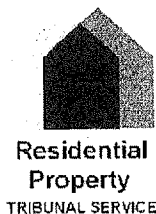


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LONDON RENT ASSESSMENT PANEL

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 (The "Act")

Ref: LON/00AG/OLR/2012/0043

Property: Garden Flat, 195 Goldhurst Terrace, South Hampstead, London NW6 3ER

Applicant: D Perkins (the tenant)

Respondent: N Braham, P M P Lefebvre, J M Pyzer and B M Braham (the landlord)

Date of Directions: 27 January 2012

Date of Hearing : 9 May 2012

Appearances :

For the Applicant Valuer: B Passmore BSc MRICS ACI Arb

For the Respondent Valuer: A Lester MRICS

Members of the Leasehold Valuation Tribunal Mrs J Pittaway LL.B

Mr R Humphrys FRICS

Date of Decision : 15 May 2012

Introduction

1. This is an application to the Tribunal by the Applicant for a lease extension of the lease of Garden Flat 195 Goldhurst Terrace London NW6 3ER. The Notice of Claim to Exercise this Right is dated 25 October 2011, and admitted by the Respondent by way of Counter Notice dated 28 October 2011. The Applicant applied to the Tribunal on 6 January 2012 for the determination of the price, the terms of the lease and costs under Section 60 of the Act.
2. The Tribunal issued Directions on 27 January 2012. At the Hearing neither party suggested that the Directions had not been complied with.
3. The Application was heard on 9 May 2012. Mr Passmore represented the tenant Applicant and Mr Lester represented the landlord Respondents.
4. The bundles before the Tribunal contained a Statement of Agreed Facts and Matters in Dispute. This did not refer to the terms of the lease nor costs under Section 60 of the Act.

Matters in Dispute

Valuation Issues

1. The long lease market value.
2. The deferment rate.
3. The short lease relativity
4. The premium to be paid for the extended lease.

Decisions of the Tribunal

1. The Premium

The Tribunal **determines** in accordance with section 48 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 that the **premium for the extended lease is £60,855.00.**

A copy of the Tribunal's valuation is attached as Appendix 2.

2. The terms of the new lease

In the absence of any submissions to the contrary the Tribunal presume that the form of the Lease is settled as contemplated by the Directions.

3. Costs

The Applicant's surveyor did not ask the Tribunal to determine the Respondent's reasonable costs under section 60(1) of the Act so it has made no determination.

Evidence

The Tribunal had before it the hearing bundle provided by the Applicant, which included an unsigned witness statement by Mr Passmore, which he signed at the Hearing at the Tribunal's request.

The bundle did not include Mr Lester's Proof of Evidence, which had been provided separately to the Tribunal and Mr Passmore. During the Hearing it became apparent that Mr Passmore had a copy of Mr Lester's Proof of Evidence but without the appendices. Mr Passmore did not object to the absence of the appendices (which Mr Lester said should be at Mr Passmore's office) and during the Hearing, where necessary Mr Lester provided copies of the Appendices to Mr Passmore.

Inspection

1. The Tribunal inspected the Property on a very wet afternoon following the Hearing on 9 May. Goldhurst Terrace is a busy road, heavily parked in places close to Swiss Cottage South Hampstead and Kilburn High Road stations. The road consists of a variety of typical red brick Victorian houses converted into flats usually on four floors.

The Property is an end terrace four-storied house converted and arranged as four flats. The garden flat is situated on the lower ground floor and is approached via steps from the front garden. The front door gives access to a hallway where a partition wall has been removed to incorporate the kitchen. The bathroom has been extended by removal and replacement of a partition wall, which enabled a walk-in shower to be installed. There is a double bedroom to the front of the flat. There is a good rear living room which gives access to the large private rear garden. There is a further narrow bedroom. The flat has been modernised and the fittings, which include wardrobes and cupboards, appear to be of a good standard.

2. Following the inspection the Tribunal viewed from the outside all the parties' comparables in Goldhurst Terrace.

The Tribunal's Decision on each Matter in Dispute

Having heard evidence and submissions from the parties and considered of the documents provided those to which the parties directed the Tribunal's attention during the Hearing, the Tribunal has made determinations on the various issues as follows.

Long leasehold market value

1. The Tribunal made it clear to the parties that they had not had the opportunity before the Hearing to review the comparables provided and that it would be for the parties to draw their attention to the comparables to which they wished the Tribunal to have regard.
2. The Tribunal would have been assisted had the parties provided it with an agreed schedule of comparables. It was unfortunate that the surveyors had not agreed sale prices for the comparables that they both used. (For example; Mr Passmore stated that the sale price of 44 Goldhurst Terrace was £549,000 in July 2011; Mr Lester that it was £525,000 in April 2011). Further the surveyors did not agree the facilities enjoyed by some of the comparables (For example, whether 134 Goldhurst Terrace

had off-street parking). Accordingly the Tribunal had to treat the comparable evidence with caution.

3. The comparables provided by Mr Passmore included flats of different sizes to the Property and flats located on floors other than lower ground floor. His adjusted prices made reductions for assumed matters (such as ceiling height) without evidence to support such reductions. At the beginning of the Hearing Mr Passmore introduced additional comparables (which had not been previously provided to Mr Lester) but, except for 147A Goldhurst Terrace, did not refer to them at the Hearing.

As for 147A Goldhurst Terrace Mr Passmore submitted that the particulars provided were evidence that with an extended lease it was worth £765,000. This was based solely on the basis of agent's particulars stated that the 69 year lease was being marketed for £725,000 and that a new 150 year lease was available for £40,000 plus any additional costs. He did not know if the flat had been sold and provided no analysis or evidence as to the matters asserted in relation to this flat.

4. The Tribunal preferred the approach adopted by Mr Lester in respect of adjusting for time. It was logical and adopted an approach generally accepted by valuers and this Tribunal. Of his comparables the Tribunal discounted those not in Goldhurst Terrace as these appeared to have higher valuations than those in Goldhurst Terrace. Mr Lester's comparables in Goldhurst Terrace were all lower ground floor flats with gardens. (The Tribunal noted that they all had north facing gardens, unlike the Property, which has a south-facing garden.) Mr Lester had adjusted the comparable prices with reference to the Land Registry Index for LB Camden to account for any time lapse between the date attributed to the valuation of the comparable and the agreed valuation date for the Property of 25 October 2011. Of Mr Lester's comparables in Goldhurst Terrace the Tribunal excluded 120 Goldhurst Terrace and 94 Goldhurst Terrace, the former having a significantly higher valuation per square foot and the latter a significantly lower valuation per square foot than the other comparables.

Mr Lester's three remaining comparables have valuations ranging from £778/sq.ft. to £788/sq.ft.

5. The Tribunal have therefore adopted a value per square foot for the Property in its present state of £780. They have deducted approximately 4% for improvements (Mr Lester having proposed 4% which having inspected the Property the Tribunal consider a generous allowance). Given the agreed Gross Internal Area of the Property of 786 sq.ft. this gives a **long leasehold market value for the Property of £589,500.**

(In passing the Tribunal note that in Mr Lester's Proof of Evidence he refers to the Property having been marketed by In London Properties in 2011 for an asking price of £675,000 on the basis of a long lease.)

Deferment

1. Mr Passmore submitted that it was appropriate in this case to depart from the 5% deferment rate established by the decision in *Sportelli* on the grounds that the Court of Appeal in *Sportelli* had opened the door for valuer judgement. He cited the following extract from the Court of Appeal decision in *Sportelli* to support his submission;

"The Tribunal's later comments on the significance of their guidance do not distinguish in terms between the PCL [prime central London] area and other parts of London or the country. However, there must in my view be an implicit distinction. The issues within the PCL were fully examined in a fully contested dispute between the interested parties. The same cannot be said in respect of other areas. The judgement that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with other areas. The deferment rate adopted by the tribunal will no doubt be the starting point; and their conclusions on methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on elements relevant to the risk premium for residential properties in different areas. That will be a matter for those advising future parties, and for tribunals, to consider as such issues arise."

2. Mr Passmore initially sought to adjust the Real Growth Rate by a further -0.5% but subsequently changed this to seek an increase in the risk premium by 0.5%. He argued that there should be a departure from risk premium of 4.5% established by the decision in **Sportelli** because a different rate should apply to flats outside the Prime Central London area, which covers only the London Boroughs of Kensington & Chelsea and Westminster, where properties attract "high net worth individuals" who were not reliant on mortgage finance. He considered that the long term growth outside the PCL was not as good as the PCL and that this should result in an adjustment based on valuer judgement.

Mr Passmore's evidence was set out in Appendices D and E of his witness statement, which Appendices are attached for ease of reference. Appendix D shows the actual price increases between January 1995 and January 2012 based on the Land Registry House Price Index. This shows that values in Camden (where the Property is situated) rose by 9.65% annually compared with 10.02% for Kensington & Chelsea and 9.33% for Westminster. He also included in Appendix D Nationwide statistics showing "London" as a whole growing by 8.88% over the same 17 year period.

In Appendix E Mr Passmore sought to demonstrate the price movement in Camden as against South Kensington, Chelsea and Mayfair going back to 1973, 1977, 1973 and 1979 respectively. He argued that the price movement in Camden, based on the parties' surveyors' respective figures for enfranchisement of the Property to be 9.23% or 9.85% with the price movement for the other properties ranging from 11% to 15.23% based on market values which he stated were "settled on comparable evidence for lease extension purposes" taken in conjunction with published indices from the Land Registry and Nationwide. He argued that this showed a sufficient discrepancy in long term growth to justify the departure from the risk premium percentage established in **Sportelli**.

The Tribunal do not consider that the Land Registry House Price Index shows this for the past 17 years, where the percentage increase in prices in Camden has exceeded that in Westminster. The Tribunal finds the evidence in Appendix E unpersuasive and lacking in substance. It is based on insufficient properties and the valuations of the Property itself are not evidence of a sales price.

2. The Tribunal were disappointed that Mr Lester was content to rely on **Sportelli** and did not address or challenge Mr Passmore's departure from **Sportelli**.

3. Mr Passmore submitted that the percentage attributed to the increased management risk for flats should be increased from the 0.25% adopted in **Sportelli** to 0.5% by reason of the more significant management burdens placed on investors since the implementation of the various sections of the Commonhold and Leasehold Reform Act 2002, and in particular the Service Charges (Consultation Requirements) (England) Regulations 2003. Mr Passmore was reluctant to express an opinion as to when 0.25% should apply but he did indicate it was appropriate to a small building with only two flats. He submitted that any property with more than 2 flats would involve a greater management risk following the new consultation requirements but produced no evidence to substantiate this assertion.
4. On being questioned by Mr Lester Mr Passmore said that he was not aware of there having been any management problems at the building in which the Property is situated.
5. The Tribunal consider that the appropriate deferment rate in each case must be decided on its merits.

Mr Passmore did not provide the Tribunal or Mr Lester with copies of the decisions in either **Sportelli** or **Zuckerman**. The Tribunal informed him that this was unacceptable and that extracts could, and indeed in this instance did, prove to be misleading. In **Zuckerman** the Lands Tribunal make it clear at paragraphs 47, 51 and 52 that the valuer in that case was demonstrating that in the West Midlands an investor would reasonably anticipate significantly slower long term growth than in the PCL. In paragraph 53 the Tribunal say an investor "*would be less confident that the Real Growth Rate of 2% would be achieved in the West Midlands than in the PCL*". The Tribunal are uncomfortable that Mr Passmore did not guide it to these paragraphs.

Mr Passmore did not attempt to adjust actual growth to real growth and did not attempt to demonstrate that an investor would expect long term growth in Camden or Goldhurst Terrace to be significantly below 2%; it is significantly higher.

In the absence of compelling evidence to the contrary the Tribunal are not persuaded that the risk premium of 4.5% adopted in **Sportelli** requires adjustment in relation to the Property.

The Property is in a terraced house converted into four flats that is typical for its location in Camden. The Tribunal sees no particular management complications arising in respect of this house as a result of the introduction of the Service Charges (Consultation Requirements) (England) Regulations 2003 and they therefore consider that an investor would make an allowance of 0.25% as envisaged in **Sportelli** and not more.

6. Accordingly the Tribunal do not feel that there is any compelling evidence requiring them to deviate from the deferment rate of 5% that is used, since **Sportelli**, as a starting point for flats.

Relativity

1. The Tribunal did not consider it helpful that Mr Passmore referred to various graphs in his witness statement without providing the Tribunal with copies of the same. It is however prepared to accept the percentages that Mr Passmore referred to as being extrapolated from those graphs on the basis that Mr Lester accepted them.

Mr Passmore preferred the South East Leasehold Graph because it was based on research carried out in 1997 before the general public became aware of the "no Act world" requirement. On questioning Mr Passmore was unable to confirm the area to which this graph related. The Tribunal were assisted in this by Mr Lester who advised them that it was based on evidence obtained in Bromley and Beckenham. The Tribunal noted that the graph Mr Passmore preferred was that which was most beneficial to his client, showing a relativity of 90% for a 60 year term. The other graphs to which he referred all showed relativities in the region of 85 to 86%.

2. Both surveyors rejected use of the Nesbitt graph.
3. Mr Lester proposed a relativity obtained by taking the average of three graphs;
 - a relativity graph produced by Knight Frank in June 2011 which shows a relativity of 82%;
 - a graph produced by John D Wood in June 2011 on the basis of 601 decisions of the Tribunal and the Upper Tribunal in the London area.
 - The Leasehold Advisory Service graph derived from LVT decisions in England and Wales between 1994 and 2007.

Mr Lester discounted the South East Leasehold Graph because it was based on questionnaires submitted to estate agents in one specific area in South East London some 15 years ago.

On the basis of the graphs to which Mr Lester referred he proposed a relativity of 84%, based on an average taken from the graphs he referred to, which he considered reasonable given the proximity of the Property to the PCL area.

4. As an expert Tribunal the Tribunal consider a relativity of 90% too high for a lease with a term of 60 years left to run. It is prepared to accept Mr Lester's proposed relativity of 84% (although they would have expected more detailed argument from Mr Lester given his submission that the proximity of the Property to the PCL should be factored into the calculation of relativity); noting that it is not far from the range of 85 to 86% shown by the relativity graphs of Beckitt and Kay, Austin Gray and Andrew Pridell referred to but rejected by Mr Passmore.

The Law

The relevant statutory provisions are set out in Appendix 1 to this decision.

The Tribunal also had regard to the following legal decisions which had been referred to by the parties

Earl Cadogan & Cadogan Estates Ltd v Sportelli & Sportelli (2006)

LRA/50/2005

Hildron [LRA/120/2006]

Zuckerman case [LRA/97/2008]


.....
Chairman

15 May 2012

APPENDIX 1

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

s 48 Applications where terms in dispute or failure to enter into new lease.

- (1) Where the landlord has given the tenant—
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
 - (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

s 56 Obligation to grant new lease.

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

- (a) in substitution for the existing lease, and
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

S 60 Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;
- (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

SCHEDULE 13 PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord's interest

3(1) The diminution in value of the landlord's interest is the difference between—

- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
- (b) the value of his interest in the flat once the new lease is granted.

3(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

3(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

3(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

3(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.

4(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease,

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

(b) the aggregate of—

(i) the value of the interest to be held by the tenant under the new lease,

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and

(iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

4(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

4(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date .

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

4A(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

4A(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4A(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4A(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.]

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date ;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

4B(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

4B(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4B(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

- (a) any transaction which—
 - (i) is entered into after 19th January 1996, and
 - (ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or
- (b) any alteration after that date of the terms on which any such inferior interest is held.

4B(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

- (a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and
- (b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.5(2) This paragraph applies to—

- (a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and
- (b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

5(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

5(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).

Commonhold and Leasehold Reform Act 2002.

SCHEDULE 12 PARAGRAPH 10

COSTS

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
- (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

- (a) £500, or
- (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

APPENDIX 2

LEASEHOLD VALUATION TRIBUNAL'S VALUATION IN ACCORDANCE WITH THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 AS AMENDED

Garden Flat, 195 Goldhurst Terrace, London NW6 3ER

Valuation Date: 25th October 2011

Lease term remaining	60.16 years
Capitalisation Rate	6.75%
Deferment Rate	5.00%
Relativity	84%

Long Leasehold Value

Price per sq.ft. (with improvements)	£780
Less about 4% (excluding improvements), say	£750
Area in square feet	x 786
	£589,500

Freehold VP value + 1%	£595,395
Value of Existing Lease @ 84%	£500,132

Valuation of Landlord's Existing Interest

Ground Rent	75	
YP for 27.16 years @ 6.75%	12.3016	922
Reversion	100	
YP 33 years @ 6.75%	13.0987	
PV of £1 for 27.16 years @ 6.75%	0.1696	222
Reversion for freehold VP	595,395	
PV of £1 for 60.16 years @ 5%	0.0531	31,615
Value of Landlord's Current Interest		32,759

Less

Value of Landlord's Proposed Interest

Ground Rent	NIL	
Reversion to Freehold VP	595,395	
PV of £1 for 150.16 years @ 5%	0.0007	417

Diminution in Value of Freehold Interest 32,342

Marriage Value

Value of Freehold after extension	417	
Value of Leasehold after extension	589,500	589,917

Less

Value of Existing Freehold	32,759	
Value of Existing Leasehold	500,132	532,891
Marriage Value		57,026
Landlord's share @ 50%		28,513

PREMIUM PAYABLE

£60,855

APPENDIX D - HISTORIC HOUSE PRICE DATA

Actual price increases (no adjustment for inflation) across London boroughs for the 17 year period from Jan 1995 to Jan 2012 (Land Registry House Price Index)

	Borough	Total %	Annual %
1	Hackney	511.4	10.07
2	Kensington & Chelsea	508.8	10.02
3	Camden	479.9	9.65
4	Lambeth	466.1	9.45
5	Islington	461.7	9.40
6	Westminster	456.6	9.33
7	Wandsworth	446.0	9.18
8	Hammersmith	443.8	9.15
9	Brent	440.4	9.11
10	London*	425.0	8.88
11	Southwark	417.9	8.76
12	Tower Hamlets	384.0	8.22
13	Ealing	382.5	8.19
14	Lewisham	367.4	7.57
15	Hounslow	340.5	7.06

*Nationwide's statistics show 'London' as a whole growing by 8.88% over this same 17 year period.

APPENDIX E - SPECIFIC PROPERTY HISTORIC PRICE MOVEMENTS

Using actual sale prices taken in conjunction with published indices from Land Registry and Nationwide.

Garden Flat, 195 Goldhurst Terrace (the subject flat) NW6 3ER

Market value at say 25/10/2011: £550,000 (applicant) £618,750 (respondent)

Market value at 1/1/1995 (Camden index): £114,600 (applicant) £128,935 (respondent)

Market value at 22/5/1973 (commencement of lease) £16,250

Annual Increase in market value 22/5/1973 to 1/1/1995 (22 years): 9.23% (applicant) 9.85% (respondent)

85C Cornwall Gardens, (South Kensington) SW7 4AZ

Market value at 4/10/2010: £700,000 (settled on comparable evidence for enfranchisement purposes)

Market value 1/1/1995 (K & C index): £152,505

Market value 27/6/1977 (commencement of lease): £17,750

Annual Increase in market value 27/6/1977 to 1/1/1995 (18 years): 12.67%

24 Meriden Court, Chelsea Manor Street, (Chelsea) SW3 3TT

Market value at 3/12/2010: £355,000 (settled on comparable evidence for lease extension purposes)

Market value 1/1/1995 (K & C index): £74,579

Market value 1/5/1971 (commencement of lease): £6,250

Market value 1/1/1973 (assumed increase of 20% during this highly inflationary period): £7,500

Annual Increase in market value 1/1/1973 to 1/1/1995 (22 years): 11.00%

11 St James Chambers, Ryder Street (Mayfair) SW1Y 6QA

Market value as at 11/11/2009 £1.568m

Market value as at 1/1/1995 (Westminster index) £404,645

Market value 27/6/1979 (commencement of lease) £42,500

Annual increase in market value 27/6/1979 to 1/1/1995 (16 years): 15.23%

SUMMARY:

Period	Yrs	Property	London (N'wide)
May 73 – Jan 95	22	G'hurst (128,935/16,250 = 9.85% pa (9.23%) [+ 1.91% (+1.29%)])	103.1/19.2 = 5.37 = 7.94% pa
Jun 77 – Jan 95	18	C'wall (152,505/17,750 = 12.67% [+4.13%])	103.1/23.5 = 4.38 = 8.54% pa
May 73 – Jan 95	22	Meriden (74,579/7,500 = 11.0% pa [+3.07%])	103.1/19.2 = 5.36 = 7.93% pa
June 79 – Jan 95	16	Ryder (404,645/42,500 = 15.23% [+ 8.93%])	103.1/38.7 = 2.66 = 6.30% pa