

4215



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

Case reference : LON/00BK/OLR/2016/0492

Property : Flat 71A White Hall Court, London
SW1A 2EL (“the flat”)

Applicant : Rebecca Susan Keely

Representative : Bates & Co, Solicitors

1. Respondent : The Crown Estate Commissioners
 (“the Crown”)

Representative : Pemberton Greenish LLP, solicitors

2. Respondent : Whitehall Court London Ltd (“the
Landlord”)

Representative : Wallace LLP, solicitors

Type of application : A new lease claim

Tribunal members : Angus Andrew
Mr I B Holdsworth BSc MSc FRICS

**Dates and Venue of
hearing** : 3 August 2016 and 5 September 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 29 September 2016

DECISION

Decisions

1. The “*no rights*” assumption under schedule 13 of the Act does not extend to other flats in Whitehall Court.
2. The threshold rent will be met once in every two years.
3. “Net Receipts” includes all the premium income apart from any unlawful premiums charged for licences permitting non-structural alterations.
4. There is no “claw back” below the threshold rent.
5. The hypothetical purchaser of the head-leasehold interest in Ms Keely’s flat would assess the probability of the head-lessee not receiving its profit rent up to the trigger point at 90%.
6. The price to be paid for the new extended lease is £228,424 of which £217,528 is to be paid to Crown and £10,895 to the Landlord.

The application, inspection and hearing

7. Ms Keely applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of the flat.
8. We inspected the common parts and exterior of Whitehall Court during the afternoon of 2 August 2016. When we arrived to inspect only Mr Fielding, the Crown’s expert, was in attendance. At our request he telephoned Ms Ellis, the Landlord’s expert, and she confirmed that she had no objection to our undertaking the inspection in the presence of Mr Fielding alone.
9. The hearing took place on 3 August 2016 and we reconvened on 5 September 2016 to hear closing submissions. Ms Keely took no part in the hearing because the essential issues were between the Crown and the Landlord. The Crown was represented by Cecily Crampin, and the Landlord by Paul Letman, both of whom are barristers. Ed Fielding MSc MRICS gave expert evidence on behalf of the Crown whilst Jennifer Ellis FRICS gave expert evidence on behalf of the Landlord.

Background

10. Whitehall Court is a large mansion block built in the late Victorian era that comprises four separate adjoining blocks. It fronts Victoria Embankment Gardens and on one side it adjoins the National Liberal Club. The freehold reversion to Whitehall Court is owned by the Crown. The Landlord holds a

head-lease of block 3 and 4 Whitehall Court ("The Head-lease"). The Head-lease was granted on 12 May 1987 for a term expiring on 4 April 2086. The original parties to the Head-lease were the Crown and Whitehall Court (Holdings) Limited. For the remainder of this decision we refer to blocks 3 and 4 simply as Whitehall Court.

11. Whitehall Court contains not only a large number of high value residential flats but also a number of offices and the Farmers' Club, a well known institution within the farming community. On basis of our inspection the offices are all relatively small and are located on parts of the ground and basement floors in what appear to have been intended as residential flats. Neither expert could say exactly how many offices remain in Whitehall Court. The basement extends to vaults under the adjoining pavement. Although some parts of the basements are used as offices most of the basement is open and on the basis of our inspection is used either for storage or as a workroom by those who presumably maintain Whitehall Court.
12. As originally designed each pair of flats was separated by a short lateral corridor at right angle to the main corridors in Whitehall Court. The short lateral corridors provide access to the two adjoining flats. As was apparent from our inspection a number of adjoining flats have come into common ownership and the owners have, with consent, created one large flat after taking a lease of the lateral corridor from the Landlord.
13. It seems that all the flats, the offices and the Farmers' Club were let on long leases reserving a ground rent. Ms Keely holds an under-lease of flat 71A that is on the second floor of block 3 ("the Under-lease"). The Under-lease expires on 24 March 2086 with the result that the Landlord holds a reversion of a few days. Nevertheless for the purpose of the Act the Crown is the competent landlord.
14. On 21 July 2015 Ms Keely's predecessor in title gave notice of his claim to extend the under-lease. On 7 August 2015 the benefit of that notice was assigned to Ms Keely and on 24 September 2015 the Crown gave notice in reply admitting the claim. On 30 September 2015 the Landlord gave notice under schedule 11 of the Act that it intended to be separately represented in these proceedings. On 22 March 2016 Ms Keely made her application to the tribunal.

The Head-lease

15. The terms of the Head-lease are at the heart of the dispute between the Crown and the Landlord. The Head-lease reserves the following rents:

"(1) Throughout the said term £10,760

(2) The amount by which the Landlord's Share (as defined in the second Schedule hereto) in any accounting year (as also so defined) exceeds £21,406"

the ground rental income from the under-leases would double on 25 March 2029 and that the Crown would receive 85% of the increased ground rental income with the Landlord retaining the other 15%.

23. The Act has however intervened and a little over half the under-lessees have taken new extended leases under it. Under those new extended leases the lessees do not pay a ground rent. Thus the ground rental income envisaged by the architects of the Head-lease has been continually eroded and it will continue to be eroded as other lessees take new extended leases under the Act. As will be seen the rate of that erosion is one of the issues between the parties.
24. In addition to the ground rental income the Landlord has also received other income including in particular premiums received on the grant of under-leases of the lateral corridors, premiums received on the variation of office under-leases to permit residential use and rental income from letting or licensing unspecified parts of the basement including the pavement vaults. Until the first day of the hearing it was common ground that this other income was within the income streams contemplated by paragraph 1 of the second schedule to the Head-lease. However, as will be seen, at the hearing Mr Letman argued that this other income was not within the ambit of paragraph 1(b)(ii) of the second schedule.
25. At the end of every accounting year the Landlord or its predecessors in title have submitted a return of this other income to the Crown. It was suggested at the hearing that the return has not always been as comprehensive as it should be although there was no evidence to support that suggestion. To date the income has always exceeded the trigger rent and the Landlord has retained the surplus income. In some years the income has exceeded the threshold rent and in those years the Landlord has paid both the trigger rent and also overage rent to the Crown that, since 5 January 2009, has been 85% of the profit income.
26. A summary of the returns was included in Ms Ellis' report and it is set out below:

Year ended December	Income from rents	Income from premiums	Aggregate
2004	£22,649.00	£37,860	£60,329
2005	£22,439.00	£20,000	£42,439
2006	£22,439.00	£375,000	£397,439
2007	£20,072.00		£20,072
2008	£19,340.00		£19,340
2009	£19,802.00	£75,000	£94,802
2010	£17,619.79	£370,000	£387,170
2011	£17,618.50		£17,619
2012	£16,351.00	£175,000	£191,351
2013	£16,261.51		£16,262
2014	£15,521.94	£2,500	£18,022
2015	£15,362.06		£15,362

to the reconvened hearing on 5 September 2016 when we heard their closing submissions. In the following sections of this decision we deal with each of those issues. For each issue we summarise each party's position and then give the reasons for our decision. We have amended the agreed issues only to reflect the definitions that we adopted in paragraph 20 above.

Issue 1

39. **Does the “no rights” assumption under Schedule 13 extend to the premises containing the applicant tenant’s flat so as to exclude new lease claims in respect of other flats therein or not?**

40. The “no rights” assumption relates to the diminution in value of the landlord’s interest following the grant of the new extended lease. It is to be found in paragraph 3(2)(b) of schedule 13 in these terms:

“On the assumptions 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”.

The Crown’s approach

41. The Crown’s case as put by Ms Crampin is that the phrase “*or to acquire any new lease*” relates back to the words “*in any premises containing the tenant’s flat*”. Consequently the experts are required to assume that the 56 owners of the remaining short leases do not have the right to extend their leases under the Act.

42. If that interpretation is correct the experts must assume that the ground rental income will not continue to be eroded by the grant of further extended leases. Thus the ground rental income will remain at £15,000 until the first review on 25 March 2029 when it will double to £30,000 and then double at each successive 20 year review until the expiry of the Head-lease term. Consequently from the first review date the aggregate ground rental income will always exceed the threshold rent and the Crown will always receive the overage rent.

43. If this interpretation is correct another likely outcome is that prior to the first review date there is an increased likelihood that the Landlord will receive greater surplus income in those years when the threshold rent is not achieved. This would enhance the value of the Head-lease interest.

The Landlord’s approach

44. The Landlord’s case as put by Mr Letman is that the words “*any new lease*” relates back to “*this Chapter*”. As “*this Chapter*” confers the right to acquire a new extended lease of the subject flat the “no rights” assumption simply requires the experts to assume that the tenant of the flat (as opposed to the tenants of other flats in Whitehall Court) does not have the right to acquire a new extended lease.

45. The practical effect of this interpretation is that the experts must assume that the ground rental income will continue to be eroded as the remaining short leases are extended under the Act. Although the rate of erosion is a matter of evidence it is feasible that by the first review date the ground rental income will be less than half the threshold rent with the result that after the first review date there is no guarantee that the Crown will receive the overage rent.

Reasons for our decision

46. Both advocates drew our attention to the Upper Tribunal decision in *The Trustees of the Sloane Stanley Estate v Adrian Howard Mundy* [2016] UKUT 223 (LC) although they accepted that it was not entirely on point. Nevertheless we agree with Mr Letman that some assistance can be drawn from the approach adopted by the Upper Tribunal in *Mundy* in particular at paragraphs 10-19. In those paragraphs the Upper Tribunal distances itself from the previous commonly held view that the experts must value the existing lease in a “*no act world*”. The Upper Tribunal pointed out that the experts must reflect “*the real position*” or put it another way “*the real world*”.
47. Ms Crampin rightly pointed out that in *Mundy* the Upper Tribunal was considering flats that were “*outside the premises containing the tenant’s flat*”. It is nevertheless apparent that the Upper Tribunal considered that in so far as possible the valuation to be undertaken should reflect the real world and not a hypothetical construct. In the real world the ground rental income will continue to diminish and a valuation that does not reflect that reality is artificial.
48. Ms Crampin sought to persuade us that the application of the no act assumption to the other flats in Whitehall Court was justified on the basis that it preserves the ground rental income and thus the Crown’s overage rent that was intended when the lease was granted prior to the introduction of the Act. Although that may be true in so far as it goes the Crown is compensated for the loss of that income on the grant of each extended lease. Thus the Crown will not in reality suffer a loss if the no act assumption is limited to the flat. When we put this to Ms Crampin she was unable to give a reasoned response.
49. In so far as the “grammar” of the assumption is concerned it is ambiguous and capable of substantiating the two interpretations that were put to us. In such circumstances we again agree with Mr Letman that it is reasonable to consider the intention of schedule 13 in general and the no act assumption in particular. The assumption is made to facilitate a valuation of the landlord’s interest in the particular flat. There is no obvious reason for applying the assumption to any other flat. Indeed if the assumption were applied to other flats in the Whitehall Court it might preclude their use as short lease comparables, which is unlikely to have been intended. Ms Crampin conceded that it was only in the unusual circumstances of this case that the extension of the assumption to other flats within the premises

would have any practical effect. It seems unlikely that Parliament would have had those circumstances in mind when the Act was enacted.

50. Paragraph 3(2)(b) requires the experts to assume, when valuing the diminution in value of the landlord's interest, that the lessee of the particular flat does not have the right to acquire a greater interest in that flat either through a collective enfranchisement under chapter 1 or by the grant of a new extended lease under chapter 2. In our view it does no more than that. Such an interpretation is consistent with the scheme of the enfranchisement legislation, which is to apply the "no act" assumption to the subject property.
51. Consequently and for each of the above reasons we agree with Mr Letman's interpretation and conclude that the "*no rights*" assumption under schedule 13 does not extend to other flats in Whitehall Court.

Issue 2

52. **What would the hypothetical purchaser of the freehold/intermediate leasehold interest in the claimant tenant's flat respectively assess as the probability of the threshold rent of £21,406 being reached during the unexpired term of the intermediate lease?**
53. If the threshold rent is reached and overage rent is payable the value of the Crown interest increases whilst that of the Landlord's interest diminishes. Consequently the probability of overage rent being paid is an important factor in determining the value of the Crown's and the Landlord's respective interests in the flat.
54. To an extent the answer to the question is dependent upon the third issue. Nevertheless the parties put this issue first and in their evidence both experts relied on the historic income return summarised in paragraph 26 above.

The Crown's approach

55. On the basis of those returns Mr Fielding concluded that the income would exceed the threshold rent 50% of the time. In reaching that conclusion he had regard to the fact that the Landlord, since it purchased the Head-lease in 2013, has been attempting to negotiate a reduction in the overage rent. He also took into account seven ongoing transactions that might result in future premium income including the proposed grant of two corridor leases.

The Landlord's approach

56. In her initial report tendered on the first day of the hearing Ms Ellis assumed that the income from premiums would be taken into account in assessing both the threshold rent and any overage rent. Mr Letman having developed his argument that these premiums should not be taken into

account Ms Ellis submitted a revised report. Although in her revised report she does not expressly state that the threshold rent will be reached once in every eight years she has nevertheless retained that strike rent in her valuation calculation.

57. Ms Ellis pointed out that the threshold rent has not been exceeded since 2012. She also gave her opinion that the owner of the Head-lease would manage the income so as to restrict or limit the years in which the threshold rent was reached. She concluded, on the basis of this evidence, that it was reasonable to assume that threshold rent would be reached only once in every eight years.

Reasons for our decision

58. In considering this issue we were hampered by the surprising lack of information provided by the Landlord. Although it had paid a substantial premium for the Head-lease we were told that it had never carried out an audit to establish either the number of remaining lateral corridors or the number of offices remaining in Whitehall Court. Thus it is impossible to establish the reservoir of premium opportunities. Equally it had not identified the rent from commercial units within the rental income that would not be eroded by future lease extensions. Nevertheless we do the best that we can with the available evidence.

59. Essentially Mr Fielding's assessment of the strike rate is based on historical evidence whilst Ms Ellis's prediction of the future strike rate is based on her opinion of the Landlord's future conduct. In general we prefer an evidence based approach to decision making.

60. We agree with Mr Fielding that the Landlord's attempt to renegotiate the overage rent casts doubt on the returns for the last three years. The Landlord clearly has an incentive to reduce the yearly income in the hope of bringing the Crown to the negotiating table. We do not say that the Landlord has done that but the possibility calls the last three returns into question.

61. We consider that the previous 9 returns give a more realistic assessment of the likely aggregate income. In those 9 years the threshold rent was reached in 6 years: that is a strike rate of two in every three years. In that context Mr Fielding's suggested a strike rate of one in every two years is realistic and we adopt it.

62. For the sake of completeness we would add that if the premium income falls to be disregarded it seems unlikely that the threshold rent will ever be reached at least until the first review date. On that basis we would have adopted Ms Ellis's strike rate on one in every 8 years.

Issue 3

63. What potential premium income is within the scope of "Net Receipts" as defined in the Second Schedule of the intermediate

lease? In assessing the probability of the threshold rent being reached or not what view would the hypothetical purchaser take of the scope of "Net Receipts"?

64. Given Mr Letman's evolving argument about the net receipts it is necessary to recite the definition of net receipts in paragraph 1(b) of the second schedule to the lease. It is in these terms:

(b) "Net Receipts" during each year of the said term (ending on the 25th day of December (hereinafter called "the Accounting Year") means the total of the following sums received by the Tenant in respect of any underlease of any part of the demised premises granted varied extended or renewed or in respect of which the rent shall have been reviewed after the commencement thereof:-

- (i) All rents received by the Tenant during the Accounting Year in respect of the demised premises including (without prejudice to the generality of the foregoing) licence franchise and concession fees means profits interest in respect of sums in arrear and all other income in the nature of rent or otherwise arising from the demised premises but excluding any sums properly and reasonably received in respect of service charges (including management fees properly payable in respect of such service charges) insurance rents and similar sums and payments for repairs decoration maintenance and services provided*
- (ii) All capital and other sums received whether as premiums or otherwise in consideration of the grant of renewal or continuance of any underlease.*
- (iii) All sums in the nature of capital or income received by the Tenant during the Accounting Year in respect of the demised premises for the variation or surrender of any under tenancy except legal costs surveyors' fees and disbursements.*
- (iv) All sums received by the Tenant (or which would have been received by the Tenant but for any default or neglect) during the Accounting Year in respect of the demised premises from insurers under any insurance against loss of rents.*
- (v) All losses of rent and other sums suffered during the Accounting Year due to any failure by the Tenant to use its best endeavours to ensure the fullest underletting of the demised premises or to take timely action under the terms of any underletting to review rents or to recover any arrears of rent or other sums or to obtain the best consideration for any underletting or in respect of any breach of Clause 3(16) of this Lease and all arrears of rent and other sums written off as bad debts without the consent in writing of the Landlord after deducting reasonable legal and surveyor's costs fees and disbursements incurred by the Tenant in connection with any*

under-letting of part of the demised premises and any rent reviews thereunder to the extent that the same are not recoverable from a third party.

65. The receipts in issue include (a) premiums received on the grant of the corridor leases (b) premiums received on the grant of deeds varying some of the office leases permit residential use (c) rental or licence fees income derived from letting or licensing parts of the basement including the pavement vaults (d) licenses permitting both structural and non-structural alterations to individual flats. Clearly there may be other income streams but they were not identified or relied on by the two experts.

The Landlord's approach

66. As previous explained Ms Ellis prepared her original report on the basis that these income streams were net receipts under the above provisions. On the first day of the hearing Mr Letman took the point that premiums received on the grant of the corridor leases were not net receipts. By the time that this issue was reached in closing submissions and after some hesitation Mr Letman advanced the argument that none of the identified income streams were net receipts.

67. His argument was based on the proposition that net receipts could only be derived from transactions that were both permitted under the terms of the Head-lease and for which the landlord was entitled to recover a rent or premium. Thus by way of example clause 3(16)(c) of the lease restricts any underletting to "*any one individual residential flat or office unit*". Consequently the Head-lease does not permit the grant of a lease of a lateral corridor and any premium received of the grant of such a lease would not be a net receipt. Likewise there is a complete prohibition on structural alterations with the result that a licence authorising a structural alterations is not within the contemplation of the Head-lease and a premium received would not be a net receipt.

The Crown's approach

68. Put briefly Ms Crampin argued that the broad definition of "net receipts" in the Head-lease was intended to capture all the capital and rental income received by the Landlord.

Reasons for your decision

69. We are not persuaded that the definition of "net receipts" should be interpreted in the restrictive manner suggested by Mr Letman. The definition catches both capital and income received for the variation of any underlease. Thus any premium received on the variation of an underlease to permit a change of use or permit structural alterations is within the contemplation of the definition. This suggests that the original parties to the lease had in mind receipts derived from transactions not specifically authorised under the terms of the Head-lease. Equally that interpretation is reinforced by the reference to "licence franchise and concession fees"

even though the Head-lease does not specifically authorise the grant of licences, franchises or concessions.

70. Standing back and looking at the paragraph as a whole we agree with Ms Crampin that the definition was intended to capture all net capital and rental receipts received by the head-lessee in respect of White Hall Court. Clearly the freeholder's consent will be required to a transaction such as the grant of corridor lease or a variation permitting a change to residential use but once given the freeholder is entitled to the overage rent if the premium takes the income above the threshold rent, as were told it inevitably will.
71. We agree with both advocates that we must have regard to the assumptions that would be made by a hypothetical purchaser when making his bid for either the freehold or Head-lease. A hypothetical purchaser would make usual enquiries of the freeholder and the head-lessee. He would find, as was acknowledged by both experts, that the annual returns have always included the premiums that Mr Letman now suggests are not net receipts. The hypothetical purchaser would also have regard to the wording of the terms of the lease and in particular the definition of "net receipts". For each of the above reasons we are satisfied that the hypothetical purchaser would conclude that, with one exception, the premiums and rents are indeed net receipts that should be taken into account in the calculation of the trigger rent, the surplus income, the profit income and the overage rent.
72. The one exception relates to any premiums received for the grant of licences permitting non-structural alterations permitted by the Head-lease and the relevant under-lease. Even if the head-lessee's consent is required it could not be unreasonably withheld and the head-lessee could not lawfully charge a premium for granting it. There was no evidence before us to suggest that the annual returns had ever included such premiums and the issue only arose because of Mr Fielding's evidence that there were ongoing negotiations for "reconfiguring" two flats: the extent of the proposed reconfigurations were not clear and for all we know they may have included structural alterations for which a deed of variation and subsequent consent would have been required.

Issue 4

73. **Is there a clawback below the threshold rent?**

The Landlord's approach

74. As previously observed the trigger rent of £10,760 is a little more than half the threshold rent of £21,406: it is in fact 50.27% of the threshold rent. Ms Ellis had applied that percentage to the ground rent reserved by the Under-lease. Thus she assumed that £90.48 of the ground rent, until the first review date, formed part of the basic income whilst the balance of £89.52 formed part of the surplus income.

The Crown's approach

75. Mr Fielding on the other hand assumed that all the ground rent reserved by the Under-lease until the first review date formed part of the profit income so that 85% of the ground rent was receivable by the Crown and was thus subject to "claw back". In answer to our questions Mr Fielding justified this approach on the basis that the threshold rent will be met by other income.

Reasons for our decision

76. This is not a legal issue and indeed it is not even a matter of valuation of principle. It appears to us that the answer to the question is to be found by the application of common sense. Firstly, Mr Fielding's analysis must be wrong because he accepts that in one out of two years the threshold rent will not be met. Furthermore the threshold rent is the sum of the ground rent receipts as at the date of the grant of the Head-lease. Consequently it is logical to apportion the ground rent to the first review date between the basic income and the surplus income in the manner suggested by Ms Ellis. Consequently and for each of the above reasons we conclude that there is no claw back below the threshold rent until the first review date.

Issue 5

77. Would the hypothetical purchaser of the intermediate leasehold interest in the claimant tenant's flat assess the probability of the intermediate leaseholder not receiving its profit rent up to the trigger point? If so, at what probability?

78. As previously indicated Ms Ellis assumed that the threshold rent would only be met once in every 8 years. In the other 7 years she assumed that in an attempt to maximise the surplus income without meeting the threshold rent the Landlord would achieve on average 90% of the surplus income. Thus in valuing the Head-lease she discounted the ground rent that she had attributed to the surplus income (£89.52) by 10% to give a net figure of £80.57. Although not entirely relevant to this issue she then added back £1.20 $[(89.52-80.57)/8]$ to account for her assumption that the threshold rent would be met in one out of every 8 years.

79. As observed in the previous section Mr Fielding had assumed that the whole of the Under-lease ground rent forms part of the profit income and consequently he had not made a similar or any deduction to reflect the possibility of the net receipts falling below the threshold rent.

80. Although Ms Crampin considered that Ms Ellis' approach was contrary to a proper understanding of the Head-lease, we understood her to accept it. In any event and largely for the reasons set out under the previous issue we prefer the approach of Ms Ellis that appears to us to be more consistent with reality although in our valuation we have adapted it to reflect our assessment of the strike rate.

Issue 6

81. **What is the premium, and the split between the First Respondent and Second Respondent, (including consideration of whether calculation of the expected rent in relation to the freehold/intermediate interests respectively should be on the slice or tiered basis).**
82. The difference between the two experts results from the way in which they have valued the Under-lease rent on review. Mr Fielding valued the rental income of £180 to the first review date and then a rental income of £360 to the second review date and so on. Ms Ellis in contrast valued the rental income of £180 for the remainder of the under lease term and from the first review date she valued the increased rent of £180 for the remainder of the under lease term and so on.
83. The experts appeared to agree that their different approaches should produce the same result but they did not: they resulted in a difference of £60 that appears incapable of rational explanation.
84. Again we do not consider that this is an issue of law or that it raises any valuation principle. Ultimately Ms Crampin said that she would accept Ms Ellis's approach for sake of consistency because she had elsewhere argued that the hypothetical purchaser making the highest bid would be successful. Again we are inclined to adopt Ms Ellis's approach in any event simply because it is consistent with valuation practice as we understand it.
85. We have adopted Ms Ellis' valuation approach to the premium calculation and applied the above decisions to it. Our valuation is attached. As will be seen we determine the premium at £228,424 of which £217,528 is to be paid to Crown and £10,895 to the Landlord.

Name: Angus Andrew

Date: 29 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

71A Whitehall Court, London SW1A 2EL
GM/LON/00BK/OLR/2016/0492

Valuation date 22/07/2015
Underlease expiry 24/03/2086
Unexpired term 70.67 yrs
Headlease expiry 04/04/2086
Unexpired term 70.70 yrs
Next increase 25/03/2029
in 13.68 yrs

VALUES:
70.67 year leasehold £ 2,615,000
160.67 year leasehold £ 2,970,000
freehold £ 3,000,000

**A DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST
excluding prospects of marriage**

Before the grant of the extended lease

Term

Proportion of Base Rent receivable			£	90.48		
YP	70.70 years @	5%		<u>19.36</u>	£	1,752
Potential annual overage from premiums @ 85% of £180 pa if received only 1 year in 2, average annual receipt			£	153.00		
YP	70.70 years @	5%		<u>76.50</u>	£	1,481
Potential for overage from rent increases after 2029						
Average annual potential income from 2029 (see below)			£	76.50		
YP	57.00 years @	5%		18.76		
PV £1 after	13.68 years @	5%		<u>0.5131</u>	£	736
Average annual potential income from 2050 (see below)			£	153.00		
YP	36.00 years @	5%		16.55		
PV £1 after	34.68 years @	5%		<u>0.1842</u>	£	466
Average annual potential income from 2071 (see below)			£	306.00		
YP	15.00 years @	5%		10.38		
PV £1 after	55.68 years @	5%		<u>0.0661</u>	£	210
Reversion on 04/04/2086						
to freehold in possession				£ 3,000,000		
PV £1 after	70.70 years @	5%		<u>0.0318</u>	£	95,277
					£	<u>99,924</u>

After the grant of the extended lease

Term

Proportion of Base Rent receivable			£	90.48		
YP	70.70 years @	5%		<u>19.36</u>	£	1,752
Reversion in 2176						
to freehold in possession			£	3,000,000		
PV £1 after	160.67 years @	5%		<u>0.0004</u>	£	1,182
					£	<u>2,934</u>

Diminution in value of Freeholder's interest carried forward £ 96,990

brought forward £ 96,990

**B DIMINUTION IN VALUE OF HEADLESSEE'S INTEREST
excluding prospects of marriage**

Before the grant of the extended lease

<u>Term</u>					
rent receivable		£	180.00		
rent payable		£	90.48		
theoretical profit rent		£	89.52		
assume 90% generally achieved				£	80.57
but 100% achieved 1 year in 2, add 1/2th differential				£	4.48
net average annual profit rent				£	85.04
YP	70.67 years @	5 % and 2.25%			17.892
				£	1,522

Potential for income from rent increases after 2029

increased ground rent from	2029			£	180.00	
overage payable @ 85%		£	153.00			
if paid only 1 year in 2, average annual payment				£	76.50	
Average net increase				£	103.50	
YP	57.00 years @	5 % and 2.25%	17.0045			
PV £1 after	13.66 years @	5 %	0.5131		8.7254	£ 903

increased ground rent from	2050			£	360.00	
overage payable @ 85%		£	306.00			
if paid only 1 year in 2, average annual payment				£	153.00	
Average net increase				£	207.00	
YP	36.00 years @	5 % and 2.25%	14.6353			
PV £1 after	34.66 years @	5 %	0.1842		2.6956	£ 558

increased ground rent from	2071			£	720.00	
overage payable @ 85%		£	612.00			
if paid only 1 year in 2, average annual payment				£	306.00	
Average net increase				£	414.00	
YP	15.00 years @	5 % and 2.25%	9.3630			
PV £1 after	55.66 years @	5 %	0.0661		0.6190	£ 256

<u>Reversion on</u>	24/03/2086					
rent payable from 24 March to 4 April (12 days)				-£	90.48	
YP	0.03 years @	5 % and 2.25%	0.0325			
PV £1 after	70.67 years @	5 %	0.0318		0.0010	-£ 0
						£ 3,239

After the grant of the extended lease

<u>Term</u>					
rent receivable				£	-
rent payable see above				£	90.48
profit rent				-£	90.48
YP	70.70 years @	5 % and 2.25%			17.895
					-£ 1,619

Diminution in value of Headlessee's interest £ 4,858

C CALCULATION OF MARRIAGE VALUE

After the grant of the extended lease

Freeholder's interest		£	2,934		
Headlessee's interest		-£	1,619		
Lessee's interest		£	2,970,000	£	2,971,315

Before the grant of the extended lease

Freeholder's interest		£	99,924		
Headlessee's interest		£	3,239		
Lessee's interest		£	2,615,000	£	2,718,162
Gain on marriage of interests				£	253,153
Take 50% Marriage value					<u>£ 126,576</u>

D APPORTIONMENT OF MARRIAGE VALUE

Freeholder	£ 96,990 x	£ 126,576	£	120,539
	£ 101,847			

Head Lessee	£ 4,858 x	£ 126,576	£	6,037
	£ 101,847			

E APPORTIONMENT OF PREMIUM

**FREEHOLDER
HEADLESSEE**

<i>Diminution</i>		<i>Share of MV</i>		<i>Aggregate</i>
£ 96,990	+	£ 120,539	=	£ 217,528
£ 4,858	+	£ 6,037	=	£ 10,895
£ 101,847		£ 126,576		£ 228,424

D TOTAL PREMIUM PAYABLE BY CLAIMANT FOR LEASE EXTENSION

£ 228,424