest of Mr Hamilton's figures.

261. If that is applied to Mr Hamilton's analysis, the existing lease value would equate to £300,000 in round terms (£223,000 (£158,000 + £65,000) plus £92,000 "hope" = £315,000 rounded down to £300,000).

Decision

262. The Tribunal prefers the approach of Mr Hamilton and determines that the leasehold vacant possession value at £300,000 notwithstanding the marginal understatement of rents and taking into account the overstatement of deductions by Mr Hamilton and also an element for "hope" value.

DEFERMENT RATE

Introduction

263. It was common ground between the parties that the Tribunal was not bound by the deferment rate prescribed by the Lands Tribunal in *Earl Cadogan v Sportelli* LRA/50/2005. In paragraph 85, that Tribunal said:

> "Our conclusion is that the deferment rate is constant beyond 20 years. Below 20 years we accept the view of Mr Dumas, Professor Lizieri and Mr Orr-Ewing that the rate would need to have regard to the property cycle at the time of valuation. Beyond 75 years we see no reason on the evidence before us to conclude that the rate would be either higher or lower."

Sportelli does not preclude adjustments to the assumed 2% long-term growth assumption in the case of a short unexpired term.

Evidence

264. Mr Hamilton adopted the 4.75% deferment rate prescribed for houses by *Sportelli* because at the Valuation Date "super prime properties were continuing to outperform the market and have continued to do so". In cross-examination, he said that he had applied the house deferment rate rather then the flat deferment rate because the market would look at No 110 as if it was a house not a flat. He accepted that the investor would be looking at what would happen to the property cycle in the three remaining years of the Lease.

265. Mr Hamilton did not accept that a person bidding for No 110 would be disillusioned but that he would regard the market as still strong and be optimistic. The perception of the market in November 2007 was that super prime properties were not affected by the credit crunch and would not be. The market assumed that growth would at least match inflation. However, if the bidder was concerned Mr Hamilton accepted that 6% deferment rate would not be unreasonable.

266. Mr Buchanan adopted the 5% deferment rate prescribed for flat by *Sportelli* because that the Valuation Date No 110 was then laid out as six flats and

would remain so until expiry of the Lease in 3.38 years time. Post September 2007 and in the aftermath of the Northern Rock saga and the resulting credit crunch there was a significant change in market sentiment resulting in a significant loss of confidence for properties such as No 110. He referred the Tribunal to a graph of real house prices in the UK between 1953 and 1005 used in the *Sportelli* case.

267. He considered that a higher deferment rate to reflect the risk that the property cycle would beat a lower level and that an informed buyer was likely to base his deferment rate on an anticipated real growth of 1% rather than the 2% used by *Sportelli.* He therefore proposed an additional 1% bring the rate to 6%.

268. In cross-examination, Mr Buchanan stuck firmly to his view that the developer bidding for No 110 would require a higher deferment rate. The various forecasts referred to in the evidence, including the Savills forecast referred to above, and the research papers were put to him as evidence of market sentiment that in November 2007 the market perceived that growth would well exceed 2%. Mr Buchanan's response was that developers are more street wise that estate agents.

Decision

269. The Tribunal prefers that evidence of Mr Hamilton that the appropriate starting point is 4.75% applicable to houses because the hypothetical purchaser would purchase No 110 as a house, albeit that it was divided into flats at the time of the Valuation Date.

270. The Tribunal prefers the evidence of Mr Buchanan as to the perception the market, bearing in mind that this is the development market not the finished product market which is being considered. By November 2007, the hypothetical purchaser would be looking to achieve a return within the unexpired term. For the reasons already set out above, he would have viewed the property market as having past its peak and possibly be in decline. He would not have long enough to wait for the property cycle to turn. The most likely scenario was a decline in values *after* November 2007.

271. In conclusion, the Tribunal determines that the applicable deferment rate is 5.75% being 4.75% plus a further 1% to reflect market perception prevailing at the Valuation Date.

272. In reaching this decision, the Tribunal has put out of its mind prevailing difficulties in the economy at large and the property market in particular, as well as all post-November 2007 research and other literature and information put before it.

CONCLUSION

273. The Tribunal determines that the purchase price for the freehold is £9,046,185 as set out in the Appendix hereto.

CHAIRMAN ..... 13th October 2008

110 Hamilton Terrace, London, NW8

Tribunal's Valuation; Leasehold Reform Act s.9(1C)

Agreed Facts

Valuation Date	05/11/2007
Capital value of ground rent	£573
Lease term/commencement	61.25yrs/25th December 1949

Determined by Tribunal

FHVP	£10,062,187
LHVP	£300,000

Diminution in Freeholders interest

Term			agreed	£573
Reversion				
FHVP			10,062,187	
x PV	3.38 yrs	5.75 %	0.827813165	£8,329,611
Value of Freeholder's existing interest				£8,330,184

Marriage value

FHVP		10,062,187	
Less			
Freeholder's existing interest	8,330,184		
Lessee's existing interest	300,000		
		8,630,184	
Marriage value		1,432,003	
Freeholder's share @	50 %		£716,002
Enfranchisement price			**£9,046,185**