4535

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AK/OLR/2017/0443**
Property	:	**91b Warwick Road, London N11 2SP**
Applicant	:	**Ms Adit Rachel Goschalk**
Representatives	:	**Mr Piers Harrison Counsel** **Mr Andrew Cohen Talbots**
Respondent	:	**Sarum Properties Limited**
Representative	:	**Mr Kieron McKeown McKeown & Co**
Type of Application	:	**Section 48 Leasehold Reform, Housing and Urban Development Act 1993 – determination of terms of acquisition in dispute**
Tribunal Members	:	**Judge John Hewitt** **Mr Charles Norman BSc FRICS**
Date and venue of hearing	:	**8 August 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**15 September 2017**

DECISION

The issue before the tribunal and its decision

1. The issue before the tribunal was the premium to be paid by the applicant to the respondent for the grant of a new lease pursuant to section 56 of the Act.

2. The decision of the tribunal is that the premium payable by the applicant to the respondent for the grant of the new lease is £29,730.00, made up as set out in the valuation appended to this decision.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 2 November 1988, the respondent was registered at Land Registry as the proprietor of the freehold interest [20] and, in the absence of any intermediate leases it is the reversioner for the purposes of the Act.

4. By a notice of claim dated 31 August 2016 given pursuant to s42 of the Act, Christopher Francis Thomas Cranie then the registered proprietor of a lease of the subject property dated 26 February 1982 sought to exercise the right to a new lease [15].

5. By a deed of assignment dated 9 September 2016 Mr Cranie assigned the benefit of the notice of claim to the applicant [49]. The residue of the term created by the lease was also assigned to the applicant and on 22 September 2016 the applicant was registered at Land Registry as the proprietor of the lease [25].

6. By a counter-notice dated 4 November 2016 the respondent admitted, subject to the notice of claim being a valid notice, that on the relevant date the tenant under the lease had the right to acquire a new lease [17]. That counter-notice was given without prejudice to the right to challenge the validity of the notice of claim. So far as we are aware no such challenge has been made. The proceedings before us were conducted on the basis that the notice of claim was a valid notice.

7. The parties were unable to agree all of the terms of acquisition and on 28 February 2017 the applicant made an application to the tribunal pursuant to section 48 of the Act for a determination of the terms of acquisition in dispute [1].

8. Directions were given on 10 April 2017.

The hearing

9. The application came on for hearing before us on Tuesday 8 August 2017.

   The applicant was represented by Mr Piers Harrison of counsel. Mr Harrison called Mr Andrew Cohen MRICS as an expert valuer witness.

The respondent was represented by Mr Kieron McKeown MRICS who acted as both advocate and as an expert valuer witness.

9. Mr Cohen's report is at [53]. Mr McKeown's report is at [109].

10. A statement of agreed matters and matters not agreed dated 1 June 2017 is at [52]. Since that time some further progress had been made and the valuers had agreed the capitalisation rate at 6%.

11. Thus the parties were agreed that the:

    11.1 Valuation date was 31 August 2016;
    11.2 Unexpired term at that date was 64.32 years;
    11.3 Deferment rate was 5%;
    11.4 Capitalisation rate was 6%;
    11.5 Freehold value of the flat was 1% higher than the value of the flat with the extended lease; and
    11.6 The property, which has a floor area of 61m^2, is in good condition and there are no improvements to bring into account

12. At the start of the hearing the differences between the valuers was as follows:

Item	**Mr Cohen**	**Mr McKeown**
FHVP	£393,000	£420,460
Extended lease	£390,000	£416,250
Existing lease – with Act rights	£350,098	£355,000
Existing lease – without Act rights	£345,000	£366,398
Relativity	88.88%	80.00%
Premium payable	£28,996	£49,660*

* Later revised to £51,617 during the course of the hearing.

13. Both valuers gave oral evidence in support of their respective reports and were cross-examined by the other side.

The admissibility of Mr McKeown's report and evidence

14. No objection was taken to Mr McKeown giving his evidence in chief. Part way through his cross-examination of Mr McKeown, Mr Harrison put it to him that he was not an independent expert and that his evidence was not admissible. We found this to be surprising because evidently this was not a point taken by the applicant at any stage during the course of the proceedings and it was not a point mentioned by Mr Harrison in the skeleton argument which he handed in at the commencement of the hearing. Also, it was not a point which had emerged unexpectedly during the course of cross-examination because Mr Harrison had brought with him copies of materials and an authority

upon which he wished to rely in support on the question of admisibility and he handed these in partway through his cross-examination.

15. Mr Harrison made a submission that Mr McKeown was not independent of the respondent to such an extent that it rendered the whole of his evidence inadmissible. Mr Harrison invited us to disregard the totality of Mr McKeown's evidence. In those circumstances, it is sensible that we deal with that submission at this point.

16. The gist of the background facts was not in dispute. These were that:

McKeown & Co LLP

16.1 Mr McKeown is a partner in the firm McKeown & Co LLP. There is another partner, C. A. Church Limited and the two partners hold 50% each.

In the registration documents filed at Companies House, Mr McKeown lists his correspondence address as being at 14 Wilton Road, Salisbury.

The partnership was established in August 2015.

The Church family

16.2 A Mr Paul Church and his brother Mr Sebastian Church are long time and substantial investors in the residential property sector. The investments are held in a number of different companies, many of which are in the same group.

Mr Paul Church's daughter, Ms Tamara Jon Folkesson, also plays a significant role in the family business which operates out of 14 Wilton Road, Salisbury. That address is given as Ms Folkesson's correspondence address in registration documents filed in respect of a number of companies of which Ms Folkesson is an officer.

Sarum Properties

16.3 On 1 April 2011 Ms Folkesson was appointed a director.

Mr Colin Lewis Chandler was appointed a director on 4 April 2011 and secretary on 15 July 2013. His correspondence address is given as 14 Wilton Road, Salisbury.

Mr Sebastian Church resigned as a director on 16 May 2013 – his correspondence address was given as 14 Wilton Road, Salisbury.

75% or more of the shares are held by Elmbirch Properties PLC.

Its registered office is at 14 Wilton Road, Salisbury.

C.A. Church Limited

16.4 On 1 April 2011 Mr McKeown was appointed secretary and a director. He resigned as a director on 21 September 2015 and as secretary on 22 February 2016. Both entries record Mr McKeown's correspondence address as being at 14 Wilton Road, Salisbury.

Ms Folkesson was appointed a director on 25 August 2015 and was appointed secretary on 22 February 2016.

Currently there are two other directors, Sten Arild Adeler) and Dr Lynda Zoe Partridge both of whom were appointed on 3 October 1994.

Elmbirch Properties PLC

16.5 On 1 April 2011 Ms Folkesson was appointed as both secretary and as a director.

There is one other director, Colin Lewis Chandler.

Its registered office is at 14 Wilton Road, Salisbury.

Mr McKeown accepted that Elmbirch has a financial interest in Sarum Properties and that it has a financial interest in his practice (through C.A. Church) but he did not know what the extent of those interests was.

Mr McKeown's report

16.6 In his report Mr McKeown sets out his qualifications and experience [111] which includes:

"From 2008 to 2016 I dealt solely with Leasehold Enfranchisement for a group of Ground rent investment companies and handled circa 200 cases a year."

Mr McKeown appended to his report ay [163] a paper entitled: *"Valuations for Leasehold Enfranchisement – A New Approach to Relativity"*. That paper dated December 2016 was written jointly by Mr McKeown and Mr Paul Church.

The paper gives some information about the authors and as regards Mr Church, it records:

"Paul Church FCA is a Chartered Accountant of more than 46 years experience, having worked both in practice and in commerce, he has always had a particular interest in property valuation matters. He owns a portfolio of freehold ground rents and also buy to let investments, including flats which he bought with short leases. As a Chartered Accountant, he was trained in statistical sampling, whilst as a buy to let investor he has first-hand knowledge of what motivates investment decisions."

The Preface to the paper states its purpose is to develop a relativity graph based upon a 2-step approach suggested in the Mundy case. Whilst acknowledging its limitations, it suggests that if found helpful to Tribunals and Valuers it can be further refined.

17. In cross-examination, Mr McKeown conceded that he thought Mr Paul Church and Mr Sebastien Church both had an interest in Elmbirch Proeprties (but he did not know the details), and that Elmbirch Properties controlled both Sarum Properties and had an interest in C.A. Church, the latter company being his partner in McKeown & Co LLP. Mr McKeown said that group set-up was quite complicated but he did not know the details as they were not relevant to him or to his work.

18. Mr McKeown was adamant that he was independent of the respondent, Sarum Properties, that his connections with the Church family had not coloured his views and that he works quite independently of them. He also said that a few years back he had something of a breakdown and the Church family helped him out to set up his current practice.

19. In support of his submission that Mr McKeown's evidence was inadmissible, Mr Harrison relied upon an authority, *Liverpool Roman Catholic Archdiocesan Trustees Inc v Goldberg (No.3)* [2001] 1 WLR 2337. Mr David Goldberg QC was in practice at the bar specialising in tax matters. He sought to adduce expert evidence from Mr Michael Flesch QC, a close friend of 30+ years standing who was also in practice at the bar and who was a member of the same set of chambers as Mr Goldberg. The headnote records: *"Where there is a relationship between a proposed expert and the party calling him which a reasonable observer might think is capable of making the views of the expert unduly favourable to that party, his evidence should not be admitted however unbiased his conclusions might probably be."* Evans-Lombe J went on to say: *"The question is one of fact, namely, the extent and nature of the relationship between the proposed witness and the party.*

20. In *Goldberg,* the admissibility of Mr Flesch' evidence was first taken during the course of a pre-trial review conducted by Neuberger J (as he then was) but held over for determination at trial. Neuberger J expressed the preliminary view that:

"... the fact that Mr Flesch has had a close personal relationship and a close professional relationship with the defendant in the sense that they had been friends and in the same chambers for a long time does not mean as a matter of law, or even as a matter of fact, that Mr Flesch is incapable of fulfilling the functions described by Lord Wilberforce and Creswell J in Whitehouse v Jordan *[1981] 1 WLR 246 and* National Kudtice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) *[1993] 2 Lloyd's Rep 68 respectively."*

With some diffidence Evans-Lombe J took a different view. He suggested a two-stage test. The first stage was whether the proposed evidence qualified as admissible expert evidence. The second stage was, if so, should it actually be admitted as of assistance to the court. He held that the nature of the relevant part of Mr Flesch's evidence qualified as that of an expert but he that the court should disregard it on the ground that Mr Flesch was unable to fulfil the role of an expert witness because of his close relationship with the defendant. The judge said it was of significance that Mr Flesch had described his relationship evidence and had added:

"I do not believe that this [relationship] *will affect my evidence; I certainly accept that it should not do so. But it is right that I should say that my personal sympathies are engaged to a greater degree than would probably be normal with an expert witness."*

Evans-Lombe J found that that admission rendered the whole of Mr Flesch's evidence as an expert inadmissible on grounds of public policy.

It was against the above background that Evans-Lombe J explained that the test was:

"Where there is a relationship between a proposed expert and the party calling him which a reasonable observer might think is capable of making the views of the expert unduly favourable to that party, his evidence should not be admitted however unbiased his conclusions might probably be."

21. Mr McKeown had not been given advance notice that this point was to be taken, and thus he had not researched it and was unable to make legal submissions to us. Mr McKeown did not seek an adjournment to enable him to consult but sought to assure us that he was not in fact biased towards the respondent.

22. Whilst we have some sympathy with the position in which Mr McKeown found himself in, it is the fact that if a witness, whether expert or not, takes on the role of advocate, they must expect that sometimes legal points will crop up during a hearing and that they have to deal with them as best they can. Further, the test is not whether Mr McKeown was in fact partial towards the respondent but whether an informed bystander armed with the facts set out in paragraph 16 above might think that his opinions and evidence might be unduly favourable to the respondent. The question is one of fact and degree, namely, the extent and nature of the relationship between the proposed witness and the party.

23. There is a further feature of Mr McKeown's evidence that Mr Harrison relied upon to show that Mr McKeown had not fulfilled his duty to the tribunal. One of the issues between the parties was what adjustment was required to reflect a 'No Act World'. Mr McKeown noted a sale of the subject flat pretty close to the valuation date with the benefit of the

claim notice. Mr McKeown made an adjustment of -5.24% to reflect the value of the Act rights. Thus, his adjusted value was £336,398. He said at [121] that he had based that adjustment on the strength of an Upper Tribunal decision (LRA/108/2008 – Sarum Properties v Webb [2009] UKUT 188 (LC)) where a 2.5% deduction was applied with 78 years remaining and a further Upper Tribunal decision (LRA/128/2007 – Cadogan v Cadogan [2011] UKUT 154 (LC)) where 10% was deducted with 44 years remaining the view of the Upper Tribunal being that the benefit of the Act increases as the lease gets shorter. Mr KcKeown said that with those two fixed points a straight-line basis he calculated (and adopted) 5.24%.

Mr McKeown then cited two recent FTT decisions which he said supported that approach.

24. The challenge which Mr Harrison pursued was that the assertions made as regards the Upper Tribunal decisions were wrong and that Mr McKeown knew or ought to have known they were wrong.

25. To support this challenge Mr Harrison relied upon a recent Upper Tribunal (Lands Chamber) decision in *Contractreal Limited v Ms Hannah Smith* [2017] UKUT 178 (LC) (LRA/102/2016) (Mr A J Trott FRICS). This appeal was determined on the basis of written representations. The appellant, Contractreal relied upon its grounds of appeal and the expert evidence which Mr McKeown had given to the FTT.

As regards the 'No Act World' adjustment, in his report to the FTT Mr McKeown had said:

"We are aware of an Upper Tribunal Decision where a 2.5% deduction was applied with 78 years remaining and another where 10% was deducted with 44 years remaining, the view of the Upper Tribunal being that the benefit of the Act on value increases as the lease gets shorter. On a straight line basis we can calculate the deduction at 4.6% for 67.49 years remaining."

Evidently in his report to the FTT Mr McKeown had said these cases were *Sarum and Cadogan* respectively but he had not given the full citations in his report. (It may be noted from paragraph 23 above, that in his report to us in the subject case, Mr McKeown did identify the two authorities relied upon, although his report did not include the full neutral citations).

26. In *Contractreal,* The Upper Tribunal pointed out that Mr McKeown's reference to a -10% adjustment supported by *Cadogan* was wrong. Mr Trott said that in *Cadogan* the term unexpired was far shorter than 44 years and the adjustment was in fact -25%. He went on to say that the only case he was aware of concerning 44 years unexpired was *Nailrile Ltd v Earl Cadogan* (LRA/114/2006 – [2009] RVR 95) where the adjustment was -7.5%.

Mr Trott concluded:

"McKeown's straight-line interpolation which gave a figure of 4.6% was based upon an unidentified Tribunal case said to have allowed a 10% deduction for an unexpired term of 44 years. Taking a more cautious approach given the lack of clear evidence I consider that an allowance of 3.5% is appropriate. I determine the benefit of the Act in this amount rather than remit the issue to the FTT for further consideration."

27. In cross-examination McKeown conceded that reference in his report to the *Cadogan* case and an adjustment of -10% was an error. He had prepared his report using standard text on his PC and he had overlooked that this piece of text had not been corrected following consideration of the *Contractreal* decision. He accepted that his report needed to be corrected, and as will be seen shortly, his revised adjustment was pretty close to that contended for by Mr Cohen.

28. The gist of Mr Harrison's challenge was that Mr McKeown's duty to the tribunal was to assist the tribunal and it was wholly inappropriate for Mr McKeown to rely on a position and an authority which was wrong and which he knew, or ought to have known, was wrong compounded by the omission to draw attention to *Contractreal* further compounded by reliance on two FTT decisions which he knew, or ought to have known, are not binding on the FTT.

29. Before leaving this point we observe that the *Contractreal* decision is dated 16 May 2017 and that Mr McKeown's report to this tribunal is dated 25 July 2017.

Discussion

30. First, we wish to say that we are not wholly satisfied that the challenge to the admissibility of Mr McKeown's evidence was properly taken in the light of the overriding objective. Further the challenge was only taken after Mr McKeown had given his evidence in chief and then only part way through cross-examination.

31. We consider that where Party A takes the view that the expert witness for Party B may not be impartial to the extent required by the law, Party A is entitled to put questions to Party B as to the exact nature of the relationship between Party B and the expert. If the answers to those questions are considered to be unsatisfactory it is open to Party A to make an interim application for the question of admissibility to be determined. Not only would that put Party B on proper notice so that all relevant evidence and submissions be put before the tribunal; that was the case in *Goldberg,* but further, in the event the evidence of the proposed expert was ruled inadmissible, it would be open to Party B to seek expert evidence elsewhere if it wished to do so. Such a course would eliminate any procedural unfairness.

32. In the present case there is no suggestion or dispute that the valuation nature of Mr McKeown's evidence did not qualify as admissible expert evidence, so that first of the tests set by Evans-Lombe J was satisfied.

33. The second test is the problematic one. In *Goldberg* it appears that Evans-Lombe J was very taken with the admission made by Mr Flesch. There is no such or similar admission in the present case. Each case turns on its own facts as to the extent and nature of the relationship.

We find that at one end of the scale is a case such as *Goldberg,* which justifies ruling that the whole of evidence inadmissible, whereas along the scale the evidence may be admissible but subject to considerations as to the weight which can be placed on it, or, at least, parts of it.

Where a conflict exists, it does not necessarily mean that the evidence will be wholly excluded, but it may diminish the weight of the evidence – again, it is a matter of fact and degree. The expert must be able to demonstrate that they know their primary duty is to the court or tribunal and are willing to carry out that duty notwithstanding any connection with the party instructing him or her. This requires that the expert witness ought to give a full and honest disclosure of any potential conflict at the outset. If this is done it enables the opposite party investigate it and to ask questions about it if required.

34. As regards the present case we find that Mr McKeown ought to have disclosed more about his relationship or connection with Elmbirch. In his CV at [111] Mr McKeown makes reference to his work between 2006 and 2016 *"... for a group of Ground rent investment companies..."*. We infer that was the group which controls the Church family ground rents investments which includes Elmbirch. That ought to have been mentioned. Similarly, when making reference to setting up his own firm he ought to have mentioned that was done with assistance from a company connected the respondent. That disclosure would have enabled the applicant to raise questions about the relationship if there were any concerns.

35. We have considered carefully what the informed bystander would have made of the disclosure had it been given. In our judgment, the informed bystander would consider there was a great deal of difference between the closeness and the nature of the relationship in *Goldberg* than that it the present case. In the present case is much further down the scale. We find that the informed bystander would not have concluded that the relationship was capable of affecting the views of the expert so as to make them unduly favourable to the respondent.

36. In all of the circumstances we reject the submission that the whole of Mr McKeown's evidence should be ruled inadmissible. However, we do have concerns about the accuracy of some of his evidence which goes to the weight we can attach to those parts which means that we have to treat some of his evidence with caution.

37. We do find that Mr McKeown was in error in not disclosing his relationship with Elmbirch and with Paul Church the moreso when he placed reliance on a paper jointly written with Mr Church the objective of which appears to be aimed at achieving an outcome particularly favourable to investors such as Mr Church.

Also, we find that Mr McKeown was in error in not correcting the error in his report as regards the 'No Act World' adjustment and the outcome in *Contractreal.* We acknowledge that the *Contractreal* decision was issued on 16 May 2017, that we do not know when it first came to Mr McKeown's attention (but we infer fairly promptly given his key role in it) and that Mr McKeown's report in this case was signed off on 25 July 2017 and that it may have been signed off in circumstances in which the error was overlooked. But the hearing before us took place on 8 August 2017. Mr McKeown was to take the key roles of both advocate and expert witness such that a thorough preparation should have been undertaken. Such a preparation ought to have revealed the error and it ought to have been brought to our attention by Mr McKeown, rather than teased out in cross-examination.

38. Whilst not relevant to the findings made and set out above, we do wish to record that we do not find that the shortcomings we have identified arose out of a deliberate intention to mislead the tribunal or advance the respondent's position unfairly, rather they were the product of inadequate attention to detail, and, to an extent, lack of the high level of competence required by the tribunal.

39. Finally, on the expert's reports in this case we record that neither Mr Cohen nor Mr McKeown have complied with rule 19(5)(e) by including in their reports a summary of the instructions they had each received.

Valuation issues

Long lease value

40. Mr Cohen was at £390,000; Mr McKeown was at £424,240 (having revised his value during the curse of the hearing).

41. Mr Cohen relied upon three transactions [59]:

- The ground floor flat at 91 Warwick Road (the flat below the subject flat); adjusted to £388,500;
- 15 Highworth Road adjusted to £397,000; and
- 116a Warwick Road adjusted to £390,000

Where considered appropriate, Mr Cohen has adjusted for time using the Land Registry data applicable to the locality. His other adjustments tended to be more subjective or intuitive and in respect of which he relied upon his accumulated experience of the market.

Mr Cohen's figure is just below the average of the three adjusted transactions, perhaps as a consequence of rounding.

42. Mr McKeown relied upon four transactions [129]:

- The ground floor flat at 91 Warwick Road (the flat below the subject flat); adjusted to £429,170;
- 15 Highworth Road adjusted to £419,578;
- 129 Brownlow Road adjusted to 439,578; and
- 101 Brownlow Road adjusted to £400,075

Where appropriate Mr McKewon had also adjusted for time on the same basis as Mr Cohen, but Mr McKeown had also adjusted for size and made further adjustments which tended to be more subjective or intuitive and in respect of which he relied upon his accumulated experience of the market.

Mr McKeown took the average of his four comparables to arrive at £424,240, rounded.

Discussion

43. Both valuers were questioned quite closely on the transactions relied upon and their subjective adjustments. We reject Mr McKeown's adjustments for size. First, because in the outer London retail market flats tend not to be valued or priced on size; in contrast, of course to prime central London. But more importantly because both valuers agreed (as does the tribunal) that the most helpful transaction is the sale of the ground floor flat at 91 Warwick Road and there was lack of clarity as to the size of that flat. That flat has a long narrow cellar with low ceiling height. In all probability, it's use is limited to storage or similar.

44. Mr McKeown's schedule at [129] records two areas 51m^2 and 57m^2, and that the dimensions of the cellar were 1.59m x 7.29m. Mr McKeown thought that lower figure was correct and that the area of the cellar was 7m^2. However, in cross-examination Mr McKeown accepted that if his dimension of the cellar were correct that area of the cellar is 11.60m^2. Mr McKeown was unable to correlate those rival figures by reference to the floor plans of the two flats within 91 Warwick Road, the foot prints of which were broadly similar, save for the space to be allowed for the stairway.

45. In these circumstances, we cannot rely with any confidence on the floor areas of the ground floor flat and its cellar beneath. This supports our view that adjustments for size should not be undertaken.

46. Other adjustments tend to be subjective and plainly the experience of the two valuers is different. We have taken careful note of the rival positions to which we have added the accumulated experience and expertise of the members of the tribunal.

47. We have rejected the two transactions in Brownlow Road relied upon by Mr McKeown because they are both in a different type and size of building to the subject and because there are a number of factors concerning Brownlow Road which require adjustments, both positive and negative, (the properties are of a superior type but the road is a busy but with additional amenities which might appeal to some purchasers) the application of which we consider gives rise to a real possibility of arriving at an unreliable value.

We also reject the transaction at 116a Warwick Road relied upon by Mr Cohen because that is a one-bedroom flat which cannot reliably be adjusted to reflect a value of the subject two-bedroom flat.

48. We set out below the transactions we consider to be the most helpful and our adjustments:

- **Ground floor flat 91 Warwick Road**

Sale price:		£440,000
Less:		
Time	£ 7,827	
Garden	£40,000	
Parking space	£10,000	
Condition	£10,000	
Cellar	£ 1,000	£ 68,827
		£371,173
Plus:		
5% for size		£ 18,558
		£389,731

- **15 Highworth Road**

Sale price		£445,000
Less:		
Time	£ 4,063	
Garden	£30,000	
Balcony	£ 5,000	£ 39,063
		£405,937

Taking these two transactions together we arrive at a long lease value of £400,000, in the round. Both valuers agreed a 1% uplift to freehold and so we arrive at £404,000 for that value.

Existing lease value

49. Mr Cohen considered two approaches. Firstly, he analysed the recent short leasehold sale of the subject property. This sold for £355,000 in September 2016 only a few days after the valuation date. For this approach, Mr Cohen considered it appropriate to deduct £5,000 to reflect the cost of works to carry out some modernisation, whereas Mr McKeown did not consider that such an adjustment was appropriate.

50. When analysing the short leasehold sale, both valuers considered that an adjustment was required to deduct the value of 'Act' rights. Mr Cohen was at 4%. Mr McKeown was originally at 5.24%. However, when it was drawn to his attention in cross-examination that he was in error as to the guidance given in the authorities he relied upon (see paras 23-27 above) Mr McKeown revised his opinion and came to a figure very close to Mr Cohen's 4% and that it the figure we have adopted. Mr McKeown also sought to rely upon three FTT decisions concerning the value of Act rights. Mr McKeown therefore arrived at a figure of £336,389 for the existing lease value [121].

51. Mr Cohen however considered that a short leasehold sale was often unreliable [63]. He therefore preferred to rely on relativity graphs. He relied upon the Section Two graphs in the RICS Research Report: Leasehold Reform: Graphs of Relativity dated October 2009, which he averaged to arrive at 88.88% [63].

Mr Cohen was of the opinion that graphs concerning prime central London should not be relied upon because the subject property and its market are quite different from properties in that area.

52. Mr McKeown relied only on the short leasehold sale of the subject property at £355,000 [119] prior to deduction of his assessment of Act rights.

53. We preferred the evidence of Mr Cohen on this aspect which we considered was more in line with a conventional valuation approach and Upper Tribunal guidance. We have thus adopted a relativity of 88.88%.

Conclusion

54. Having regards to the foregoing we have arrived at a premium of £29,730 arrived at as set out in the valuation appended to this decision.

Judge John Hewitt
15 September 2017

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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

APPENDIX

IN THE MATTER OF 91b WARWICK ROAD LONDON N11 2SP
VALUATION BY THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Date of Valuation			31-Aug-2016
Lease expiry date			24-Dec-2080
Unexpired Term /years			64.32
Virtual Freehold Value of Flat	(determined)		£ 404,000
Value of 64.32 year lease@ 88.88 % of virtual freehold value	(determined)		£ 375,639
Ground rent capitalisation rate	(agreed)	6.00%	
Reversionary deferment Rate	(agreed)	5.00%	
Premium Payable			£29,730

Diminution in Value of Freeholder's Interest

Term 1

Ground rent				£	70.00	per annum	
31.32 Years' Purchase	@	6.00%	13.9792			£	978.54

Term 2

Ground rent				£	105.00	per annum	
33 Years' Purchase	@	6.00%	14.2302				
PV £1 in 31.32 years	@	6.00%	0.16125				
			2.29462			£	240.94

Reversion

value of virtual freehold			£	404,000	
Present Value of £1 in 64.32 years' time @ 5%		0.0434			
				£	17,533.60
Freeholder's present interest					£ 18,753.08

Less

Freeholder's Proposed Interest					
value of virtual freehold			£	404,000	
Present Value of £1 in 154.32 years time @ 5%				0.000537	£ 216.95

Diminution in Value of Freeholder's Interest **£ 18,536.13**

Calculation of Marriage Value

Value of Proposed Interests

Leaseholder	£	400,000.00	
Freehold after lease extension	£	216.95	
Total Value of Proposed Interests			£ 400,216.95

Value of Present Interests

Existing lease (£404,000 x 0.8888)	£	359,075.20	
Freeholder (see above)	£	18,753.08	
Total Value of Present Interests			£ 377,828.28
Hence Marriage Value, Difference Between Proposed and Present Interests			£ 22,388.67
Divide Marriage Value equally between the Parties			£ 11,194.33
Premium Payable			**£ 29,730.47**
			say £29,730