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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**DD/LON/00BK/OCE/2014/0272**
Property	:	**69 Blenheim Crescent, London W11 2EG**
Applicant	:	**John Sebastian Mackay and Laura Louise Diana Mackay**
Representative	:	**Mr James Fieldsend (Counsel) Bracher Rawlins LLP**
Respondent	:	**Mrs Fiona Havers**
Representative	:	**Mr Piers Harrison (Counsel) Streathers Solicitors LLP**
Type of Application	:	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Mr J Donegan (Tribunal Judge) Miss M Krisko FRICS (Valuer Member)**
Date and venue of Hearing	:	**03, 04 and 18 March 2015 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10 May 2015**

DECISION

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Decisions of the tribunal

(1) **The tribunal determines the price payable by the Applicants for the freehold of 69 Blenheim Crescent, London W11 2EG ("the Property"), pursuant to section 24(1) and schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), is £239,630 (Two Hundred and Thirty Nine Thousand, Six Hundred and Thirty Pounds), as set out in the attached schedule.**

The background

1. The Applicants are the leaseholders of Flats 3 and 4 at the Property. There are a total of 4 flats at the Property, all of which are let on long leases. The Respondent is the freeholder of the Property.

2. On 01 May 2014 the Applicants served an Initial Notice on the Respondent pursuant to section 13 of the 1993 Act, seeking to exercise their right to collective enfranchisement. The Applicants were named as the nominee purchaser in this notice, which proposed a purchase price of £137,800 for the freehold interest in the "specified premises" and £2,500 for "additional freeholds", as shown hatched red and cross hatched red on the accompanying plan. The leaseholders of Flats 1 and 2 did not participate in the service of the notice.

3. On 10 July 2014 the Respondent served a Counter-Notice admitting that on the relevant date the Applicants were entitled to exercise their right to collective enfranchisement. The Counter-Notice proposed a purchase price of £542,500 for the freehold interest in the specified premises and £12,500 for additional freeholds. It also made proposals as to the terms of the conveyance to the Applicants.

4. On 11 August 2014 the leaseholder of Flat 1 (Ms Irina Janakievska) served a Notice of Claim pursuant to section 42 of the 1993 Act, seeking to exercise her right to a new lease of this flat. The operation of that notice was suspended by virtue of section 54(1) and a Notice of Suspension was served by the Respondent on 02 September 2014.

The applications

5. On 17 October 2014 the Applicants, as nominee purchaser, submitted an application to the Tribunal to determine various terms of acquisition. Directions were issued on 06 November 2014.

6. The application was listed for a full hearing on 03 and 04 March 2015.

The hearing

7. The Applicant was represented by Mr Fieldsend at the hearing, who was accompanied by Mr Paul Craig of Bracher Rawlins LLP. The Respondent was represented by Mr Harrison, who was accompanied by Ms Iris-Ann Stapleton of Streathers LLP. The tribunal heard oral evidence from the parties' valuation experts, Mr Thomas Hutchinson FRICS for the Applicants and Mr Alexander Ingram-Hill MRICS for the Respondent.

8. The tribunal members were supplied with an unpaginated hearing bundle, which included copies of the application, directions, Initial Notice, Counter-Notice, Land Registry entries, leases and deeds of variation, notices relating to Flat 1, the agreed form of transfer deed and valuation reports.

9. Immediately before the hearing the tribunal were also supplied with typed opening submissions from Mr Harrison and a statement from Ms Stapleton, both dated 02 March 2015. In her statement (and accompanying exhibit), Ms Stapleton provided evidence that an application had just been made to register a unilateral notice against the freehold title, in relation to the section 42 Notice for Flat 1. The contents of the statement were not disputed and Ms Stapleton was not required to give oral evidence at the hearing.

10. During the course of the hearing various additional documents were submitted by the parties, including revised valuation calculations from the experts, planning documents and Land Registry entries for 28A Elgin Crescent, and drawings for possible alterations to LGFF, 18 Ladbroke Crescent. The tribunal were also supplied with typed closing submissions on hope value from Mr Fieldsend and copies of the Upper Tribunal decision in ***Trustees of Sloane Stanley Estate v Carey-Morgan and Stephenson [2011] UKUT 415 (LC)*** and the subsequent Court of Appeal decision ***(Carey-Morgan and Stephenson v Trustees of the Sloan Stanley Estate [2012] HLR 47)***.

11. At the start of the hearing, both Counsel addressed the tribunal on the admissibility of a letter from Marsh & Parsons Estate Agents, Valuers and Chartered Surveyors, dated 23 January 2014. This was addressed to the Ground Floor Flat (Flat 2) and was a promotional, circular letter. A copy of the letter was exhibited to Mr Ingram-Hill's addendum report. It referred to a recent sale of 28a Elgin Crescent, which was described as an *"..unmodernised two-bedroom lower ground floor apartment.."* and which had achieved *"...a value of £1,385 per sqft"*.

12. Mr Fieldsend objected to the letter upon the basis that it had only been disclosed on 02 March 2015, the day before the hearing started. Mr Ingram-Hill had included this flat as one of his comparable properties

in his original report but had not provided details of the sale and had only disclosed sales particulars from Hamptons, dating back to 2012. Mr Fieldsend argued that Mr Hutchinson was not in a position to analyse the 2014 sale or verify the information in the letter, having only just received details.

13. Mr Harrison sought to rely on the Marsh & Parsons letter, pointing out that it had been referred to in Mr Ingram-Hill's original report and was a circular letter that would also have been sent to the Applicants.

14. The tribunal advised the parties that it would decide whether to admit the Marsh & Parsons letter, when determining the case. If it is admitted then the tribunal would go onto decide the weight to be attached to the letter.

15. The hearing was listed for two days and concluded just before 5pm on 04 March 2015. The tribunal reconvened on 18 March 2015 to determine the case.

The leases

16. The leases of Flats 1 and 4 are each for a term of 99 years from 25 March 1982. The lease of Flat 2 is for 999 years from 25 March 1982 and the lease of Flat 3 is for 99 years from 25 March 1981.

17. The hearing bundle contained copies of the leases, which were varied by deeds of variation dated 24 September 1985. A copy of sample deed (Flat 4) was also included in the bundle and provided for a change to the lease plan.

18. The lease for Flat 2 was extended by a deed of variation dated 01 July 2013. A copy of this deed was also in the bundle.

The issues

19. By the time of the hearing, the only issues in dispute were the capital value of the flats, the hope value attributable to Flat 1 (a non-participating flat) and the proper treatment of the balcony/roof terrace and the extension for Flat 4.

20. The balcony had been created by extending into the original eaves on the third floor. The interior of the third floor had also been extended into the eaves. Based on the lease plan these areas appear to be outside the demise. In a letter dated 19 October 2011, the Respondent stated that the balcony was created in 1988 and that her consent had not been sought.

21. In his outline submissions, Mr Harrison accepted that the extended areas were either part of the original demise or were an accretion to the demise under the doctrine of encroachment. This meant that the Respondent could not insist upon the reinstatement of these areas. Mr Harrison agreed that the extension(s) fell to be valued as a tenant's improvement but suggested it should be valued as if it was an extension within the existing demise for which permission had been given by the Respondent or where permission was not needed.

22. The following matters had been agreed, as set out in the experts' agreed statement of facts, dated 29 January 2015:

(i)	Date of valuation:	01 May 2014
(ii)	Lease expiries:	
	Flat 1:	24 March 2081
	Flat 2:	28 November 2969
	Flat 3:	24 March 2080
	Flat 4:	24 March 2081
(iii)	Participating flats:	3 and 4
	Non- participating flats:	1 and 2
(iv)	Ground rents:	
	Flat 1:	£50pa until 24 March 2015
		£100pa until 24 March 2048
		£150pa for remainder of term
	Flat 2:	Nil
	Flat 3:	£100pa until 24 March 2047
		£150pa for remainder of term
	Flat 4:	As for Flat 1
(v)	Deferment rate:	5%

(vi) Floor areas: To be confirmed following joint inspection

(vii) Relativities:

Flat 1:	66.9 years remaining – 85.96%
Flat 2:	-
Flat 3:	65.9 years remaining – 85.36%
Flat 4:	66.9 years remaining – 85.96%

23. The floor areas of the flats were subsequently agreed as:

Flat 1:	621 square feet
Flat 2:	-
Flat 3:	421 square feet
Flat 4:	761 square feet (excluding anything below 1.5m)
	864 square feet (floor area to current walls)
	886 square feet (full floor area)

24. The agreed statement of facts made no reference to the additional freeholds. However neither expert attributed any value to appurtenant property in their valuation calculations.

25. By the time of the hearing the parties had agreed the form of the transfer deed, subject to insertion of the price. Paragraph 1 of the directions provided that any application to determine the Respondent's recoverable costs was stayed. There was no application to lift the stay, which meant that the tribunal was only required to determine the disputed valuation issues. By the conclusion of the hearing the experts had agreed the capitalisation of the ground rents for Flats 1, 3 and 4.

The inspection

26. The tribunal inspected the Property on the morning of 04 March 2015 in the presence of the Second Applicant, Mr Hutchinson and Mr Ingram-Hill. Flats 1, 3 and 4 were inspected along with the exterior of the Property. The tribunal also undertook 'walk-by' inspections of the various comparable properties put forward by the two experts.

27. The Property is a substantial and attractive, mid-terrace house on the south side of Blenheim Crescent. It is arranged over five floors. Flat 1 is in the basement, Flat 2 on the ground floor, Flat 3 on the first floor and Flat 4 on the second and third floors. Flat 1 has its own entrance. Flats 2-4 are accessed via steps, which lead to a raised ground floor communal entrance.

28. Flat 1 has its own garden and direct access to a large communal garden, which lies between Blenheim Crescent and Elgin Crescent. The other 3 flats also have indirect, key access to the communal garden via a gate in Ladbroke Grove.

29. Flat 1 is in poor condition. It comprises a living room at the rear, leading onto the garden, bathroom in the centre, bedroom at the front and small kitchen in the entrance area. There are only two windows in the flat, one at the front and one at the back. The kitchen and bathroom are very dated.

30. Flat 3 is a one bedroom unit with a living room incorporating a kitchen at the rear, bathroom in the middle and bedroom at the front. The living room has a small balcony. The kitchen and bathroom are modern.

31. Flat 4 comprises two bedrooms, a bathroom and small kitchen area on the second floor and living room with balcony in the third floor loft space. There are also substantial storage units built into the eaves on the third floor. Again the kitchen and bathroom are modern.

32. Flats 3 and 4 are both in good condition, having been modernised to a reasonable standard.

<u>Valuation evidence</u>

33. Both experts are experienced valuation surveyors, with particular expertise in leasehold enfranchisement valuations.

34. Mr Hutchinson is a director of JSS Egerton and is based at 17c Curzon Street, London W1. He is a Fellow of the Royal Institution of Chartered Surveyors, having first qualified in 1978, and an Associate of the Arbitrators.

35. Mr Ingram-Hill is an Associate Director in the valuation and surveying department of John D Wood & Co ("JDW") and is based at their head office at 140 Kensington Church Street, London W8. He is a professional Member of the Royal Institution of Chartered Surveyors and has worked at various firms of surveyors since 2002.

36. The tribunal were supplied with two reports from each expert, who also gave oral evidence. It is unnecessary for the tribunal to recite the contents of these reports in detail, as the reports are there for the parties to see. The experts' evidence on each of the disputed issues is briefly summarised below:

General

Mr Hutchinson

37. Mr Hutchinson's initial report/proof of evidence was dated 25 February 2015. He valued the freehold at £201,815 including hope value. Mr Hutchinson also relied on an addendum submission dated 27 February 2015, which largely addressed the comparable evidence put forward by Mr Ingram-Hill. In that submission he revised his valuation down to £193,115. In his revised calculations, produced on the second morning of the hearing Mr Hutchinson valued the premiums for the flats at £34,620 (Flat 1), £60,163 (Flat 3) and £104,327 (Flat 4), making a total of £199,110.

38. Mr Hutchinson considers that Notting Hill is now part of Prime Central London. Blenheim Crescent is bisected by Ladbroke Grove, which is a steep hill. In Mr Hutchinson's opinion properties at the top of the hill are more desirable than those at the lower (northern) end. Not only are the properties superior but they also have better views. Mr Hutchinson described Blenheim Crescent as being towards the bottom of the hill and less desirable, being closer to the Westway flyover and council properties to the north in Cornwall Crescent.

39. Mr Hutchinson described the conversion of the Property, into flats, to be of poor quality. He likened the south side of Blenheim Crescent with the east side Elgin Crescent, in terms of desirability.

40. Mr Hutchinson described Flat 1 as "*..very much unimproved*". He pointed out that layout appears to have changed since the lease was granted. The lease plan shows the kitchen as being incorporated in the living room but it has now moved to an area below the external stairs and entrance porch at ground floor level. Based on the plan it appears that this area might not have been included in the original demise but Mr Hutchinson had taken it into account when valuing this flat, as a tenant's improvement.

41. The Applicants have refurbished Flats 3 and 4. Flat 3 has stripped wood floors and a new kitchen and bathroom. Mr Hutchinson has disregarded the new kitchen and bathroom, as tenant's improvements, when valuing this flat.

42. Flat 4 also has a new kitchen and bathroom. The lease plan for Flat 4 shows the kitchen as being within the attic and it has been moved down to the second floor. Mr Hutchinson treated the relocation of the kitchen and the creation of the new balcony, as a tenant's improvements. Mr Hutchinson described the third floor loft space as being *"..a worse than normal mansard as it is a very shallow slope with two dormer windows, one at each end"*

43. When valuing Flat 4, Mr Hutchinson has excluded those parts of the third floor with headroom of less than 1.5 meters (5'), upon the basis that this is unusable space. This was different to the approach used by Mr Ingram-Hill, who had also valued the floor area below 1.5m. Mr Hutchinson relied on an extract from the RICS Code of Measuring Practice 6th Edition, which specifically excludes *"..areas with headroom less than 1.5 m where the dwelling does not have any useable space vertically above"*. The height where the ceiling reaches the walls at either end is 0.6m (1'10").

44. The floor area for this flat, including those arears with headroom below 1.5m and extending to the internal walls, is 864 square feet. Mr Hutchinson acknowledged that the sales particulars from Foxtons had quoted an area of 862 square feet but suggested that it was this company's practice to quote the full floor area. He also suggested that if the attic was to be valued based on the full floor area then the rate per square foot would have to be substantially reduced.

Mr Ingram-Hill

45. Mr Ingram-Hill's initial report/proof of evidence was dated 27 February 2015. He valued the freehold at £252,783 excluding hope value and at 274,194, including 25% hope value. Mr Ingram-Hill also put forward alternative values of £282,783/£304,194, if the balcony to Flat 4 was not part of the demise. This was upon the basis that the Respondent could seek compensation for the unauthorised use of this area.

46. Mr Ingram-Hill also relied on an addendum report dated 02 March 2015, which largely commented on matters raised in Mr Hutchinson's report. In the addendum he acknowledged that due to the passage of time, no action could be taken in relation to the creation of the balcony for Flat 4 in line with Mr Harrison's opening submissions. Mr Ingram-Hills's revised valuations of the freehold were £250,122 excluding hope value, £270,949 including 25% hope value and £283,446 including 40% hope value.

47. In his revised calculations, produced on the second day of the hearing, Mr Ingram-Hill valued the freehold at £252,783 excluding hope value and £274,194, including 25% hope value.

48. Mr Ingram-Hill agreed with Mr Hutchinson that properties towards the top of Ladbroke Grove were generally more valuable than those at the bottom of the hill but pointed out that Blenheim Crescent was some distance up the hill. He likened the south side of the Blenheim Crescent to the north side of Elgin Crescent, on the other side of the communal gardens. Mr Ingram-Hill relied on market questionnaires, which he had circulated to local estate agents. He had received eight completed questionnaires. Of those, six indicated that south side of Blenheim Crescent was considered to be the same as Elgin Crescent; one indicated that the two areas were the same and one had been left blank.

49. The tribunal found the questionnaires to be of limited assistance, as they were fairly rudimentary and there was no indication of how many questionnaires had been circulated.

50. Mr Ingram-Hill appeared to accept that Flat 1 was in an unimproved condition, in that he had valued it based on how it was at the time of his inspection. He made the point that the rear garden and access to the communal gardens were desirable and sought after attributes.

51. Mr Ingram-Hill described Flat 3 as *"..a very attractive property"* and referred to the high ceilings and the well-configured layout. He considered the new kitchen arrangement to be question of taste and not necessarily an improvement.

52. Mr Ingram-Hill made no adjustments for tenant's improvements in respect of the new bathroom and kitchen in Flat 4. He considered these to be updates or renewals, as opposed to improvements.

53. In his addendum report, Mr Ingram-Hill accepted that the value of Flat 4 could be reduced to reflect the cost of creating the balcony (as a tenant's improvement). However he suggested that it would be wrong to deduct the value of the balcony from the value of the flat.

54. In relation to Flat 4, Mr Ingram-Hill valued both the 'core' gross internal floor area ("GIA") on the third floor, with headroom of more than 1.5 meters and the extra internal floor area below this height. In relation to the latter he had applied half the rate for the core area, to reflect the restricted headroom. Mr Ingram-Hill pointed out that this area *"lends lateral proportion and usable accommodation to the third floor"*. He suggested that agents attach value to areas with limited headroom and relied on the Foxtons sales particulars. He also referred to sales particulars for a similar flat, which had been prepared by JDW, which had included the areas of restricted head height in the GIA but had marked these on the floorplan. Mr Ingram-Hill also pointed out that the RICS Code was concerned with the measurement of properties with reduced head height but that measurement is only part of valuation.

Capital values of flats

Mr Hutchinson

55. Mr Hutchinson relied on two schedules of comparable properties; with 5 comparables for Flat 1 and 15 for Flats 3 and 4. Many of these were in Blenheim Crescent or Elgin Crescent. In the case of Flats 3 and 4, the comparables included the sales of these flats in 2011 and 2012, respectively. Mr Hutchinson worked out the rates per square foot, based on the sale prices of the comparables. He had then adjusted these rates for tenure (using the Savills (With Rights) Graph) and date of sale (using the Savills Prime Central London Index). Mr Hutchins suggested that most surveyors use the Savills index for market adjustments, save those who work for JDW. He had not analysed the JDW Index, in any detail and had no specific criticisms of it. In his experience, the Savills Index was generally regarded as the best.

56. Flats 3 and 4 were purchased by the Applicants in December 2011 and October 2012, respectively. Mr Hutchinson considered that the price paid for Flat 4 (£1,130,000) was substantially in excess of the level shown by the comparables. He suggested that this might be explained by the fact that the Applicants already owned Flat 3 at the time of purchase and live in Blenheim Crescent, which meant this was a special purchase and might have resulted in an overbid.

57. Mr Hutchinson normally uses a range of £100-£500 per square foot when adjusting tenant's improvements. He made no adjustments for Flat 1, being in an unimproved condition. There were also no specific adjustments for Flat 3, as Mr Hutchinson simply disregarded the new kitchen and bathroom. In his original report he stated that he had made an adjustment of £100 per square foot for the relocation of the kitchen and the creation of the new balcony in Flat 4. However in his addendum he pointed out that the extensions on the third floor had been created from areas on the third floor where the headroom was below 1.5m and had already been excluded from his valuation.

58. Mr Hutchinson also made adjustments for condition and other factors, such as gardens, location and parking. Mr Hutchinson was cross-examined on the various condition adjustments he had made, which ranged between £100 and £300 per square foot. Mr Harrison suggested that these adjustments were too high and overstated the cost of the upgrading work required to put the subject flats in the same condition as the comparables. Mr Hutchinson disagreed and explained that his adjustments reflected the difference in the value of the properties arising from the differences in condition, which is not always the same as the cost of the upgrading works.

59. In relation to Flat 1, Mr Hutchinson has tried to find comparables with direct access to communal gardens. Where appropriate he has made

adjustments of 10% for flats that have patios, rather than their own gardens.

60. In his original report, Mr Hutchinson valued the flats as follows:

Flat 1 £1,065 per square foot (capital value £661,365)

Flat 3 £1,472 per square foot (capital value £619,712)

Flat 4 £1,600 per square foot (capital value £1,217,600)

61. In his addendum, Mr Hutchinson concluded that he had overvalued Flat 4, having regarding to the extension on the fourth floor and Mr Ingram-Hill's comparables. His revised valuation was:

Flat 4 £1,472 per square foot (capital value £1,120,192)

This was less than the sum paid by the Applicants in October 2012. Mr Hutchinson considered that they had overpaid, as 'special purchasers'.

Mr Ingram-Hill

62. Mr Ingram-Hill relied on three schedules of comparables properties; with 5 comparables for Flats 1 and 4 each for Flats 3 and 4. Again the comparables for Flats 3 and 4 included the sales of these flats in 2011 and 2012. Mr Ingram-Hill had followed a similar valuation approach to Mr Hutchinson. He had adjusted for tenure using the Savills (With Rights) Graph but had used a blended index, being an average of the Savills and JDW indices, to make adjustments for date of sale. In a few instances he had adjusted for time from the dates when contracts were exchanged, rather than completion. The tribunal's view is that time adjustments must be from completion, being the date when legal title passes. Although rare, there are instances where contracts are exchanged but the transaction does not complete.

63. Mr Ingram-Hill had also made adjustments to the comparables for condition and other factors, which included the proximity to busy roads and bus routes, where he considered it appropriate. In the case of Flat 1, he also took account of the depth/basement feel for two of the comparables. Mr Ingram-Hill suggested that Flat 1 could potentially be converted into two bedroom accommodation, as it is relatively large. Accordingly the price per square foot would be in line with that for two bedroom flats.

64. Initially Mr Ingram-Hill did not make any adjustments for tenant's improvements for any of the flats. His view was that the new bathrooms and kitchens in Flats 3 and 4 were renewals rather than

improvements. In the case of Flat 4 the kitchen had been moved down to the second floor but Mr Ingram-Hill did not consider this to be an improvement, as it meant that residents would have to carry meals upstairs to eat (the new kitchen area being too small to eat in).

65. Having analysed the historic sales of Flats 3 and 4, Mr Ingram-Hill considered these to be of limited value. This was due to the time lapse since the sales, they dynamic nature of the market in the intervening period and the fact that they were sold with the exiting lease terms and without the benefit of lease extension claim notices. When adjusting for time, Mr Ingram-Hill had taken an average of the JDW and the Savills indices and also applied each index separately. Applying just the JDW index yielded higher rates than the Savills index. Mr Ingram-Hill made the point that local markets can perform differently to wider area covered by the indices. He relied on the completed market questionnaires, to demonstrate that agents' opinions differed widely on whether the local market had matched the Savills index in the year to the valuation date.

66. Mr Ingram-Hill rejected the suggestion that the Applicants might have overbid for Flat 4 and produced details of other sales, from around the period of this transaction, which illustrated that comparable prices (per square foot) were being achieved.

67. In his original report, Mr Ingram-Hill valued the flats as follows:

Flat 1 £1,377 per square foot (rounded capital value £855,000)

Flat 3 £1,884 per square foot (rounded capital value £795,000)

Flat 4 £1,851 per square foot (rounded capital value of £1,600,000)

68. In his addendum, Mr Ingram-Hill accepted that the condition of Flat 1 was dated and made some adjustments for the condition of the comparables. His revised valuation was

Flat 1 £1,340 per square foot (capital value £831,140)

69. Mr Ingram-Hill also reduced his valuation of Flat 4 to £1,580,000, to reflect his estimate of the cost of creating the balcony (£20,000), being a tenant's improvement.

Comparables - general

70. Both experts were cross-examined in detail on the merits of the comparables, which had also been considered in their reports. In many

cases they had not inspected the interior of the comparables; rather they had relied on sales particulars and/or external inspections. The tribunal undertook 'walk by' inspections of the comparables and the respective merits of these properties were also addressed in closing submissions.

71. At the inspection and at the request of the tribunal, the experts produced a list of those comparables that were agreed. In the case of Flat 3, the experts also included their 'top picks' that were not agreed. The agreed comparables, with the expert's initials for 'top picks', were:

Flat 1	LGFF, 108 Lansdowne Road
Flat 3	3D Arundel Gardens
	31D Arundel Gardens
	FFF, 27 Blenheim Crescent
	GFF, 45 Elgin Crescent (AIH)
	47B Elgin Crescent (TH)
Flat 4	48C Blenheim Crescent
	7A Elgin Crescent
	FFF, 20 Elgin Crescent

72. At the tribunal's request, the experts subsequently produced a shortlist of the best comparables for each flat. The tribunal's assessment of the shortlisted properties is dealt with at paragraph 78 below.

The tribunal's decision

73. The tribunal determines the extended lease values of the flats, as at the valuation date, as follows:

Flat 1	**£767,556**
Flat 3	**£698,018**
Flat 4	**£1,459,202**

Reasons for the tribunal's decision

74. Both experts agreed on the use of Savills (With Rights) Graph for tenure adjustments. The tribunal adopted the Savills Index for time adjustments, for the reasons advanced by Mr Hutchinson.

75. In relation to Flats 3 and 4, the tribunal agreed with Mr Ingram-Hill that the replacement of the bathrooms and kitchens amounted to renewals rather tenant's improvements. It also agreed that the relocation of the kitchen in Flat 4 was not a tenant's improvement. Not only is the new kitchen area on a separate floor to the living room, which is inconvenient, it is also very small.

76. In relation to Flat 4 the tribunal accepted Mr Ingram-Hill's argument that some value should be attributable to the floor area with headroom below 1.5 meters, as this has some utility and benefits the flat. It created a more spacious feel to the third floor and part of this area could be used for low level furniture or equipment. Further the eaves had been converted into substantial and useful storage units, which clearly added value. The tribunal concluded that all of the floor area below 1.5 meters should be valued, including the storage units. This meant that there was an additional 125 square feet to value (886 less 761 square feet). The tribunal considered Mr Ingram-Hill's valuation of 50% of core GIA was too high, as much of this area was very low level (given the pitch of the roof) and had limited use. Having regard to the utility and benefit of this area as a whole, the tribunal concluded that a figure of 20% was appropriate.

77. Given that that the tribunal valued the area below 1.5 meters, it was necessary to make an adjustment for the creation of the balcony as a tenant's improvement. The tribunal accepted Mr Ingram-Hill's figure of £20,000, which is to be deducted from the extended lease value for Flat 4.

78. The tribunal considered all of the comparables in the experts' shortlist and also had regard to the other comparables, when checking the final figures. Its assessment of the shortlisted properties is set out below:

Flat 1

LGFF, 23 Arundel Gardens – This flat sold in August 2013 at £860,000 and was adjusted for time. The floor area was 993 per square foot. The location is inferior and the flat does not have a garden but does have indirect access to communal gardens. The tribunal agree with Mr Ingram-Hill that it is *"very basementy"* and made a global adjustment of +15% for all of these disadvantages. The experts agreed that no adjustment for condition was required, so the final rate is **£1,226 per square foot**.

28A Elgin Crescent – The tribunal disregarded this comparable, as being unreliable. There were no particulars for the January 2014 sale and the letter from Marsh & Parsons dated 23 January 2014 had been disclosed very late in the day. Further the letter only provided very limited information regarding the sale. In addition the purchaser had bought not just the flat but also the adjacent vaults, which are on a separate title. The sale price of £1,500,000 was the combined figure for the flat and the vaults and part of this figure must have been attributable to the vaults. In addition, the flat had the benefit of planning consent to extend into the vaults (dated 19 March 2013). The potential to extend may have affected the sale price. All of these factors led the tribunal to conclude that this comparable was unreliable.

LGFF, 108 Ladbroke Crescent – This flat sold in February 2014 at £1,350,000 and was adjusted for time. The experts had used different floor areas and the Tribunal adopted the midway point of 1,093 square feet. The tribunal concluded that the location was inferior and the building was less attractive than the Property. It adjusted the rate by +£100 per square foot to take account of these disadvantages. The internal condition of this flat appeared to be far superior, based on the sales particulars. The tribunal considered that Mr Hutchinson's condition adjustment of -£200 per square foot was too high. Whilst the adjustment must reflect the impact in value of a difference in condition, this will usually be informed by the cost of upgrading works. In this case a figure of £200 per square foot would suggest an upgrading cost in the order £200,000, which is unrealistic. The tribunal accepted Mr Ingram-Hill's condition adjustment of -£100 per square foot. This gives a final rate of **£1,252 per square foot**.

LGFF, 22 Ladbroke Gardens – This flat sold in September 2013 at £1,060,000 and was adjusted for time and tenure. The floor area was 1,199 square feet. Again the location was inferior. Again the tribunal agreed with Mr Ingram-Hill that the flat was *"very basementy"*. However the internal condition appeared to be superior based on the sales particulars. The tribunal made a net adjustment of +5%, to account for all of these differences. This gives a final rate of **£1,232 per square foot**.

The mean average of the adjusted rates for these 3 comparables (excluding 28A Elgin Crescent) is £1,236.67, which the tribunal rounded down to £1,236 per square foot. The extended lease value of Flat 1 is £767,556 (£1,236 x 621 square feet).

<u>Flat 3</u>

3D Arundel Gardens – This flat sold in April 2014 at £1,090,000 and was adjusted for time and tenure. The floor area is 626 square feet. It has indirect access to communal gardens but the location is inferior

to the Property, as it overlooks the busy Kensington Park Road. The tribunal made a location adjustment of +10%. Mr Ingram-Hill stated that the flat had been affected by some damp at the time of sale. The sales particulars described this flat as "..*tastefully refurbished using high quality materials and a superb eye for design and style*". Mr Hutchinson had adopted a condition adjustment of -£300 per square foot for the designer refurbishment. However the tribunal agreed with Mr Ingram-Hill that there should no condition adjustment. Flat 3 has been refurbished and is in good condition. Further the designer finish in the comparable property might not be to everyone's taste. Any difference in condition was minimal and would be counteracted by any damp. The final rate for this comparable is **£1,949 per square foot.**

31D Arundel Gardens – This flat sold in February 2014 at £970,000 and was adjusted for time. The floor area is 603 square feet. The location is similar to the Property, with indirect access to communal gardens. Mr Hutchinson made condition adjustment of -£100 per square foot. The tribunal agreed with Mr Ingram-Hill that there should be no such adjustment. The tribunal also rejected Mr Hutchinson's location adjustment of -5% and Mr Ingram-Hill's combined adjustment of 10% for floor position outside space. The final rate for this comparable is **£1,630 per square foot.**

FFF, 27 Blenheim Crescent – This flat sold in August 2014 at £850,000 and was adjusted for time. The floor area is 489 square feet. It is very close to the Property but on the inferior east side of the road with a less attractive outlook. The tribunal made an adjustment of +10% for location/outlook, as adopted by Mr Ingram-Hill. Mr Hutchinson made a condition adjustment of -£200 per square foot. Again the tribunal agreed with Mr Ingram-Hill that there should be no such adjustment. The final rate for this comparable is **£1,900 per square foot.**

Flat 3, 69 Blenheim Crescent – The flat was purchased by the Applicants for £468,000 in December 2011 and was adjusted for time and tenure. Although this was almost 2½ years before the valuation date, the tribunal did take this transaction into account as it had the benefit of not requiring any subjective adjustments for condition, location or other factors. Also no adjustment for floor area was required. The final rate is **£1,510 per square foot.**

GFF, 45 Elgin Crescent – In his initial report, Mr Ingram-Hill stated that contracts were exchanged in February 2014 for £999,999. However he did not give the completion date. In his addendum, Mr Hutchinson stated that he had checked at the Land Registry, which showed a transfer date of May 2014. Upon this basis no adjustment for time was necessary. The floor area is 608 square feet. Mr Ingram-Hill made an adjustment of +10% for the location, which he considered to be inferior. Mr Hutchinson proposed a condition adjustment of -£300

per square foot. The tribunal rejected both of these adjustments. The location is very similar to the Property and there is no justification for a condition adjustment. The final rate for this comparable is **£1,645 per square foot.**

Flat B, 47 Elgin Crescent – This flat sold for £875,000 in September 2013 and was adjusted for time. The floor area is 710 square feet. Mr Hutchinson had made an adjustment of -10%, as this flat has direct access to the communal gardens, via the common parts of the building. The tribunal concluded that any benefit conferred by direct access to the communal gardens, as opposed to indirect access, was minimal and rejected this adjustment Mr Hutchinson did not suggest any other adjustments and Mr Ingram-Hill had not included any analysis for this flat in his reports. The final rate is **£1,313 per square foot.**

The mean average of the adjusted rates for these 6 comparables is £1,657.83, which the tribunal rounded down to £1,658 per square foot. The extended lease value of Flat 3 is £698,018 (£1,658 x 421 square feet).

Flat 4

48C Blenheim Crescent – This flat sold for £2,300,000 in January 2014 and was adjusted for time. The floor area is 1,201 square feet. It has two roof terraces and had been refurbished but is on inferior east side of the road. Mr Hutchinson had made adjustments of -£200 per square foot for the refurbishment, -15% for the two terraces and +10% for location/outlook. Mr Ingram-Hill had made a net adjustment of +5% to reflect the trade-off between the superior terraces and the inferior location/outlook. Flat 4 has been refurbished and is in good condition. The tribunal made no condition adjustment and concluded that the superior terraces and inferior location/outlook cancelled each other out. Accordingly no further adjustment was required and the final rate for this comparable is **£1,915 per square foot.**

Flat 4, 69 Blenheim Crescent – The flat was purchased by the Applicants for £1,130,000 in October 2012 and was adjusted for time and tenure. The tribunal did take this transaction into account, notwithstanding Mr Hutchinson's concern that there might have been a special purchase overbid and Mr Ingram-Hill's concern over the time lapse. The flat had been marketed for sale at £1,150,000 and the Applicants paid less than the asking price. Again the flat had the benefit of not requiring for any subjective adjustments for condition, location or other factors or any adjustment for floor area. The final rate is **£1,909 per square foot.**

FFF, 20 Elgin Crescent – This flat sold for £940,000 in June 2013 and was adjusted for time and tenure. The floor area is 651 square feet. Again the tribunal rejected the condition adjustment made by Mr

Hutchinson (-£100 per square foot). However it did make an adjustment of +5% for the inferior location/outlook, as the flat is very close to Portobello Road and a bus lane and does not enjoy the same views. Mr Ingram-Hill had not included any analysis for this flat in his reports. The final rate is **£1,737 per square foot.**

TFF, 22 Elgin Crescent – In his initial report, Mr Ingram-Hill stated that contracts were exchanged in May 2014 for £1,495,000. Once again he did not give the completion date. The tribunal accepted Mr Ingram-Hill's adjustments for time and tenure, as there was no analysis from Mr Hutchins. The floor area is 772 square foot. Mr Ingram-Hill described this flat as being "*..presented in very good condition*", with the benefit of a lateral layout (rather than being over two floors). He suggested that the location was very similar to the Property but having regard to the inferior outlook and no access to a communal garden had made a net adjustment of 5%. The tribunal concluded that no further adjustment was appropriate, as the benefits and disadvantages cancelled each other out. The final rate for this comparable is **£1,969 per square foot.**

The mean average of the adjusted rates for these 4 comparables is £1,882.50, which the tribunal rounded down to £1,882 per square foot. This is the rate for the core area. The rate for the area below 1.5 meters is £376 per square foot (£1,882 x 20%). A deduction of £20,000 is to be made for tenant's improvements. The extended lease value of Flat 4 is £1,459,202 (£1,882 x 761 square feet plus £376 x 125 square feet less £20,000).

Hope value for Flat 1

79. The leaseholders of Flats 1 and 2 are not participating in the enfranchisement claim. It follows that no marriage value is payable for these flats. The experts have considered whether hope value is recoverable. This is not appropriate in the case of Flat 2, as the lease had approximately 967 years unexpired at the valuation date. The parties agree that hope value is payable for Flat 1, which had 66.9 years remaining at the valuation date.

80. The parties were unable to agree on the appropriate level of hope value for Flat 1. This issue was covered in the experts' evidence and in Counsels' submissions, which are all summarised below.

Mr Hutchinson

81. In his initial report Mr Hutchinson referred to the Upper Tribunal's decisions in ***Carey-Morgan, Culley v Daejan Properties Limited [2009] UKUT 168 (LC)*** and the Lands Tribunal's decision

in ***Blendcrown Limited v Church Commissioners for England [2002] LRA/50/2002***. He had seen no evidence to deviate from the decision in ***Carey-Morgan*** where hope value was determined at 10% of over overall marriage value for a lease with 70.25 years remaining and 20% for leases with 4.74 years remaining. 10% was also the rate applied in ***Culley,*** where the leases had 65 years remaining.

82. Mr Hutchinson ignored the section 42 Notice served for Flat 1 on 11 August 2014 when assessing hope value, as it was served after the valuation date (01 May 2014). In his opinion, a hypothetical purchaser would have considered it unlikely that the leaseholder of Flat 1 (Ms Janakievska) would have come forward to negotiate for an extended lease, as at the valuation date. Upon this basis he considered that 10% was sufficient and this was the rate he used in all of his valuation calculations. In cross-examination, Mr Hutchinson acknowledged he had valued hope value at 10% before he knew that there had been informal discussions regarding a lease extension for Flat 1. He accepted that this figure was conservative, in the light of the negotiations, but did not wish to adjust it. Mr Hutchinson had not considered what figure might be appropriate if the section 42 Notice was taken into account. When pressed by Mr Harrison, he suggested a figure of 20%.

Mr Ingram-Hill

83. Mr Ingram-Hill also referred to ***Carey-Morgan*** and ***Culley*** in his initial report. He considered that 10% was too low, having regard to the particular facts in this case. Ms Janakievska had informal discussions with the Respondent between March and May 2014, regarding the possibility of a lease extension. This was confirmed in an email from Ms Janiakievska dated 27 February 2015 that was appended to Mr Ingram-Hill's initial report. In that email she explained that she had obtained a valuation report from Mr Riccardo Carelli of Knight Frank LLP dated 29 January 2014. She also stated that she had opted to serve a formal section notice to protect her interests, when she became aware of the Applicants' enfranchisement claim.

84. In his initial report, Mr Ingram-Hill expressed the view that at the valuation date the probability of Ms Janakievska hypothetically coming forward in the future to acquire a lease extension would be very high. He also made the point that the Applicants stand to benefit from significant windfall, assuming that the statutory lease extension for Flat 1 completes, as they will receive 50% of the marriage value. Having regard to these factors, Mr Ingram-Hill's opinion was that hope value should be 25% of overall marriage value.

85. In his addendum, Mr Ingram-Hill suggested that a figure of 40% would be appropriate if it was possible to take account of the section 42 Notice served by Ms Janakievska. He accepted that there should be some discount on the proportion of marriage value payable on a statutory

extension, to reflect the possibility of the leaseholder withdrawing claim. He made the point that Ms Janakievska had instructed reputable solicitors and surveyors to advise on her claim, who would have advised her on the costs position.

Legal submissions

86. Mr Fieldsend contended that 10% was appropriate, having regard to the comparable lease length for Flat 1 and the longer of the two leases in ***Carey-Morgan***. He reminded the tribunal that the hope being valued was that a non-participating tenant would come forward and seek to negotiate a lease extension with the freeholder (other than a statutory extension). As stated by Lord Neuberger in ***Earl Cadogan and others v Sportelli and another [2008] UKHL 71*** it is the "hope" of releasing marriage value through the grant of a new lease.

87. Mr Fieldsend referred to the valuation exercise as being one of speculation. A hypothetical purchaser is gambling on the amount of marriage value/profit he might realise by subsequently granting lease extensions. The maximum profit he can realise is 50% of the overall marriage value, being the sum payable on statutory lease extensions. A purchaser will not gamble all of this profit and would adjust his bid accordingly.

88. Mr Fieldsend accepted that a section 42 Notice that had been given at the valuation date could be treated as evidence of interest, as could the informal discussions between Ms Janakievsa and the Respondent. However he suggested that their evidential value of Ms Janakievsa' email was limited.

89. Mr Fieldsend made the point that a hypothetical purchaser might not be aware of the informal discussions and, if he was, would have regard to the delay between Ms Janakievsa obtaining her valuation report and the valuation date. An assessment of hope value based on these discussions could not justify payment of 25% of overall marriage value, as this would represent 50% of the purchaser's potential profit and was 5% more than the figure allowed ***Carey-Morgan*** for the short leases with 4.74 years unexpired.

90. In this case the section 42 Notice was served after the valuation date and Mr Fieldsend contended that such evidence must be ignored. He relied on the following passage at paragraph 117 of the Upper Tribunal's decision in ***Carey-Morgan:***

"As to flat 20, where the LVT concluded that the service of a section 42 notice by the lessee in 2009 triggered hope value in that instance, we think they were wrong to take it into account. It was served 18 months after the valuation date, and any post valuation date factual

evidence must, of course, be ignored. What that does do, though, is to provide retrospective support for our view that there was a reasonably good chance that an application might be received, not just from flat 20 but from any of the short leasehold units".

91. Mr Harrison reiterated that the Applicants were likely to receive a windfall if the service of the Notice was ignored, as they would extract 50% of the marriage value on completion of the statutory lease extension for Flat 1. He submitted that a much fairer approach was to take account of the Notice, discounted to reflect the risk of withdrawal.

92. Mr Harrison referred to the valuation assumptions at paragraph 3(1) of schedule 6 to the 1993 Act, which are set out in the appendix to this decision. Paragraph 3(1)(d) requires an assumption that "*..the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made..*". Mr Harrison pointed out that the conveyance of the freehold will be subject to the section 42 Notice for Flat 1, as this had just been protected by registration of a unilateral notice (as detailed in Ms Stapleton's statement), even though the Notice was served after the valuation date. It follows that the Applicants will purchase the freehold subject to the section 42 Notice.

93. Paragraph 3(1)(d) is subject to the 'no Act world' assumption at subparagraph (b). However this assumption makes it clear that taking into account the service of a section 42 Notice (by a non-participant) is not precluded. Upon this basis, Mr Harrison submitted that a post valuation date Notice should be taken into account, as a burden that the conveyance will be subject to.

94. Mr Harrison pointed out that the impact of the post valuation date section 42 Notice in ***Carey-Morgan*** did not form part of the appeal on hope value before the Court of Appeal, in which the figures allowed by the Upper Tribunal were upheld. It follows that the Court of Appeal had not considered whether such a Notice could be taken into account.

95. Mr Harrison contended that hope value should be 40% of overall marriage value, taking account of the section 42 Notice. Statutory lease extension claims are rarely withdrawn, so there was every likelihood that the lease would be extended. It follows that only a small discount should be applied for the risk of withdrawal. If the Notice was to be ignored then hope value should be determined at 25%, having regard to the evidence of Ms Janakievsa's interest in extending her lease. She had obtained a valuation in late January 2014 and shortly afterwards embarked on informal discussions with the Respondent (in March 2014). It stood to reason that a hypothetical seller would inform a hypothetical purchaser of this interest and would increase the sale price accordingly.

The tribunal's decision

96. The tribunal determines that the hope value for Flat 1 is 15% of the overall marriage value for this flat and amounts to £11,513.

Reasons for the tribunal's decision

97. In order to construe subparagraphs 3(1)(b) and (d) of schedule 6 to the 1993 Act, it is necessary to consider paragraph 3(1) in its entirety. The opening passage spells out that the value of the freeholder's interest in the specified premises is to be valued at the relevant date, which in this case was 01 May 2014. It follows that the freehold of the Property is to be valued as if it was to be conveyed on that date and subject to the rights and burdens that existed at that date. The freehold cannot be valued having regard to such rights and burdens that might exist when the property is actually conveyed, as that date is in the future and uncertain and the rights and burdens might vary over time. The unilateral notice protecting the section 42 Notice for Flat 1, being a post valuation date burden must be disregarded. The section 42 Notice itself must also be disregarded, having been served 3 months after the valuation date. As stated by the Upper Tribunal in Carey-Morgan, *"..any post valuation date factual evidence must, of course, be ignored"*.

98. Having concluded that the section 42 Notice and unilateral notice should not be taken into account, the tribunal then considered the impact of the informal discussions between Ms Janakievska and the Respondent. As at the valuation date she had obtained a valuation report and discussed a possible lease extension. In her email of 27 February 2015 she explained that she opted to serve the section 42 Notice when she learned of the Applicant's enfranchisement claim. This suggests that she would have continued with the informal discussions, but for the enfranchisement claim. The tribunal's view is that it is highly likely that a hypothetical buyer would have been informed of these discussions and would have taken these into account when bidding for the freehold. However there was no certainty at the valuation date that these discussions would go any further.

99. The tribunal's starting point was the 10% figure adopted by the Upper Tribunal and upheld by the Court of Appeal in ***Carey-Morgan***. In that case the unexpired term was 70.25 years, whereas in the case of Flat 1 it was 66.9 years. The likelihood of a voluntary lease extension increases, as the lease gets shorter. A difference of just over 3 years is not enough, on its own, to justify a departure from 10%. However in this case there had been a clear expression of interest from Ms Janiakievska. The tribunal concluded that the hope of realising marriage value was higher than in ***Carey-Morgan*** but not as high as the 25% proposed by Mr Ingram-Hill. The evidence from Ms

Janiakevska was limited to the email dated 27 February 2015. There was no witness statement from her and she did not give oral evidence to the tribunal. The tribunal agrees with Mr Fieldsend that the value of her evidence was limited. However it did justify some uplift and the tribunal concluded that a figure of 15% was appropriate.

Summary

100. **Having determined the capital value of Flats 1, 3 and 4, as set out at paragraph 73 of this decision and the hope value for Flat 1 at £11,513, as set out at paragraph 96, the tribunal determines that the price payable for the freehold on the valuation date was £239,630, as set out in the attached schedule.**

Name: Tribunal Judge Donegan **Date:** 10 May 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1992 (as amended)

Schedule 6

3(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises 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 [no person who falls within sub-paragraph (1A)] buying or seeking to buy) on the following assumptions –

(a) on the assumption that the vendor is selling for an estate in fee simple –

(i) subject to any leases subject to which the freeholder's interest in the specified premises is to be acquired by the nominee purchaser, but

(ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser

(b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant);

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

(d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with an subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with an subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7

TRIBUNAL VALUATION – 69 BLENHEIM CRESCENT, LONDON, W11

All matters agreed except:

Freehold/extended lease values
Hope value for Flat 1: 15%
Value of "storage" space, Flat 4: 20% of habitable floor space.

Flat 1

Agreed value of term		£1,689	
Reversion £767,556			
PV 66.9 years 5% 0.0382		£29,320	
Landlord's interest			£31,009
Marriage value:			
Extended lease	£767,556		
Less existing lease	£659,791		
Less landlord's interest	£ 31,009		
	£ 76,756		
Hope value 15%			£11,513
Premium			£42,522

Flat 3

Agreed value of term		£1,735	
Reversion £698,018			
PV 65.9 years 5% 0.0401		£27,990	
Landlord's interest			£29,725
Marriage value:			
Extended lease	£698,018		
Less existing lease	£595,828		
Less landlord's interest	£ 29,725		
	£ 72,465	50%	£36,232
Premium			£ 65,957

Flat 4

Agreed value of term		£1,689	
Reversion £1,459,202			
PV 66.9 years 5% 0.0382		£55,741	
Landlord's interest			£57,430
Marriage value:			
Extended lease	£1,459,202		
Less existing lease	£1,254,330		
Less landlord's interest	£ 57,430		
	£147,442	50%	£73,721
Premium			£131,151

Summary

Flat 1	**£42,522**
Flat 2	**£65,957**
Flat 3	**£131,151**
	£239,630