



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

Case Reference : **LON/00AC/OLR/2018/0981 & 0982**

Property : **11A & 11B Lichfield Grove, London
N3 2JH**

Applicants : **(1) Mr Ofer Mor
(2) Ms Iris Ben-Arzi
(3) Ms Talia Mor
(4) Haim Ben-Arzi**

Representative : **Mr Richard Stacey MRICS**

Respondent : **Ms Abigail Hamilton**

Representative : **Mr Saul Gerard MRICS**

Type of Application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mrs Helen Bowers MRICS (Valuer
Member)**

**Date and venue of
Hearing** : **11 December 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **05 February 2019**

DECISION

Decision of the Tribunal

(A) The Tribunal determines that the following premiums are payable in respect of the grant of new leases for 11A & 11B Lichfield Grove, London N3 2JH ('the Flats'):

11A - £20,530 (Twenty Thousand, Five Hundred and Thirty Pounds)

11B - £26,756 (Twenty-Six Thousand, Seven Hundred and Fifty-Six Pounds).

(B) Schedules are attached, setting out the Tribunal's calculation of the premiums.

The background

1. The application concerns claims for new leases of the Flats under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act').
2. The first and second applicants are the leaseholders of 11A Lichfield Grove and the third and fourth applicants are the leaseholders of 11B Lichfield Grove. The respondent is the freeholder of 11 Lichfield Grove ('the Building'), which is a semi-detached house that has been converted into three flats. The respondent occupies the third flat, which is not subject to a registered lease.
3. On 17 November 2017 the applicants served section 42 notices on the respondent, proposing the following premiums for new leases:
11A - £16,340
11B - £20,710.
4. On 29 January 2018 the respondent served section 45 counter-notices. These admitted the new lease claims but proposed higher premiums, as follows:
11A - £35,350
11B - £44,000.
The counter-notices were served without prejudice to the respondent's contention that the section 42 notices were invalid.

The applications

5. On 25 July 2018 the Tribunal received two applications under section 48 of the Act; one relating to 11A and one for 11B. Directions were issued on 15 and 16 August, respectively. In each case, direction 1 provided:

“Any application to determine the landlord’s recoverable costs is stayed. Any application to lift the stay must include confirmation that the recoverable costs are in dispute.”

6. There have been no applications to lift the costs stay and the parties have agreed the wording of the new leases so the only issues to be determined by the Tribunal are the premiums for each lease.

The leases

7. The lease of 11A was granted by the applicant to Philip Joseph Anthony Daniels on 04 December 1989 for a term of 99 years from 24 June 1989. The annual ground rent was £75 for the first 33 years of the term, increasing to £100 for the next 33 years and £150 for the final 33 years. The demised premises are described in the first schedule, as:

“ALL that flat and premises comprising the Ground Floor (Front) of the Building as the same is for the purposes of identification only shown edged red on the plan “A” annexed hereto... TOGETHER WITH part of the garden at the rear of the Building which for the purpose of identification only shown edged green on the plan “B” annexed hereto”

8. Plan A shows the demised premises laid out as a studio flat with a raised bed area in the main living room and a separate kitchen. At some point after the lease was granted the kitchen was moved into the original bed area and the original kitchen was converted into a separate bedroom to create a one bedroom flat.

9. Various rights are granted in the second schedule to the lease, including:

“6. The exclusive right to park a motor vehicle on the parking area shown edged red on Plan “C” annexed hereto.”

The designated parking area is on the front forecourt at the Building.

10. The lease of 11B was granted by the applicant to Christopher John Thraves and Kathryn Sian Protheroe on 27 July 1990. Again this was for a term of 99 years from 24 June 1989 and the ground rents were the same as those for 11A. The description of the demised premises in the first schedule does not include any outside space. Again, there is an exclusive right to park on a designated area on the front forecourt. Unlike 11A, there has been no change to the layout since the lease was granted.

The hearing

11. The applicants were represented by Mr Stacey and the respondent was represented by Gerrard. Both representatives acted as advocates and expert witnesses.
12. Mr Stacey appeared in place of his colleague, Mr John Crosbie FRICS. They are both directors of the Chambers Property Group ('CPG'), trading as Brendons Chartered Surveyors, based in Ealing. Unfortunately, Mr Stacey was admitted to hospital shortly before the hearing and this necessitated a change of representative. Mr Stacey has some 20 years' experience of general professional property matters, including numerous assessment, reports and negotiations for lease extensions and freehold enfranchisements. He spoke to a report from Mr Crosbie dated 05 December 2018, which dealt with both of the Flats but provided his own expert's declaration. He confirmed that he had reviewed the report and agreed the analysis. He had assisted with the preparation of the various appendices and was familiar with the contents of the report. He adopted Mr Crosbie's valuation of the two premiums, as at 17 November 2017, namely:

11A - £17,660

11B - £22,190.

Although the report was prepared by Mr Crosbie, the Tribunal treated it as part of Mr Stacey's expert evidence.

13. Mr Gerard is the principal surveyor and managing director of Saul Gerard Surveyors, based in Hendon. He is also a director of Martyn Gerrard Estate Agents and has worked consistently in the property sector for the past 15 years. He has undertaken a large number of lease extension and enfranchisement valuations and negotiations. He is a member of the Association of Leasehold Enfranchisement Practitioners and spoke to two reports, one for each flat, both dated 30 November 2018. His valuation of the premiums, as at 17 November 2017, was:

11A - £27,080

11B - £32,365.

14. Mr Gerard also put forward alternative valuations based on a valuation date of 11 December 2018. His rationale was that the section 42 notices were invalid and he invited the Tribunal to determine the validity of the notices. The grounds on which the notices were challenged were set out in an undated document from the respondent's solicitors appended to each of Mr Gerard's reports. In brief, it is contended that each of the Flats was inaccurately described in the section 42 notices. In his reports, Mr Gerard explained that the respondent was still willing to grant lease extensions if the notices were found to be invalid but suggested that the valuation date should be brought forward to the hearing date.

15. The Tribunal explained that it had no jurisdiction to determine the validity of the notices. This is a matter for the County Court, pursuant to section 90 of the Act. In some circumstances, Tribunal Judges can also sit as County Court Judges under a flexible deployment scheme. This only applies to claims commenced in the County Court and transferred to the Tribunal, which is not the case here. Any application to challenge the validity of the notices, or amend the notices would have to be issued in the County Court. If the notices are amended then a new valuation date might be appropriate but this is very unlikely to be 11 December 2018.

16. In the light of this explanation, Mr Gerrard advised that he wished to proceed with the hearing based on the 17 November 2017 valuation date.

17. The Tribunal members were each supplied with a hearing bundle that included copies of the applications, directions, notices of claim, counter-notices, Land Registry searches for the freehold and leasehold titles, the existing leases and the agreed form of new leases. They were also supplied, separately, with copies of the valuation reports.

18. By the time of the hearing the parties had agreed many of the issues, as set out in the statements of agreed facts. These were:
 - Unexpired term on 17 November 2017 70.6 years
 - Ground rent capitalisation rate 6%
 - Deferment rate 5%
 - Freehold adjustment Plus 1%
 - Gross internal floor area Approx. 485 ft²/45 m² (11A)
Approx. 760 ft²/70.6 m² (11B).

This meant the issues in dispute were the long lease values, relativity and the premiums to be paid for each of the Flats.

Inspection

19. The Tribunal inspected the Building and the Flats during the morning of 12 December. The Building is a semi-detached, two-storey property on the north east side of Lichfield Grove, close to the junction with Regents Park Road. It is conveniently located for the shopping facilities on Regents Park Road and Ballards Lane and Finchley Central tube station (Travelcard Zone 4). The character of Lichfield Grove changes as you approach Regents Park Road. The eastern end is quieter, being further away from the amenities and the houses are more attractive, with a 'greener' outlook. The Building is at the less attractive and busier, western end.

20. There is restricted street parking in the vicinity of the Building. However, there is a forecourt with space for three cars to park. The Flats are accessed via a communal entrance hall with 11A on the ground floor and 11B on the first floor.
21. 11A comprises a small hallway, small double bedroom, living room/kitchen and a bathroom/WC. It benefits from central heating and high ceilings and there are UPVC double-glazed windows to the front. The kitchen area is to the rear of the living room and is very dark, with borrowed light from the living room windows. The kitchen units are modern but basic. The bathroom/WC leads off the kitchen area and the suite is also basic. A section of the rear garden is included in the demise. This is accessed via a path leading down the side of the building and is overlooked by the rest of the rear garden, which has been retained by the respondent. There is no direct access from the flat and the garden area is overgrown and neglected.
22. 11B comprises internal stairs to the first floor, a hallway two double bedrooms (one with an en-suite shower room), a living room, separate kitchen and a main bathroom/WC. It also benefits from central heating but has single glazed, timber windows throughout and the ceilings are lower. The kitchen is very narrow with dated units and work surfaces. The en-suite shower room is very small and the suites in this room and the main bathroom are basic.
23. The Tribunal also undertook drive-by inspections of both experts' comparables.

The issues

24. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made the following determinations on the disputed issues.

Long lease values of the Flats

25. Mr Stacey's unimproved long lease values were £331,000 for 11A and £420,000 for 11B. In his oral evidence, he referred to a general reduction in transactions over the last couple of years and explained that he had been unable to find any verifiable sales of studio flats in the immediate area. Although 11A was originally laid out as a studio, it was generously proportioned and was ripe for conversion to a one-bedroom flat. In the circumstances, he had used one-bedroom comparables for this flat.
26. Mr Stacey relied on four comparables for each flat and adjusted for time using the Land Registry House Price Index for the London Borough of Barnet (flats and maisonettes) for November 2017. He also made adjustments for condition/features and valued the comparables on a price per square foot, to

derive the value of the Flats. Mr Crosbie's report included Land Registry entries and marketing details for each of the comparables.

27. Mr Stacey's comparables for 11A were:

Address	Description	Sale Date and Price	Adjusted Price
1 Hervey Close, London N3 2HG	1 bed, second floor, conversion flat in average condition with eaves arrangement/restriction. Close to Ballards Lane. 532 ft ² . Approx. 972 years unexpired.	10/08/18 £265,000	£286,767
6A Elm Park Road, London N3 2HG	1 bed, ground floor, conversion flat, newly refurbished with basement and access to shared garden. Attractive building and quiet location. 498 ft ² . Approx. 111 years unexpired.	23/03/18 £325,000	£337,329
25C Lichfield Grove, London N3 2JH	1 bed, first floor, conversion flat in modernised condition with share of rear garden and access to loft space. 560 ft ² . Approx. 964 years unexpired with share of freehold.	31/05/17 £387,000	£375,380
14 Dorset Mews, London N3 2BN	1 bed, ground floor, purpose-built maisonette in quiet location. 433 ft ² . Approx. 104 years unexpired.	28/10/17	£363,652

28. Mr Stacey considered 25C Lichfield Grove and 6A Elm Park Road to be the best comparables in view of their type and position. When analysing the comparables he added £7,500 for those without parking spaces and 5% of the time adjusted price for those without private gardens. He deducted 1% of the time adjusted price for the ultra-long leases at 1 Hervey Close and 25C Lichfield Grove. He made condition deductions of £5,000 for 25C Lichfield Grove and 14 Dorset Mews and £12,000 for 6A Elm Park Road. He also made a location adjustment of £5,000 for 25C Lichfield Grove, which is at the more attractive end of the road.

29. Mr Stacey did not have any independent evidence to support the parking space and garden adjustments.

30. The mean average of the adjusted comparables was £330,285. Mr Stacey also took a 'stand back' approach when reviewing the evidence and also took account of the original studio layout of the flat to arrive at a long lease figure £331,000.

31. Mr Stacey's comparables for 11B were:

Address	Description	Sale Date and Price	Adjusted Price
11 Dollis Court, London N3 1HR	2 bed, first floor, purpose-built maisonette, recently refurbished with balcony and communal garden. 665 ft ² . Approx. 996 years unexpired.	01/06/18 £387,000	£409,140
5A Lichfield Grove, London N3 2JH	2 bed (one double, one single), first floor conversion flat with own entrance, parking space and garden. 767 ft ² . Approx. 145 years unexpired with share of freehold.	21/05/18 £456,000	£431,542
19A Hervey Close, London N3 2HG	2 bed, first floor maisonette with right to park on forecourt. 813 ft ² . Approx. 114 years unexpired.	12/06/17 £450,000	£457,717
79 Lichfield Grove, London N3 2JL	2 bed, split level, conversion flat with planning permission to extend. 1153 ft ² . Approx. 157 years unexpired.	01/08/17 £540,000	£532,737

32. Mr Stacey considered 5A Lichfield Grove and 19A Hervey Close to be the best comparables in view of their type and position. Again, he added £7,500 for those without parking spaces. He added 5% of the time adjusted price for the communal garden at 11 Dollis Court and deducted 1% of the time adjusted price for the ultra-long lease at this flat. The former adjustment is difficult to fathom, given that 11B does not have a private or communal garden. Mr Stacey deducted 5% of the time adjusted price for the private gardens at 19A Hervey Close and 79 Lichfield Grove. He also made condition deductions of £15,000 for 11 Dollis Court and £10,000 for 5A Lichfield Gardens.

33. The mean average of the adjusted comparables was £418,000. Again, Mr Stacey took a 'stand back' approach when reviewing the evidence to reach a long lease figure of £420,000.

34. In cross-examination, Mr Gerrard suggested that the various condition adjustments were overstated and there was little if any difference between a 1989 kitchen and one fitted in the mid-2000s. Equally, there was little difference between a 1989 central heating system and one from the mid-2000s. Mr Stacey considered that a modern kitchen justified some adjustment, particularly if it was "high end". He considered that heating systems had improved since 1989 and referred to the increasing popularity of combi boilers.

35. Mr Gerrard referred to a “*glut of investors*” in recent years who undertook very basic refurbishments before seeking to ‘turn’ properties. He suggested that some of the estate agents’ particulars overstated the condition of the comparables. In cross-examination, Mr Stacey’s said that “*newly refurbished*” would normally involve a new bathroom, kitchen and flooring, as well as redecoration.
36. Mr Gerrard suggested it was inappropriate to value on a price per square foot, given the location of the Flats. He also challenged the use of post valuation date comparables. Mr Stacey disagreed and said that valuing by floor area and using later comparables was helpful provided the surveyor exercises his judgement and makes suitable adjustments.
37. Mr Gerrard pointed out that the entrance hall at 19A Lichfield Grove accounted for approximately 56 ft² of the total floor area. Mr Stacey did not accept this was wasted square footage and described the hall as a “*lovely*” space that could be used to store bicycles and umbrellas.
38. Mr Gerrard drew attention to various differences between the comparables and the Flats. 1 Hervey Close is on the second floor and inferior to 11A due to the eaves restriction. 25C Lichfield Grove is on the first floor. 5A Lichfield Grove and 19A Hervey Close both have one double bedroom and one single; whereas 11B has two doubles. 79 Lichfield Grove is substantially larger than 11B at 1153 ft² and is the size of a three-bedroom flat.
39. Mr Gerrard’s unimproved long lease values were £405,000 for 11A and £486,500 for 11B. His valuation approach was to look for similar comparables and to adjust the sale prices, where appropriate, for gardens and parking. He adjusted for time using the Nationwide House Price Index but accepted there were some limitations to this index, which is updated quarterly.
40. Mr Gerrard did not consider it appropriate to value on a price per square foot. He lives close to the Flats and previously worked as an estate agent in Finchley. In his experience, local agents do not value Finchley flats on a floor area basis.
41. Mr Gerrard drew attention to the benefits of the western end of Lichfield Grove. It is adjacent to Regents Park Road, which had previously been an office location. However, the character is changing and two supermarkets (Sainsbury’s and Waitrose) have opened there recently, as has the library and a Travelodge.
42. Mr Gerrard relied on the following three comparables for 11A, one of which was common to both experts (25C Lichfield Grove):

Address	Description	Sale Date and Price	Adjusted Price
25C Lichfield Grove, London N3	1 bed, first floor, conversion flat in modernised condition with share of rear garden and access to loft space. 560 ft ² . Approx. 964 years unexpired with share of freehold.	31/05/17 £387,000	£400,854
269A Squires Lane, London N3 2QS	1 bed, ground floor, conversion flat in good condition with private rear garden (direct access) and a share of freehold. 541 ft ² . 0.5 miles from Finchley Central tube station.	10/03/17 £379,750	£413,450
28A Lichfield Grove, London N3 2JH	1 bed, first floor, conversion flat, with private rear garden and a share of freehold. 492 ft ² .	03/11/15 £328,000	£358,564

Mr Gerrard did not make adjustments for condition/features or share of freehold. He added £20,000 to each of the sale prices to account for the parking at 11A. He did not have any evidence of parking space sales to support this figure. Rather, he based it on his experience of garage sales in the local area. Typically, they sell for £25,000-30,000, with single, lock-up garages at the lower end of this range.

43. Mr Gerrard suggested that the estate agents had overstated the condition of 25C and there would be very little difference between the kitchen shown in the marketing photographs and the original kitchen in 11A. The usable space in both flats is very similar. 25C, being on the top floor, has the benefit of loft access but the profile of this loft is very shallow, which restricts its use. It is slightly larger than 11A but Mr Gerrard did not consider a size adjustment to be appropriate, as the entrance, landing and hallway account for much of the additional space. In his report, he referred to it being “*double the distance from local amenities in a more easterly direction from the subject property*”.
44. When analysing 269A Squires Lane, Mr Gerrard added 5% of the time adjusted price to reflect the location. He considered 11A to have a superior location, being 0.1 miles to the tube station (as opposed to 0.5 miles).
45. The mean average of the three adjusted prices was £390,956. Excluding 28A Lichfield Grove, which sold two years before the valuation date, increases the average to £407,152. Taking an overview of the evidence and the market as a whole, Mr Gerrard concluded that the long lease value of 11A was £405,000.
46. Mr Gerrard used two different approaches to valuing 11B. Firstly, he analysed the most recent sale of this flat. Secondly, he looked at four comparables.

47. The third and fourth applicants purchased 11B on 23 July 2014 for £345,000. At the time the lease had 73.92 years unexpired. Mr Gerrard applied a relativity of 92.96%, taken from the Nesbitt & Co graph in the 2009 RICS research report “*Leasehold Reform: Graphs of Relativity*” to arrive at a long lease value of £371,127. He then adjusted for time using the Nationwide index to arrive at a value (at quarter 4 of 2017) of £435,613. He also suggested that a reduction in the relativity could be justified (see paragraph 76 below), which would increase the long lease value to £445,006.

48. Mr Gerrard’s comparables for 11B, which included two sales relied on by Mr Stacey (5A and 79 Lichfield Grove) were:

Address	Description	Sale Date and Price	Adjusted Price
5A Lichfield Grove, London N3 2JH	2 bed (one double, one single), first floor conversion flat with own entrance, parking space and garden. 767 ft ² . Approx. 145 years unexpired with share of freehold.	21/05/18 £456,000	£474,000
29B Lichfield Grove, London N3 2JH	2 bed (one double and one single), lower ground floor, conversion flat, with parking, private rear garden and a share of freehold. 738 ft ² .	13/11/15 £455,000	£475,000
Flat 1, 44 Lichfield Grove, London N3 2JP	2 bed, ground floor, newly extended and refurbished maisonette with parking, private rear garden (direct access) and a share of freehold. 882 ft ² .	05/05/17 £580,000	£510,000
79 Lichfield Grove, London N3 2JL	2 bed, split level, conversion flat with planning permission to extend. 1153 ft ² . Approx. 157 years unexpired.	03/11/15 £328,000	£550,000

49. Mr Gerrard deducted £20,000 each from the sale prices of 5A and 44 for the private rear garden. Like Mr Stacey, he had no independent evidence to support this adjustment. In the case of 5A, he added £8,000 for the cost of installing an en-suite bathroom and a further £30,000 for the second bedroom (a single rather than double). The latter figure represented his estimate of the additional rent that could be generated from a double bedroom (£100pcm), capitalised at 4%. For 44, he added £50,000 for the cost of the extension and refurbishment.

50. In the case of 29B, Mr Gerard made a global addition of £20,000. It has the benefit of a private garden but this is more than offset by the single second bedroom, smaller size and floor level (on the lower ground floor).

51. Mr Gerrard did not make any condition/feature adjustments for 79 and only adjusted for time. He accepted that the kitchen, as shown in the agents' particulars, was superior. In addition, this flat benefits from a private section of rear garden. However, these advantages are offset by the inferior location (further east on Lichfield Grove) and the absence of off street parking.
52. Mr Gerrard's adjusted price for 79 was £40,000 more than the next highest comparable. He excluded this as "*a slight outlier*" and took a mean average of the other three adjusted prices to arrive at his long lease figure of £486,500. This was much higher than his analysis of the 11B sale in July 2014. In cross-examination, he explained that the comparable evidence was superior as the time adjustments were too great for the 2014 sale.
53. Mr Gerrard was cross-examined on his comparable selection and the limited nature of his adjustments. He accepted there was a small benefit to having a direct access garden, rather than indirect (as in the case of 11A). However, he rejected the suggestion that an indirect garden could be an incumbrance. He maintained his comparables for 11B were appropriate, despite all four having gardens (unlike the subject property).
54. Mr Gerrard did not consider it appropriate to make specific adjustments for share of freehold or size. Rather he used his knowledge and experience and the 'stand back' approach when analysing his comparables. Many of the flats had both benefits and disadvantages, which counteracted each other. In the case of 79 Lichfield Grove he accepted that the existence of planning permission to extend (as shown in the agents' particulars appended to his reports) could enhance the value, depending on the terms. This could reduce his adjusted price to £525,000. However, he had excluded this comparable when calculating the mean average.

The Tribunal's decision

55. The Tribunal determines that the long lease value of each of the Flats on the valuation date (17 November 2017) was:
11A - £359,500 (Three Hundred and Fifty-Nine Thousand, Five Hundred Pounds)
11B - £473,000 (Four Hundred and Seventy-Three Thousand Pounds)

Reasons for the Tribunal's decision

56. The analysis of the 11B sale in July 2014 was of little assistance due to the substantial time gap between this sale and the valuation date (3 years 4 months). Rather, the Tribunal focused on the comparables advanced by each expert. Based on the marketing details, the internal inspection of the Flats and the drive-by inspections, the Tribunal concluded that the most helpful comparables for 11A

were 25C and 28A Lichfield Grove. The most helpful for 11B were 5A and 29B Lichfield Grove.

57. It is convenient here to make some general points on the adjustments. The Tribunal preferred Mr Stacey's approach to time adjustments and used the Land Registry index. In the members' experience this is more reliable as it is based on registered purchase prices for cash and mortgage transactions, is published on a monthly basis and (in this case) is specific to flats and maisonettes. In contrast, the Nationwide index is based solely on mortgage approvals for that lender, does not take account of cash purchases, is published quarterly and is based on all property types. Furthermore the Land Registry index used by Mr Stacey was based on purchases in Barnet whereas the Nationwide index used by Mr Gerrard was based on approvals for all of Greater London.
58. The Tribunal accepts Mr Gerrard's evidence that local estate agents do not value flats in Finchley on a floor area basis. Equally, it is unlikely that purchasers in Finchley make their bids on such a basis. Given the outer London location, it is not appropriate to use a price per square foot when analysing the comparables. Rather, lump sum adjustments should be made to reflect any marked differences in size. Lump sum adjustments are also appropriate for the 11B comparables that had single second bedrooms. Based on the members' knowledge and experience, gained from hearing similar cases, the Tribunal concluded that hypothetical purchasers in Finchley are unlikely to use Mr Gerrard's approach of capitalising the potential, additional rent from a double bedroom.
59. Both experts made lump sum adjustments for the comparables without parking but there was a large difference in their figures (£7,500 and £20,000). There was some empirical basis for Mr Gerrard's adjustments, being based on garage sales, unlike those used by Mr Stacey. However, ownership of a lock-up garage, which can be used for storage as well as parking, is far superior to a right to park in an open space. This necessitated a reduction in Mr Gerrard's figure. Doing the best it could on the limited evidence available, the Tribunal added £15,000 when analysing each of the comparables without parking.
60. When cross-examining Mr Stacey, Mr Gerrard took issue with the use of post valuation date sales. However, he relied on the sale 5A Lichfield Grove which post-dated the valuation date by six months. The Tribunal's view is that later sales can be of assistance, provided they are good comparables (as in the case of 5A) and are relatively close to the valuation date.
61. Turning now to the specific adjustments; 25C and 28A Lichfield Grove were the best comparables for 11A, as they are towards the western end of the road, in similar properties and with indirect sections of rear garden. When analysing these comparables, the Tribunal first adjusted for time using the Land Registry index. No garden or location adjustments were required. The comparables are

slightly further from Regents Park Road but the difference is minimal and they are slightly closer to the quieter and more attractive eastern end of Lichfield Grove. The Tribunal added £15,000 to each comparable for the lack of parking.

62. The time adjusted price of 25C was £381,696. The Tribunal made a global deduction of £25,000 for the larger floor area (approximately 10%) and superior configuration. The entrance landing and hallway account for much of the additional size but these are useful areas and should not be discounted. Further, they should add to the brighter and more spacious appearance of this flat. The layout is superior with all rooms leading off the hallway and a separate kitchen with its own window. The Tribunal made a further deduction of £5,000 for improvements (including double glazing shown in the marketing photographs).
63. The Tribunal's adjusted value for 25C was £366,696. However, this flat comes with a share of freehold. Given that the experts had agreed a freehold uplift of 1%, the Tribunal divided the share of freehold value by 1.01 to arrive at a long leasehold value of £363,065.
64. The time adjusted price for 28A was £359,427 to which the Tribunal added £15,000 for the absence of parking. This flat has a similar floor area to 11A so no size adjustment was required. However, the configuration is superior with all rooms leading off the hallway and a separate kitchen with its own window. The Tribunal deducted £10,000 for layout and a further £5,000 for improvements (including double glazing), which reduced the adjusted price back to £359,427. Again, this comparable comes with a share of freehold and the Tribunal divided this figure by 1.01 to arrive at a long lease value of £355,868.
65. The mean average of the both adjusted long lease values is £359,466, which the Tribunal rounded up to £359,500.
66. 5A and 29B Lichfield Grove were the best comparables for 11B, as they are also towards the western end of the road, in similar properties and of a similar size. However, the Tribunal attached greater weight to 5A than 29B due to the shorter time adjustment. 5A sold six months after the valuation date, whereas 29B sold two years before.
67. The time adjusted price of 5A was £464,781. The Tribunal deducted £10,000 for the garden (private access) and a further £5,000 for improvements (including double glazing). It then added £20,000 for the smaller second bedroom and the absence of a second, en-suite bathroom to arrive at an adjusted value of £469,781. Again, there a share of freehold and the Tribunal divided this figure by 1.01 to arrive at a long lease value of £465,129.
68. The time adjusted price of 29B was £498,595. Again, the Tribunal deducted £10,000 for the garden (direct access) and £5,000 for improvements (including

double glazing). This comparable has two double bedrooms but only one bathroom. The Tribunal added £5,000 for the absence of a second, en-suite bathroom and a further £5,000 for its inferior position on the lower ground floor. This resulted in an adjusted value of £493,595. Again, there is a share of freehold and the Tribunal divided this figure by 1.01 to reach a long lease value of £488,707.

69. The Tribunal used these adjusted prices and applied a weighting multiplier of two to for 5A and one for 29B. This resulted in a mean average of £472,988, which the Tribunal rounded up to £473,000.

Relativity

70. The experts agreed there was an absence of reliable, transaction evidence of equivalent lease length that could be used to determine relativity. They both relied on the Greater London and UK graphs in the 2009 RICS report, which give the following relativities for 70.6 years unexpired:

- Beckett & Kay 93.04%
- Nesbitt and Co 91.30%
- Andrew Pridell Associates 92.86%
- South East Leasehold 93.84%
- Austin Gray 93.84%

The mean average of these five graphs is 92.86%. Neither expert sought to rely on the Prime Central London ('PCL') graphs in the RICS report.

71. Mr Stacey drew support for his use of graphs from ***Reiss v Ironhawk Limited [2018] UKUT 0311 (LC)***, which concerned a maisonette in Tottenham with an unexpired lease term of 75.23 years. The Upper Tribunal ('UT') used the Savills 2015 enfranchisable graph, in preference to the evidence from both valuation experts. Mr Stacey referred to paragraph 40, as set out below:

"In Orchidbase the Tribunal, His Honour Judge David Hodge QC and Mr Peter McCrea FRICS, said at paragraph 42:

"We endorse and reiterate the Tribunal's preference for market evidence over the use of relativity graphs, as long as it can be shown that market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply to the subject valuation."

In Mundy v The Trustees of the Sloane Estate [2018] EWCA Civ 35 Lewison LJ made a similar point at paragraph 29:

"These [valuation] adjustments are essentially a matter of value judgment. The fewer the differences there are between the comparable and the subject of the valuation, the greater the weight that can be given to the comparable."

72. Mr Stacey also referred to various First-tier Tribunal ('F-tT') decisions and particularly relied on **110A Station Road, London N3 2SG (LON/00AC/OLR/2018/0064)** dated 11 August 2017. In that case the F-tT determined relativity at 78.56% for an unexpired term of 52.8 years, based on an average of all of the Greater London and UK graphs. The flat in that case is on the next street to the subject property and Mr Stacey suggested that a prudent and advised purchaser would have known of this decision on the valuation date.
73. Rather than using the average of all five graphs, Mr Stacey used the two he considered to be most appropriate; Nesbitt and Co and Andrew Pridell Associates ('APA') to arrive at a mean average of 92.08%. He suggested that this was a balanced approach as the former is perceived to be 'landlord friendly' and the latter 'tenant friendly'.
74. In cross-examination, Mr Stacey was questioned on his use of the APA graph and whether the market for lease extensions had changed since August 2008 when this graph was produced. He had not seen any evidence to support a shift in 'No Act World' relativities outside PCL. He accepted that the Gerald Eve and Savills graphs indicated a shift within PCL.
75. Mr Gerrard looked at relativity in several different ways. He used the Nesbitt graph as his starting point. This firm is based in Edgware, North London and undertakes a large number of valuations and negotiations in this area. He did not consider it appropriate to use the APA, South East Leasehold or Austin Gray graphs, as these surveyors primarily value outside North London. He did not specifically reject the Beckett & Kay graph but said that Nesbitt & Co was the only firm that he had come across repeatedly, working in the North London area.
76. Mr Gerrard contended that relativities have shifted since the RICS report was published in 2009. In his experience, the market for ground rent investments and the value of these investments has increased. In his words, "*you can't buy ground rents at auction based on the 2009 graphs*". To support this proposition he compared the Gerald Eve ('GE') graph in the RICS report with their 2016 table of relativities. At 70.6 years unexpired, the relativity in the former is 87.36% and 85.37%; a difference of 1.99 points. Mr Gerrard deducted this differential from the Nesbitt figure to arrive at a relativity of 89.31%
77. Mr Gerrard did not rely on any settlement evidence when assessing relativity. He had negotiated many settlements but this invariably involved some form of trade-off. Further, he did not have signed settlement memoranda in a suitable form for the Tribunal.
78. Mr Gerrard also referred to ***Ironhawk***. At paragraph 54, Mr Andrew Trott FRICS rejected the landlord's relativity (based on transaction evidence) as it was "*out of line with the tone of relativity determined by this Tribunal in every other*

appeal.” At paragraph 55 he went on to say “*the most reliable method of valuation in this appeal is to use the Savills enfranchiseable graphs.*” he preferred the 2015 graph “*because it was prepared much closer to the valuation date and had been published by that time.*”

79. Mr Gerrard did not argue for the use of the Savills graphs, explaining that he wished to “*employ conservatism despite acting for the freeholder.*” However, he did append the 2015 tables to his reports. At 70.6 years the relativities are 87.64% (enfranchiseable) and 84.78% (unenfranchiseable), substantially below the Nesbitt figure of 91.30%.

80. Although the experts were unable to find transactional evidence of equivalent lease length to the subject properties, Mr Gerrard did analyse a number of local sales where similar flats, or the same flat, had been sold with short and long leases. He adjusted for time using the Nationwide index, with the following results:

- Flats 2 and 12 Laburnum Lodge - 83.8% relativity at 59.34 years
- Flats 25 and 28 Greenacres – 72.5% relativity at 52 years
- GFF, 79 Lichfield Grove – 63.2% relativity at 62.43 years

In each case, the relativity was close to or below the Savills 2015 enfranchiseable relativity and for Greenacres and 79 Lichfield Grove the relativities were below the unenfranchisable Greenacres. Greenacres was also below the discounted Nesbitt relativity. All of this led Mr Gerrard to conclude that a more bullish approach could be justified. However, he decided that “*a fairer and more conservative approach is to apply the most suitable Greater London graph with an adjustment for the passage of time.*”

81. In cross-examination, Mr Gerrard accepted that Finchley is not in PCL and that the 2016 Gerald Eve table has not been adopted by the Finchley market. He also accepted that his analysis of the local short and long lease sales was “*not ideal*”, a the flat at Laburnum Lodge and Greenacres are in purpose-built blocks and the long lease sale at 79 Lichfield Grove was an auction sale with the benefit of planning permission to substantially extend the flat.

82. Mr Gerrard rejected the notion that a hypothetical purchaser would have known of the **110A Station Road** F-tT decision on the valuation date and been influenced by it. Rather, a prudent purchaser would take valuation advice on the best and worst cases for the new lease premium.

83. Mr Gerrard also referred to changes in the availability of mortgage finance since the RICS report, which have had an impact on relativity. Lenders’ requirements have become more onerous and they now require longer unexpired lease terms. Mr Gerard described the Flats, with 70.6 years unexpired, as “*close to the wire*”, which would make purchasers wary.

The Tribunal's decision

84. The Tribunal determines the relativity at 91.30%

Reasons for the Tribunal's decision

85. All of the graphs in the RICS report have been criticised and have their flaws. The UT has consistently said that reliable market evidence is preferred to graphs, provided it is comparable and does not require artificial manipulation. Unfortunately, there is no such evidence in this case. At paragraph 169 of ***The Trustees of the Sloane Stanley Estate v Munday [2016] UKUT 0223 (LC)***, the UT said:

“In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis.”

86. Both experts used the Nesbitt graph. This is entirely appropriate, given the firm is based in North London and the geographical spread of its data (predominantly Greater London and the outer suburbs). Mr Gerrard clearly considered their graph to be the most reliable. Mr Stacey also used the APA graph but did not explain why, save to provide a ‘tenant friendly’ balance. This is not enough. It is for the experts to select and justify the most reliable graph or graphs, having regard to the data and methodology used. Mr Stacey did not advance a reasoned case for using the APA graph, which was based on data predominantly from the South East and Suburban London.
87. Whilst Mr Gerrard referred to the UT’s reliance on the Savills graphs in ***Ironhawk***, he did not argue for the use of these graphs. Rather, he (and Mr Stacey) both relied on the Nesbitt graph. The Tribunal agrees this is the most geographically relevant and has adopted the relativity in this graph. However, it is not appropriate to discount the figure.
88. The Tribunal accepts that demand for ground rent investments has increased in recent years and that ‘Act world’ relativities may have reduced. This is due to a number of factors, including low interest rates, poor returns on alternative investments and restrictions in mortgage lending. However, there was insufficient evidence to establish that ‘no Act world’ relativities in Finchley have reduced since the Nesbitt graph. The Tribunal notes that the time spread of the data in this graph was 1995 to November 2008. The GE graph in the RICS report was based on data from a much earlier period (1974 to 1996) and was restricted to Central London. The GE 2016 table of relativities does not identify the data used. Simply comparing the relativities in the two GE graphs was not enough to

establish a reduction in 'no Act world' relativities in Finchley since the end of 2008. The same applies to Mr Gerrard's transaction evidence. He analysed just six recent sales, whereas most of the graphs in the RICS report were based on hundreds of transactions. Further, there were some obvious flaws in this evidence. The sales at Laburnum Lodge and Greenacres were of different flats so these were not like for like comparisons. The long lease sale at 79 Lichfield was an auction sale with the benefit of planning permission that was granted on 19 January 2016, one day after the short lease sale on 18 January 2016. It is highly likely that this permission substantially increased the value of the Flat.

Summary

89. The Tribunal has determined the long lease values at £359,500 (11A) and £473,000 (11B) and the relativity at 91.30%. Using the freehold uplift, capitalisation and deferment rates agreed by the experts, the Tribunal determines the new lease premiums at £20,530 (11A) and £26,756 (11B), as shown in the attached schedules.

Name: Tribunal Judge Donegan **Date:** 05 February 2019

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 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.
4. 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.

**11a Lichfield Grove, Finchley
London, N3 2JH**

Long Lease Value (Unimproved)	£359,500
Freehold Value (Unimproved)	£363,095
Existing Lease Value (Unimproved)	£331,506
Deferment Rate	5%
Capitalisation Rate	6%

Freeholder's Present Interest

Term

Term 1

Rent Reserved	£75	
YP to 4.6 years @ 6 %	<u>3.9187</u>	
		£294

Term 2

Rent Reserved	£100	
YP 33 years at 6 %	14.23	
PV of £1 in 4.6 years @ 6 %	<u>0.7649</u>	
		£1,088

Term 3

Rent Reserved	£150	
YP 33 years at 6%	14.23	
PV of £1 in 37.6 @ 6%	<u>0.1118</u>	
		£239

Reversion

FH reversion	£363,095	
PV of £1 in 70.6 years @ 5%	<u>0.03192</u>	
		<u>£11,590</u>
		£13,211

less

Freeholder's Proposed Interest

FH reversion	£363,095	
PV of £1 in 160.6 years @ 5%	<u>0.0004</u>	
		<u>£145</u>
		£13,066

Marriage value

Proposed	
Extended lease value	£359,500

FH in reversion	£145		
less			
Existing			
Freeholder's Interest	£13,211		
Short lease value	£331,506		
Marriage Value		<u>£14,928</u>	
50:50 division			<u>£7,464</u>
Premium for lease extension			£20,530

**11b Lichfield Grove, Finchley
London, N3 2JH**

Long Lease Value (Unimproved)	£473,000
Freehold Value (Unimproved)	£477,730
Existing Lease Value (Unimproved)	£436,167
Deferment Rate	5%
Capitalisation Rate	6%

Freeholder's Present Interest

Term

Term 1

Rent Reserved	£75
YP to 4.6 years @ 6 %	<u>3.9187</u>

£294

Term 2

Rent Reserved	£100
YP 33 years at 6 %	14.23
PV of £1 in 4.6 years @ 6 %	<u>0.7649</u>

£1,088

Term 3

Rent Reserved	£150
YP 33 years at 6%	14.23
PV of £1 in 37.6 @ 6%	<u>0.1118</u>

£239

Reversion

FH reversion	£477,730
PV of £1 in 70.6 years @ 5%	<u>0.03192</u>

£15,249

£16,870

less

Freeholder's Proposed Interest

FH reversion	£477,730
PV of £1 in 160.6 years @ 5%	<u>0.0004</u>

£191

£16,679

Marriage value

Proposed

Extended lease value	£473,000
FH in reversion	<u>£191</u>

less

Existing			
Freeholder's Interest	£16,870		
Short lease value	£436,167		
Marriage Value		<u>£20,154</u>	
50:50 division			<u>£10,077</u>
Premium for lease extension			£26,756