



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/00HG/OLR/2015/0009**

**Property** : **First Floor Flat 64 Hill Park Crescent  
Plymouth Devon PL4 8JW**

**Applicant** : **Thomas Bates and Joseph Bates**

**Representative** : **Pamela J. Bates**

**Respondent** : **Simon Christian Lippell**

**Type of Application** : **Determination of Premium and terms  
of acquisition; Section 48 Leasehold  
Reform and Urban Development Act  
1993 (the 1993 Act)**

**Tribunal Members** : **Robert Brown FRICS (Chairman)  
Judge C A Rai**

**Date and venue of  
Hearing** : **17 August 2015**  
**Copthorne Hotel Armada Way  
Plymouth Devon PL1 1AR**

**Date of Decision** : **16 September 2015**

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**DECISION**

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1. The Tribunal determines that the premium to be paid for a 90 year lease extension under the terms of the Leasehold Reform and Urban Development Act 1993 in respect of 64 Hill Park Crescent, Plymouth, Devon PL4 8JW is **£6,959.71**.
2. The parties must now comply with the time limits referred to in section 48 of the Act and particularly in section 48(2) and the Tribunal draws their attention to the provisions of section 48(6). If the parties are unsure as to how to proceed they should seek the advice of a suitably qualified solicitor

## **REASONS FOR DECISION**

### **The Application and Introduction**

3. This application is to determine the premium to be paid for a 90 year lease extension, at the subject property, under the terms of the Leasehold Reform Housing and Urban Development Act 1993.
4. On 28 November 2014 District Judge Griggs made an order in the Plymouth County Court staying a claim by the Applicant pending application to the FTT Property Chamber.
5. Just prior to the Hearing on or about the 14 August 2015 the Tribunal received further papers from Plymouth County Court including an Order dated 3 August 2015 dated 13 August 2015 made by District Judge Griggs that the section 42 notice to be declared valid was dated 10 November 2014.
6. The Applicant is the tenant of the Property under a Lease dated 6 April 1984 made between the Respondent (as Landlord) and John Richard Bush (as Tenant) (the Lease) which demised the Property to the Tenant for a term of 99 years from 6 April 1984 at an initial ground rent of £40 per annum escalating at 33 year intervals to £70 and then £100.
7. Although the Tribunal was requested to determine the terms of the lease neither party made submissions on this point other than that contained in the application; 1) Additional 90 years, 2) Peppercorn rent, 3) Removal of "one family clause" in 5(9) of the lease. The first two points are statutory requirements and (section 56 (1) of the Act) the third is not within the Tribunal's jurisdiction as explained in paragraph 23 below.

### **Matters over which there is no dispute or were agreed between the Parties during the hearing**

8. The experts, who did not attend the hearing, appeared to be in agreement as to certain aspects of the valuation.
  - a. Date of Notice of Claim: 10 November 2014.
  - b. Term unexpired at date of Notice 68.4 years.
  - c. Capitalisation Rate 7.00%
  - d. Deferment Rate 5.00%

- e. Relativity 91.75%
- f. That the 'roof terrace' is not part of the demise and therefore excluded from the valuation.
- g. The value of tenant's improvements is £500.00.
- h. The Valuation Fee is £850.00 plus VAT.
- i. Legal Fees £700.00 (not subject to VAT) plus £150.00 plus VAT.

### **Matter in dispute between the parties**

- 9. The value of the extended lease to the Lessee. The Applicant says £100,000.00 and the Respondent £124,000.00, both after allowing for lessee's improvements. The Respondent's valuation is enhanced to £125,240.00 (1%) to reflect the 'Freehold in Possession Value'.

### **The Law**

- 10. The relevant law is contained in Chapter II sections 39 to 62 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993.
- 11. The parties no longer dispute the validity of the Application and the Respondent accepts that the Applicant is entitled to extend his lease. The Order of the Plymouth County Court has established that 10 November 2014 is the valuation date.
- 12. Chapter 2 of the 1993 Act relates to the Individual Right of Tenant of flat to acquire new lease. The law is contained in Sections 39 to 61B and Part 2 of Schedule 13 deals with premium payable in respect of grant of new lease.
- 13. Section 42 sets out what must be contained in the tenant's notice. Section 45 sets out what must be contained in any counter-notice given in response by the Landlord.
- 14. Section 48 deals with applications where terms in dispute or failure to enter into new lease. That section is set out below.

#### **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, [the appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice

was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(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.

15. Part II of Schedule 13 of the 1993 Act explains how the premium payable by the tenant in respect of the grant of the new lease shall be calculated. Relevant extracts are set out below.

### **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.
- (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) 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).
- (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).
- (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].

(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.

[(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.]

(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.

(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.

(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.

(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.

(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 [the appropriate 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.

(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.

(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.

(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.

(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 [the appropriate tribunal] under this Chapter.]

## **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.

(2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.

(3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—

(a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;

(b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and

(c) of any other sums due and payable by him to any such person under or in respect of the existing lease;

and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable



in respect of them.

- (4) To the extent that any amount tendered to the landlord in accordance with subsection (3) is an amount due to a person other than the landlord, that amount shall be payable to that person by the landlord; and that subsection has effect subject to paragraph 7(2) of Schedule 11.

## **Inspection**

16. The Tribunal members inspected the Property at 10 o'clock on the 17th August 2015. The Respondent was waiting outside the Property. One of the Applicants with Mrs Bates and her husband were at the Property.
17. The Tribunal were shown the front door, the ground floor internal front entrance to the Property, the stairs leading to the Property which was on the first floor at a split level with the three bedrooms (one of which was shown as a lounge on the Lease plan) at a slightly higher level than the kitchen and dining area and the bathroom which included the toilet.
18. Beyond the three bedrooms a further flight of stairs led to the flat roof above the kitchen/diner which was enclosed by a low wall dividing it from the property to the right and railings. It was described by the Respondent as a roof terrace which was not included in the lease of the Property. The door leading on to the roof was part of a UPVC double glazed unit comprising a full length door and half window.
19. The Applicant purchased the Property in June 2007. The lease is subject to a ground rent payable in advance in half yearly instalments on the 24 June and 25 December. The Property is described in Part 1 of the Schedule to the Lease as:-
- “ALL THAT flat comprising the first floor of the building including the stairway and the roof and the roof space and one half part of the depth of the structure between the floors of the flat and the ceilings of the flat below it and including also all service conduits used solely for the purpose of the flat and no others ALL WHICH said property is for the purposes of identification only shown edged red on the attached plan”.

## **The Hearing**

20. Following an explanation as to why Judge Tildesley was unable to attend the Hearing. The Chairman also explained that the Respondent, Simon Lippell, was known to Judge Rai who has practiced in Plymouth as a solicitor for the last 30 years and remains in practice. She has never represented the Respondent and has disclosed the circumstances of her encountering the Respondent during social occasions in the City and County when both have attended the same functions. Judge Tildesley is entirely satisfied that there is no conflict of interest but it is important to explain that to both parties and particularly to the Applicant since it would have been clear to him that the Judge is known to the Respondent.

21. The Order of the County Court dated 3 August 2014 settled the Valuation Date of 10 November 2014.
22. The Applicant had appointed Mr D Linnell MA FRICS MEWI and the Respondent Mr D Stone as their valuers. Neither expert attended the hearing but both provided written valuations of the Property on the Valuation Date of 10 November 2014.
23. Other issues between the parties are whether the value of the Property is affected by the roof terrace and the restrictive covenant in the Lease, which the Applicant would like, removed, and which prohibits occupation other than by a family. It is not within the jurisdiction of the Tribunal under the 1993 Act for it to deal with either under the Application. When questioned, the Respondent said that any mention of a figure to be paid to him for the removal of the restrictive covenant would be dependent upon and linked to the figure determined by the Tribunal as being the premium for the grant of the extended lease. He is not prepared to agree to a figure until he knows what premium he will be entitled to receive.
24. The Chairman then asked if the parties could settle the amount of the legal costs the Landlord wanted to deal with the lease extension and the valuation costs incurred with regard to the calculation of the premium. He explained that the costs of proceedings and costs incurred with regard to the other proceedings are not recoverable under the 1993 Act.
25. The Respondent wanted to hand out further bundles to all the parties which he said contained a précis of his argument and indexed the evidence provided by his valuer. He accepted that save for the arrangement of the papers and the written précis, all the other information was already in the bundles which the Applicant and the Tribunal had received. The Tribunal was reluctant to accept further papers just before the Hearing. However following consultation with the Applicant it emerged that she wished to provide the Respondent and the Tribunal with copies of a recent FTT decision containing information about the calculation of a premium in relation to a property close to the Property. Whilst that decision is a matter of public record the Tribunal agreed to accept the précis of the Respondent's argument and the Tribunal case if it was distributed and an adjournment was made to allow the parties to read the new papers. This was agreed and that part of the new bundle was extracted and distributed to all.
26. When the Tribunal reconvened the Respondent told it that the parties had reached agreement on some issues, hitherto disputed.
  - a. The Deferment Rate is agreed at 5%
  - b. The Yield Rate is agreed at 7%
  - c. The Value of the Extended Lease is not agreed

- d. Relativity is not agreed
  - e. Landlords Legal costs of £1000 + VAT are agreed
  - f. Valuation costs for two separate valuations are agreed at £850 inclusive of any VAT and £150 + VAT. (only one fee is subject to VAT)
27. The Chairman explained that there were two constituent elements to apply to the valuation; Firstly the current value of the existing lease and secondly the value of the extended lease. The difference between the two values is the Relativity. You can agree relativity and work out the value from the extended lease or you can agree the current value and apply the relativity.
  28. If you can agree a top or bottom value applying the relativity calculation will enable calculation of the other value.
  29. The Chairman identified two issues with the Valuations, upon which the Tribunal would have wished to question the experts, (a) the Linnell Valuation referring to the concept of a negative marriage value and (b) the Stone Valuation making no allowance for the diminution of the Freeholder's interest at the end of the extended term.
  30. After further discussion between the parties 91.75% relativity was agreed.
  31. The only outstanding issue was to identify the value of the lease following extension.
  32. The parties were invited to suggest which of the comparables put forward by their respective valuers in their expert reports would assist the Tribunal.
  33. There followed submissions by both parties with regard to their respective valuers reports.
  34. Mrs Bates only put forward as appropriate comparables 27C Mildmay Street and 27 Sea View Mount Gould. There are no lease details or plans showing whether the accommodation is comparable.
  35. The Respondent suggested that 27C was more in "student land" suggesting that would diminish its value. He referred to Mildmay Street as a "rat run".
  36. He said that Hill Park Crescent is a better letting area and more likely to be favoured by families than students. He said that Sea View is bordering on Mount Gould which is a "lower price" area. The student epicentre has shrunk away from Mutley Plain on account of the large number of new purpose built student accommodation available within the City Centre, which he said would affect the price of property. Flats in Hill Park Crescent will in his view let for "more money".

37. He said his best comparable are the flats in Hill Park Crescent ignoring that these are not really comparable because the prices are for leaseholds with a share of the freehold. He said he has produced details of all to demonstrate that a preferred purchaser who already owned one flat bought another flat and therefore must have negotiated a discounted price although he could not provide written evidence for this assertion or confirm that the lady shown as being a part owner of the freehold in the register of title in the bundle, had in fact purchased another flat; he seemed reluctant to accept that a 999 year lease would be more valuable. When the Stone valuation was examined in more detail it was apparent that it did not add up. Mr Stone had started with a valuation of the Property of £128,000 (which the Respondent later claimed to be a mistake). He said he had made enquiries about the value of the roof terrace and been advised it added £5,000 but he had deducted £3,000. He had then relied on his knowledge of property in the vicinity of Brunel University and deducted £2,000 for the restrictive covenant; he agreed with the suggested deduction of £500 for tenant improvements. He had miscalculated this to total £123,500. The Chairman suggested that the figure reached was poorly explained. Further inaccuracies were then identified in relation to several of the subsequently stated comparables.
38. The Respondent conceded that valuation was not an exact science.
39. He said that Mr Stone had obtained the comparables from Falcon who had carried out a search of property on the market within a two month window commencing on the 1 November 2014
40. He identified which of the comparables complied with the criteria identified namely an extended lease term at a peppercorn rent in a comparable area with similar accommodation. However questions from the Tribunal revealed that some of the property had parking. Some of the property appeared different in size and layout.
41. The Applicant suggested, although she did not back this up with written evidence, that some of the flats, referred to as leasehold were sold as "freehold" or perhaps with a share of the Freehold. The Tribunal advised the parties that this makes a difference in value as it avoids the need for a tenant to be bound to pursue a statutory route to obtain a lease extension and to pay a premium. The Property is the subject of the Application because the freehold and leasehold are in separate ownership enabling the freeholder to obtain a premium for extending the lease.
42. Mrs Bates also pointed out that whilst the comparables may have been available within the two month window of the Valuation Date, she believed from her investigations, that most had been sold much later and no adjustment to the comparable for sale value had been made to reflect the price actually obtained which she suggested may well be less and was unlikely to be more than the "asking price".

43. The parties considered the effect of the restrictive covenant on value. The Respondent thinks that it will not affect the value. However such a view does not explain why he asked for additional money to release the covenant. He does not accept that anyone reliant on a 'buy to let' mortgage might have difficulty proceeding because of this covenant.
44. Mrs Bates suggested that the tenant of the ground floor flat was unhappy with the covenant being breached but put forward no evidence of this to the Tribunal.
45. In summary the Respondent, on several occasions asked the Tribunal to accept what he said "as evidence" on the basis of his discussions with local valuers with specialist knowledge who, in his view, could be relied upon regardless of whether or not they were professionally qualified.
46. Mr Lippell does not accept that it is, at least, disingenuous and, at worst misleading for him to suggest that David Stone's expertise is equivalent to a current RICS member notwithstanding he ceased to be a member at the end of 2006. Mr Lippell said that he is still regularly employed by a local council so his expertise cannot be doubted.
47. Mr Linnell is an RICS member but Mr Lippell still commented that if both valuation reports contained errors and omissions his valuer's report remains the better of the two.
48. Neither party seemed to be able to comment appropriately as to how either valuer neither of whom practiced locally could apply knowledge and experience gained from dealings with properties in a completely different geographical area.

### **The Tribunal's Deliberations**

49. The Tribunal considered all of the evidence submitted by the parties both oral and written and summarised above. The Tribunal was grateful to the parties for the effort they had made to settle the issues and the explanations given in relation to their experts valuations.
50. It was unfortunate that neither expert attended the Hearing as the Tribunal would have benefited for hearing their explanations in person. It would also have enabled cross examination and questions from the Tribunal which might have further illuminated each party's position.

### **Extended Lease Values**

51. The Tribunal concluded that there was insufficient evidence adduced by either valuer to consider making an adjustment to reflect the 'No Act' world.

52. Neither party suggested there was sufficient evidence of transactions to justify moving away from the Graphs of Relativity.
53. Neither expert made any reference in their reports to actually inspecting the Property. The Tribunal concluded that both reports had possibly been prepared 'desktop' without an inspection of either the Property or the surrounding locality. The Tribunal concluded that it is dangerous to rely upon the accuracy of such evidence without other supporting information.
54. Both experts appear to have adopted a 'broad brush' approach to their analysis of the available comparables necessitated in part by lack of information about size of flat, availability of parking, lease terms, quality of conversion and other similar considerations.
55. Neither Mrs Bates nor Mr Lippell are professional valuers however both demonstrated that they had considered carefully the evidence upon which their expert relied.
56. The Tribunal was not sufficiently convinced by either expert to adopt the analysis of one, in preference to the other. Mr Lippell's assertion that his Valuer, who is not a current member of a recognised valuation body and does not actually practice in the region, should be preferred did not in its view, have merit.
57. The Tribunal, obliged to do the best it can with the evidence before it, concluded that the single family restrictive covenant has a significant potential to reduce the number of buyers in an area where many of the properties were houses converted to flats with a view to letting to students or sharers. Such properties attract 'Buy to Let' investors many of whom require mortgages.
58. The Tribunal, whilst acknowledging that neither party was an expert and limiting the weight applied to their evidence accordingly, was impressed by the helpful assistance of the parties views on value.
59. The Tribunal after taking all of those matters into account determined the Extended Lease Value of the Property, after allowing for the lessee's improvements and the restrictive covenant is £110,000.00.
60. The calculation of the premium due to the Respondent from the Applicant for the grant of an extended lease is set out below.

### **Tribunal's Valuation**

61. Applying those determinations to the matters agreed by the parties the Tribunal's valuations are as follows:

#### **Diminution in Freehold**

Term		
Ground Rent 1	£40.00	
YP 2.4 years @7%	<u>2.1411</u>	£85.64

Ground Rent 2		£70.00	
YP 33 years @ 7%	12.7539		
PV £1 in 2.4 years @ 7%	<u>0.8501</u>	<u>10.8421</u>	£758.95
Ground Rent 3		£100.00	
YP 33 years @ 7%	12.7539		
PV £1 in 35.4 years @ 7%	<u>0.0911</u>	<u>1.0021</u>	£100.21
Reversion to Vacant Possession Value	£111,100.00		
PV £1 in 68.4 years @ 5%	<u>0.0355</u>		3,944.05
			£4,888.85
Intended Reversion in 158.4 years	£111,100.00		
PV £1 in 158.4 years @ 5%	<u>0.0004</u>		£44.44
Diminution in Freeholder's interest			£4,844.41
<b>Freehold share of Marriage Value</b>			
After Marriage			
Freehold Interest	£44.44		
Leasehold Interest	£110,000.00	£110,044.44	
Before Marriage			
Freehold	£4,888.85		
Leasehold (Relativity 91.75%)	£100,925.00	<u>£105,813.85</u>	
Gain on marriage of Interests		£4,230.59	
Freehold Share 50%			£2,115.30
			<b>£6,959.71</b>

### Appeal provisions

62. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
63. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
64. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**Robert Brown**  
**Chairman**