FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/OCE/2018/0266**
Property	**:**	**18 Ladbroke Crescent, London W11 1PS**
Applicant	**:**	**18 Ladbroke Crescent Limited**
Representative	**:**	**Mr James Fieldsand Counsel**
Respondent	**:**	**LCW11 Limited**
Representative	**:**	**Mr Graham Pack BSc FRICS**
Type of Application	**:**	**S24 Leasehold Reform, Housing and Urban Development Act 1993 – determination of terms of acquisition in dispute**
Tribunal Members	**:**	**Judge John Hewitt** **Mr W Richard Shaw FRICS**
Dates and venue of Hearing	**:**	**30 April and 1 and 16 May 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20 June 2019**

DECISION

NB In this Decision to a number in square brackets ([1/1]) is a reference to the volume and page number of the hearing files provided to us for use at the hearing.

The issue before the tribunal and its decision

1. The sole issue before the tribunal was the price payable by the applicant to the respondent for the freehold interest in 18 Ladbroke Crescent, London W11 1PS which is registered at HM Land Registry with title number BGL94782 (the property)

2. The decision of the tribunal is the price payable is £26,490 made up as shown on the valuation appended to this decision.

3. The reasons for this decision are set out below.

Procedural background and facts not in dispute

4. On 3 June 2014 the respondent was registered at HM Land Registry as the proprietor of the freehold interest in the property. Paragraph three of the Proprietorship Register records that the price said to have been paid on 6 January 2014 was £32,000 [1/39].

   Evidently the respondent's bid at an auction was successful.

   The respondent is thus the reversioner for the purposes of Part 1 Chapter 1 Leasehold Reform, Housing and Urban Development Act 1993 (the Act).

5. The Schedule of leases which forms part of the Charges Register records the grant of five leases out of the freehold interest:

Flat	Date of lease	Term granted
1 (Lower ground)	22 March 2013	125 years from 28.03.2013
2 (Ground floor)	2 May 2013	150 years from 01.01.2013
3 (First floor)	10 June 2013	-ditto-
4 (Second floor)	27 June 2013	-ditto-
5 (Third floor)	2 May 2013	-ditto-

6. All five lessees are qualifying tenants for the purposes of s5 of the Act.

7. By an initial notice dated 8 June 2018 and given pursuant to s13 of the Act, the lessees of flats 1, 2, 4 and 5 (as participating tenants) gave notice seeking to exercise the right to the collective enfranchisement of the property [1/24].

   That notice:

7.1 Defined the 'Specified Premises' to be 18 Ladbroke Crescent … registered at HM Land Registry under title number BGL04782;

7.2 Stated the property to be acquired by virtue of s1(2)(a) of the Act was shown edged green on a plan annexed to the notice and was described to be:

(a) The garden to the rear of the Specified Premises and currently demised to Flat 1; and

(b) The front garden, pathways, basement vaults and main entrance (including the steps leading thereto over which the participating Tenants have rights of access):

(Together the 'Additional Freeholds')

7.3 Proposed a price of £25,889 for the freehold of the Specified Premises and a price of £10 for the Additional Freeholds;

7.4 Named the applicant as the Nominee Purchaser; and

7.5 Specified a response date of 16 August 2018.

8. It will be noted that the lessee of Flat 3 in a non-participant. The lease of Flat 3 is registered at HM Land Registry with title number B GL97801. On 24 June 2013 Assent Capital Management Limited (Co Regn 07223388) (Assent Capital) was registered as proprietor of the lease. Paragraph 2 of the Proprietorship Register records that the price said to have been paid on the grant of the lease was £472,500 [1/55].

Assent Capital was incorporated on 14 April 2010. Its sole officer appointed on that date is recorded as being Michael Haeems.

The applicant was incorporated on 18 December 2013. Its sole officer appointed on that date is recorded as being Michael Haeems.

The registered office of both companies and Mr Michael Haeems (Mr Haeems) correspondence address are recorded as being at 8 Flora Close, Stanmore, Middlesex HA7 4PY.

It was not in dispute that Mr Haeems controls both companies.

9. By a counter-notice dated 15 August 2018 and given pursuant to s21 of the Act, the respondent admitted that on the date when the initial notice was given the participating tenants were entitled to exercise the right to collective enfranchisement in relation to the Specified Premises [1/31].

The counter-notice stated the respondent did not accept the proposals contained in the initial notice as to the prices for the freehold of the

Specified Premises and for the Additional Freeholds and counter-proposed £60,266 and £20,000 respectively.

10. The parties were unable to agree all of the terms of acquisition. An application dated 22 October 2018 made pursuant to s24 of the Act was filed with the tribunal by the applicant [1/1].

Directions were given [1/18]:

As regards valuation matters they were:

5. 27 November 2018: Parties' valuers to exchange calculations and to meet to clarify issues in dispute;

6. 1 January 2019: Exchange of statements of agreed facts and disputed issues; and

7. Exchange of expert reports 'at least two weeks before the hearing date'

11. It does not appear that the respective valuers met but in December 2018 they exchanged valuation calculations as follows:

Applicant: Mr Thomas Hutchinson
Rent and reversion only £25,985/31,641 (depending on alternative capitalisation of the ground rents)

Respondent: Mr Graham Pack
Rent and reversion £60,795 and £20,000 in relation to 'vault value'.

12. The hearing window was specified to be 4 February to 15 March 2019. The parties were notified a hearing date of 13 February 2019. On 6 February 2019 a postponement hearing was held at Mr Haeems request. Mr Haeems sought a postponement to a date in early April 2019. The basis of his application was the Listing Questionnaire had been completed by his then solicitor and the solicitor had not taken into account the time for Mr Haeems to 'oversee' the case and the extent of his active involvement in it. Evidently, whilst Mr Pack had been instructed as the expert valuer, Mr Haeems had, two days previously, instructed a Mr Donald Shearer (an architect to assist him [Mr Haeems]) with an overview as regards development potential of communal spaces which had not been taken fully into account. Mr Haeems thus sought a postponement 'to allow his new expert to carry out an inspection and provide a detailed report'.

13. The application to postpone was granted, the hearing was re-listed for 26 and 27 March 2019 and revised directions given:

1. 27 February 2019: The parties' valuers must exchange valuation calculations and to meet to clarify the issues in dispute;

2. 13 March 2019: The parties must exchange statements of agreed facts and disputed issues and send copies to the tribunal;

3. 20 March 2019: The parties must exchange expert reports; and

4. 22 March 2019: Applicant to lodge and serve on the respondent a hearing file in accordance with direction 11 of the previous directions.

These directions were notified to the parties by letter dated 6 February 2019 [1/22].

14. In the event the respective valuers did meet. On 4 March 2019 they exchanged valuation calculations:

Applicant:	Mr Thomas Hutchinson	£25,985
Respondent:	Mr Graham Pack	£188,727

15. The valuers exchanged reports on 21 March 2019 and they spoke to values:

Applicant:	Mr Thomas Hutchinson	£22,014	[2/330]
Respondent:	Mr Graham Pack	£188,727	[2/476]

16. Mr Hutchinson's valuation of £22,014 was in respect of rent and reversion only.

Mr Pack's valuation of rent and reversion was at £38,511.

In addition he sought compensation in respect of a range of matters [4/476], namely:

16.1	Value of 2 outside vaults (2 & 3)	£40,725§
16.2	Vault Flat 1 – contravention of lease and planning	£46,795§
16.3	Flat 1 – additional extension area- breach of planning and licence for alterations	£ 8,022§
16.4	Flat 1 – additional extension into the garden	£33,091§
16.5	Additional areas – common parts/stairs	£ 578*
16.6	Additional areas – infill on ground & 1st	£ 76*
16.7	Reconfiguration of Flats 4 & 5	£ 3,530§
16.8	Building a basement	£17,500§
		£150,216

§ Claims modified during the course of the hearing
* Claims withdrawn during the hearing

17. There was broad agreement that the property is a typical mid-terraced late Victorian building originally constructed as house over basement, ground and three upper floors. As some point the property has been adapted to create five self-contained flats; one on each floor. There is no lift.

Ladbroke Crescent is a cul-de-sac at the northern end of Ladbroke Grove, just south of the M40 flyover. There are several shops close to Ladbroke Crescent, along with an eclectic mix of retailers, antique centres and the market of Portobello Road also nearby.

Ladbroke Grove underground station (Circle and Hammersmith and City lines) is approximately 200 yards from the property, a (2-minute walk).

Both valuers accepted that the property is not on the grand scale of some properties to be found in Notting Hill area. There was some nuanced dispute about the desirability of the location and whether it can properly be regarded as prime central London (PCL).

The hearing

18. At the hearings:

The applicant was represented by Mr James Fieldsend of counsel together with representatives of the applicant's solicitors and Mr Hutchinson and Mr Tom Miles of Egertons.

The respondent was represented by Mr Graham Pack together with Mr Haeems and his parents. On the first day Mr Donald Shearer, an architect, was also present. Mr Pack is the principle of Graham Pack Associates, His office is in Watford.

19. Some preliminary matters arose.

Supplemental report of Mr Hutchinson

Mr Fieldsend sought permission to file and rely upon a supplemental report by the applicant's expert witness, Mr Hutchinson.

20. Mr Fieldsend submitted that on 4 March 2019 the respective valuers had exchanged valuations. Whilst Mr Hutchinson was aware that Mr Pack's figure had gone up from £80,795 to £188,272 there was no explanation provided as to how that figure had been arrived at. It was not until reports were exchanged on 21 March 2019 that Mr Hutchinson learned the reasoning and basis on which the additional claims were made. Mr Hutchinson prepared a supplemental report by way of a reply. It is dated 1 April 2019 and was served 3 April 2019 [5/1]. Most of its contents focus on the claims for additional compensation which total just over £150,000. Mr Pack had been invited to serve a response if he wished to do so.

Mr Hutchinson further submitted it was a proper written expert report containing material evidence of assistance to the tribunal and the respondent would not suffer prejudice if it was adduced in evidence.

21. Mr Pack opposed the application. He submitted that at the hearing which granted the postponement the issues were clear and it was open to both parties' experts to make such further inspections and enquiries as they saw fit, including advice from an architect. He submitted that the reports exchanged should have dealt with all elements.

Mr Pack accepted that there was no prejudice to the respondent if the supplemental report was adduced in evidence.

22. The tribunal granted permission for the supplemental report to be adduced in evidence.

Valuers' correspondence

23. Mr Fieldsend sought permission to put in evidence a bundle of open correspondence passing between the respective valuers – volume 4. Mr Hutchinson submitted that volume 3, a file of correspondence which the respondent wished to be included, contained some but not all of the material correspondence. Mr Hutchinson submitted that his bundle contained the full set in chronological order, paged numbered 1-152, for ease of reference for all during the course of the hearing. Its relevance would depend upon how the evidence panned out during the hearing. He said the respondent had seen all of the contents of the file and it contained nothing to take it by surprise. The file was submitted to the respondent on 26 March 2019

24. Mr Pack opposed the application simply on the ground that it was late and not in accordance with the directions and that the bundle contained some omissions.

25. The tribunal granted permission for volume 4 to be referred to if need be. It also granted permission for the respondent to put in any omitted materials, subject to first showing them to Mr Fieldsend so as to give him an opportunity to object. If an objection was made the tribunal would hear argument and determine it.

Report of Mr Donald Shearer BSc(Arch), RIBA, ARB (Registered Architect

26. With reference to paragraph 12 above by an email dated 7 February 2019 [4/45] the respondent sought the opportunity of further internal inspection of Flats 1, 2 4 and 5 by Mr Pack and Mr Haeems, this time to be accompanied by Mr Shearer. Facilities were provided but in an email dated 8 February 2019 [4/48] Mr Hutchinson raised the question of compliance with tribunal directions.

27. Evidently the inspection took place on or about 15 February 2019. Mr Shearer prepared a report. It is dated 22 March 2019. It was served on

the applicant's solicitors on the afternoon of Friday 26 April 2019 – just one clear working day prior to the hearing.

The report has been included in volume 3 filed with the tribunal by the respondent but the members of tribunal have not read the report.

Mr Pack sought permission to adduce the report in evidence and to call Mr Shearer to speak to it. Mr Fieldsend opposed the application. He reminded us that no application to the tribunal for permission to adduce a report from an expert architect had been made until the morning of the hearing. He also told us that the report was not compliant with rule 19. It is not addressed to the tribunal and it does not contain an expert declaration.

28. Mr Pack submitted that Mr Haeems, as a layman, was not aware of the requirement to seek and obtain permission to adduce the report; he thought it sufficient that in correspondence to both the tribunal and to the applicant's solicitors he had mentioned his intention to take advice from Mr Shearer. Also, that when M Haeems prepared volume 3 on 25 March 2019 he flagged up to the applicant's solicitors that 'Donald's report would follow. It may be noted that whilst Mr Haeems is a layman as regards these proceedings, he is in fact a qualified solicitor who was once (some years ago) employed in the property department of a firm of solicitors, his focus in now on financial investment projects.

29. With regard to delay, we were told that the report had been attached to an email sent to Mr Haeems on 22 March 2019, but Mr Haeems was unable to open the attachment. He could not do so until later and after Mr Shearer had returned from holiday. We were not told when that was.

30. Mr Pack confirmed that when he finalised his own report (that is Mr Pack's report) he had before him Mr Shearer's report but he did not mention it at all when formulating the details or component parts of his valuations.

31. Mr Pack acknowledged that Mr Shearer's report was deficient in compliance with a number of the requirements of rule 19 but he was confident they could be overcome. Mr Pack submitted that the report addressed development value issues and that Mr Shearer's evidence would be of assistance to the tribunal when considering those issues.

32. Mr Fieldsend urged caution and that the tribunal's procedures were the gateway to expert evidence. No prior application for permission had been made until the morning of the hearing on 30 April 2019 even though Mr Haeems had mentioned the involvement of Mr Shearer at the postponement hearing on 6 February when the original hearing date was adjourned for Mr Haeems benefit and at which further directions were given. In the context of Mr Shearer inspecting, Mr Hutchinson had drawn attention to tribunal procedures in his email to Mr Haeems dated 8 February 2019.

33. Mr Fieldsend submitted it would be wrong and wholly inappropriate to allow admission of the report. He also reserved his position as to a further adjournment in the event permission was given.

34. In reply Mr Pack submitted that the lessees were aware an architect was making inspections; and that Mr Shearer's evidence was not new in that it supported development opportunities and how and why development can be done.

35. The tribunal adjourned for a short while to consider the rival submissions. The tribunal refused permission for the following reasons:

- The application was far too late;
- The respondent has had the report for some time but was not able to put forward any credible or acceptable explanation as to why the report was not provided to the applicant until Friday 26 April and the application was not made to the tribunal until 30 April 2019;
- That delay has caused prejudice to the applicant;
- Admission of the report will cause prejudice to the applicant and
- The report is deficient with rule 19 requirements in three material respects.

Matters agreed and matters in dispute

36. Prior to and during the course of the proceedings the parties were able to agree a good number of the components of the valuation exercise. A list of agreed matters as at 15 March 2019 is at 2/355.

37. Rather than focus here on the matters agreed, it is more convenient to set out the matters in dispute which the tribunal was invited to determine, namely:

37.1 The value £psf of Flat 1 and hence the value of the loss of reversion at 5%;
37.2 The capitalisation rate to adopt in respect of the ground rents; and
37.3 The value of the additional losses claimed.

38. Until a very late stage the capital values` of all five Flats were in dispute. The rival contentions were:

Flat No.	Mr Hutchinson £	Rate £psf	Mr Park £	Rate £psf
1	560,141	900	840,973	1,337
2	556,600	1,150	664,489	1,337
3	590,000	1,250	651,119	1,337
4	431,250	1,150	505,386	1,337

5	496,650	1,050	637,749	1,337

39. In the event during the course of the hearing the parties were able to agree the capital values and hence the reversionary losses of Flats 2, 3, 4 & 5 at £2,126. Thus it was that the tribunal was only required to determine the capital value of Flat 1.

Flat 1

40. Flat 1 is the basement flat. The whole of the rear garden is demised to the lessee. Since the grant of the lease the lessee sought and obtained a licence to construct a rear extension into part of the garden. The parties were agreed the extension was a tenant's improvement which fell to be disregarded.

At the hearing the parties agreed the floor area of Flat 1 for valuation purposes was 610 sq ft.

The rival valuations were:

Mr Hutchinson: £900 psf = £549,000
Mr Pack: £1,337 psf = £840,973

40. The gist of Mr Hutchinson's evidence was that in his extensive experience in the subject part of prime central London in a conversion such as at 18 Ladbroke Crescent, the basement or lower ground floor flat has the lowest value and the first floor the highest value with the other floors in between differentiated, broadly as shown in the table in paragraph 38.

41. Mr Hutchinson identified as comparable four ground and lower ground floor flats all with rear garden space. Mr Hutchinson made adjustments for size, condition and time where necessary. His adjusted values were:

Property	Floor	Adjusted value £psf
48 Blenheim Crescent	Ground & lower ground	954
98 Ladbroke Grove	Ground	970
23 Ladbroke Crescent	Ground & lower ground	1,089
5 Ladbroke Crescent	Ground & lower ground	912

Mr Hutchinson set out his adjustments in his report.

His time adjustments were based on the Savills Research: Prime London Residential: Statistical Supplement: Quarter 4 2018. Mr Hutchinson produced a copy and took us through it. He said that in his experience in negotiating transactions in PCL valuers adopt this index as it is considered to be the most reliable. That said, he accepted that the HM Land Registry index does not provide a very different outcome.

Mr Hutchinson considered that 23 Ladbroke Crescent was a rather dated transaction (April 2015) and thus of less assistance than the others.

42. Mr Hutchinson said he took into account that all of the comparables have some ground floor space and that Flat 1 does not have any such space. He said that in his experience basement space in the subject location tends to be valued at about 75% of ground floor space.

He said that his best comparable was 5 Ladbroke Crescent because it is in the same street and sold on 17 July 2018 which is very close to the valuation date of 8 June 2018, so that no time adjustment was required. Mr Hutchinson said he took into account this was a sale by an elderly lessee which had followed abortive transactions. On a floor area basis this property had a value of £912 but some of that space in ground floor and thus is better than Flat 1. It also had a slightly better layout and was accessed internally.

43. Mr Hutchinson said he stood back and considered his adjustments. Three of the comparables had some ground floor space to be taken into account. It was not appropriate to average. But standing back Mr Hutchinson adopted a value of £900 psf for Flat 1.

44. Mr Pack adopted a different approach. He made no adjustments for location, floor level or condition. He adjusted for time adopting the appropriate HM Land Registry index and he adjusted for size.

Mr Pack identified nine comparables as follows:

Property	Floor	Adjusted value £psf
176 Westbourne Park Rd	1st	1,244
2/58 Blenheim Crescent	1st/2nd	1,285
4/47-49 Cornwall Crescent	Ground	1215
3/23 Ladbroke Grove	2nd	1,292
D/160 Westbourne Park Rd	1st	1,352
15 Advance House	1st	1,579
C/12 St Mark's Place	1st	1,336
1/23 Ladbroke Crescent	Ground & lower ground	1,303
70 Ladbroke Grove	Lower ground	1,423

Mr Park averaged those comparables to arrive at an adjusted value of £1,337.

45. Both valuers were challenged about certain features of the comparables upon which they relied. Mr Hutchinson was criticised for making subjective adjustments on condition where he had not inspected

internally and where he had relied upon selling agents particulars or comments. Mr Park was criticised for not making any adjustments for condition, location or floor level. His approach that they all get sorted out in the mix when averaged was also criticised.

Discussion

46. Which index to use for adjustment of time is not overly critical. The subject property is on the edge of PCL. We accept Mr Hutchinson's evidence that practitioners in PCL generally adopt the Savills index. We have therefore accepted the time adjustments calculated by Mr Hutchinson.

47. That said, of Mr Hutchinson's comparables, we find that the most helpful is that concerning 5 Ladbroke Crescent which does not need an adjustment for time. It hardly needs any adjustment at all. Mr Pack argued that it was an urgent sale of a property owned by an elderly lessee moving into a care home and thus it may be inferred the condition was dated and poor. Evidently Mr Haeems obtained a copy of the sales particulars prepared by Winkworth Notting Hill. They were emailed to him on 13 February 2019 [3/103]. Mr Haeems does not exhibit the sales particulars but relies on two emails from Winkworth:

    Ms Sharma: "*It actually sold for £912/ft. £805k. The property needed complete renovation more like £100k spend on it and the client was moving into a care home. They found something so wanted a very swift sale. Had two previous offers which fell through.*"

    Mr Erwin: *"As promised please see attached brochure for 5 Ladbroke Crescent. The property seems from the photos to be totally unmodernised and requires a full refurbishment."*

    In valuation terms we find that the condition is balanced out by it being a ground floor and lower ground floor flat with a slightly better layout being accessed internally.

48. Mr Hutchinson has considerable experience of residential property in PCL gained over 40+ years working in the area. His evidence was impressive although not always accurate in every detail or particular. During the course of his oral evidence he made some adjustments to his opinions. On floor level we accept and prefer Mr Hutchinson's evidence that in the subject type of conversion there is a differential in the values depending on floor level, with basement accommodation being the least valuable. This evidence struck a chord with the experience of the members of the tribunal. We reject Mr Pack's approach that floor level is dealt with by averaging. That may be appropriate where the basket has equal numbers of the categories but here Mr Pack's basket contains only one basement flat, one ground and lower ground flat, one ground floor flat, four first floor flats, one first and second floor flat and one second floor flat.

49. Of Mr Pack's comparables we reject those which are of first and/or second floors. We find the most helpful are those with lower ground floor space:

1/23 Ladbroke Crescent. Time adjusted by Savills index = £1,070 psf
This property is in the same street and no adjustment for location is required. Although we have adjusted for time we do have to bear in mind that the sale was as long ago as April 2015 since when the market has moved in different directions. Mr Pack makes no adjustments for condition or floor level. The value arrived at is very close to Mr Hutcinson's value of £1,089 after adjustments. At 622 sq ft this property is of a very similar size to the subject Flat 1. No evidence of condition was provided.

70 Ladbroke Grove. Time adjusted by Savills index = £1,398 psf.
This property sold in March 2017 for £1.2m. There was no evidence of the condition of this property. At 811 sq ft it is a good deal larger than the subject. No evidence of condition was provided.

50. Standing back and looking at the five best comparables and doing the best we can with them on the imperfect materials before us we find the value of the subject Flat 1 should be based on a value of £960 psf = £585,600.

Adopting the agreed deferment rate of 5% this produces a reversionary loss of £1,698 which we have entered into our calculation.

Capitalisation rate
The rival positions

51. Initially, in December 2018 Mr Hutchinson was advocating a rate of 6% [3/9]. In February 2019, in his first report, he cited 7.5% [1/230]. In his final report dated 18 March 2019 he considered it correct to calculate the ground rent on the basis of a yield of 8.5% [2/207].

Mr Pack has been at 5% throughout although he said he could support a slightly lower rate.

As at the hearing:

Mr Hutchinson -	8.5%	=	£18,609
Mr Pack at -	5%	=	£33,951

52. During the course of the hearing Mr Fieldsend reminded those present that experts were expected to set out in their reports the evidence on which they relied to support their opinions; and that previous decisions of the tribunal on particular points in any given case was not evidence.

53. Mr Hutchinson was cross-examined very closely on the evidence he relied upon to support 8.5% and why he has steadily increased his view.

Mr Hutchinson said that his first proposal of 6% was a figure he (or rather the applicant) was minded to accept in order to achieve a fairly quick settlement without the need to spend time on research. When it became apparent that a settlement was not going to occur Mr Hutchinson's office carried out some research.

54. Mr Hutchinson said that the main factor here was that the ground rents were fixed over a very long period and thus deteriorate as inflation devalues the return. Mr Hutchinson said that this is a complex area and that evidence of sales of ground rents is often hard to come by and buyers often have factors other than the investment value of the ground rent income stream in mind when they make their bids.

55. When it became apparent that a settlement was not going to occur Mr Hutchinson had his office carry out some research for him. He checked it and was prepared to adopt it. Mr Hutchinson exhibited a schedule of 8 sales of ground rents by Allsops [2/312]. They are not fixed ground rents. The yield ranges from 6.15% to 10.86%. Using this evidence as a guide Mr Hutchinson arrived at 8.5%. Mr Hutchinson that in his experience the market takes a range of factors into account. As at the valuation date the market was aware that the Law Commission was undertaking a review of leasehold enfranchisement and also that residential ground rents was becoming a political issue for potential reform.

56. In cross-examination Mr Hutchinson was asked about some of the underlying details of some of the transactions he relied upon. Mr Hutchinson did not have the materials to hand but agreed to obtain them overnight. He did so and the next day he told the tribunal that he wished to withdraw three of the transactions as they were not appropriate. He apologised to the tribunal and agreed he ought to have checked the research put before him more closely before adopting it. The remaining five transactions relied upon by Mr Hutchinson ranged from 6.86% to 10.25%. Mr Hutchinson nevertheless remained of the firm opinion that 8.5% was the appropriate rate for the subject fixed ground rents.

57. Mr Pack is at 5%. In his report at [2/341] Mr Pack refers to a previous decision of the a tribunal – the *All Saints* case – in which a rate of 3.35% was determined. Mr Pack said that he had that rate in mind and adjusted to reflect the fixed ground rents to arrive at 5%.

Discussion

58. Mr Pack did not produce any evidence to support his rate of 5%. The *All Saints* case is not evidence of the rate to adopt to the subject property. The facts and the evidence presented in All Saints were quite different to those applicable to the present case.

59. In the absence of any evidence from Mr Pack, Mr Fieldsend submitted that we should accept the evidence of Mr Hutchinson.

60. We have given careful consideration to the evidence of Mr Hutchinson. We are aware that the capitalisation rate is a complex matter and has been controversial and the subject of litigation in which eminent experts have given evidence.

61. We readily accept that here the ground rents are fixed for a very lengthy time and we accept this will affect the market rate for such an investment stream. We also accept that the amount of the ground rents are modest which also has an impact. We find that the evidence provided to support 8.5% is not so clear cut. In Mr Hutchinson's schedule there is only one example of a yield above 8.5%. Three are between 6% and 7%, the other is 8.11%. Standing back and taking the evidence as a whole we find it is more supportive of a rate of 7.5% which is the rate we have adopted.

The additional claims to compensation.

62. Before discussing each claim it might be helpful to recap the relevant law.

Legal principles

Statutory provisions

63. S32 of the Act provides that the price to be paid by the nominee purchaser for the freehold and other interests to be acquired is to determined in accordance with Schedule 6.

Of that Schedule:-

Paragraph 3 concerns the value of the freeholder's interest. There are four main assumptions. It has been held that it does not prevent other assumptions being made if they reflect the amount which the freeholder's interest might be expected to realise if sold on the open market – see subparagraph (2). In a number of cases potential development value has been allowed. The Upper Tribunal has given guidance in a number of cases to the effect that the correct approach is to analyse the hypothetical purchaser's bid on the basis of a range of risk factors and uncertainties, one of which is planning control. This is discussed in paragraph 27-08 of *Hague: Leasehold Enfranchisement* Sixth edition.

Another potential element is what is now known as 'hope value'. This is the expectation that the hypothetical purchaser might have the opportunity to do a deal with a non-participating tenant to extend his lease. This is discussed in paragraph 27-10 in *Hague*. In the subject case there is only one non-participating tenant, a company controlled by Mr Haeems, which has a lease with about 145 years unexpired at the valuation date. The parties are agreed that here there is no hope value arising in this respect;

Paragraph 4 concerns marriage value – that does not arise in this case because each of the leases of the participating tenants has more than 80 years unexpired at the valuation date.

Paragraph 5 is in these terms:

Compensation for loss resulting from enfranchisement

5.—

(1) Where the freeholder will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to—

(a) any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and

(b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.

(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the specified premises to the extent that it is referable as mentioned in that paragraph.

(4) In sub-paragraph (3) "development value", in relation to the specified premises, means any increase in the value of the freeholder's interest in the premises which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction on, the whole or a substantial part of the premises.

(5) Where the freeholder will suffer loss or damage to which this paragraph applies, then in determining the amount of compensation payable to him under this paragraph, it shall not be material that—

(a) the loss or damage could to any extent be avoided or reduced by the grant to him, in accordance with section 36 and Schedule 9, of a lease granted in pursuance of Part III of that Schedule, and

(b) he is not requiring the nominee purchaser to grant any such lease.

The above paragraph is discussed in paragraph 27-25 of *Hague*. The concluding paragraph is in these terms:

It must be remembered that a claim to compensation under this paragraph is only concerned with damage to the freeholder's ***other property*** *interests caused by the* ***loss*** *of the* ***specified premises****. If he owns no other property there can be no additional compensation claim. In one case, an additional £5,000 was awarded under this paragraph for loss of the possibility of developing the grounds which were to be acquired.* [Emphasis added].

For ease of reference we remind ourselves that in accordance with s13(3) of the Act the initial notice defined the 'specified premises' to be 18 Ladbroke Crescent … registered at HM Land Registry under title number BGL04782.

Authorities

64. Mr Fieldsend drew our attention to a number of authorities in which relevant guidance has been given to include:

Arbid v Earl Cadogan [LRA/23/2004] and others. A decision of HHJ Michael Rich QC and Mr P H Clarke FRICS dated 20 October 2005

Paragraph 112 Evidence – … *The duty of the LVT in each case, in which an element in the valuation which it is required to determine is not agreed, and of this Tribunal on appeal, is to consider the evidence adduced to arrive at a determination in accordance with the relevant statutory provisions.*

Paragraph 113 Previous tribunal decisions – *The danger of treating one valuation by a tribunal as a precedent for a subsequent decision, in place of evidence was pointed out by the Court of Appeal in the context of … fair rent in Curtis v London Rent Assessment Committee [1999] QB 92….*

Paragraph 115 – *LVT decisions on questions of fact or opinion are indirect or secondary evidence and should be given little or no weight in other LVT proceedings ad proceedings in this Tribunal, even if they are admissible…*

Arrowdell Ltd v Coniston Court (North) Hive Ltd [LRA/72/2005]. A decision of Mr George Bartlett QC, The President of the Lands Tribunal and Mr N J Rose FRICS dated 31 October 2006

Paragraph 37 – relevance of LVT decisions as evidence … *In our judgment LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value. The reason for this is that each tribunal decision is dependent on the evidence before it, and thus, in order to determine how much weight should be attached to the figure in a decision, it would be necessary to investigate what evidence the LVT had before it and how it had treated it. Such a process of investigation is potentially lengthy, and it is inherently undesirable that LVT hearings should resolve themselves into re-hearings of earlier determinations.*

Paragraph 38 - *It is certainly understandable that valuers negotiating the settlement of an enfranchisement claim should have regard to LVT decisions on relativity, since these might seem to them to be the best guide of the likely outcome if they were unable to reach agreement, even though, as Mr Pridell said, the decisions are*

disparate and fail to show any established pattern. But the decisions themselves can constitute no useful evidence in subsequent proceedings.

Trustees of the Sloane Stanley Estate v Mundy [2016] L&TR 32 a decision of Morgan J and Mr A Trott sitting in the Upper Tribunal (Lands Chamber) dated 10 May 2016. In this case the Tribunal considered in great detail hedonic regression and the Parthenia model as a tool in the valuation process. It decided that it had failed the test. But starting at paragraph 163 the Tribunal gave some guidance about future cases and with particular reference to the market said:

Paragraph 166 – *Secondly, the valuations required under Sch.13* [for material purposes the same as Sch 6] *to the Act relate to market values on the statutory hypotheses. … when the tribunal comes to determine a dispute as to the amount of such a premium, the relevant valuation date will generally be in the past. The parties and the tribunal must focus on the state of the market at that date. What matters is how the market performed at that date. … It is not open to a party when discussing the market at a date in the past to suggest that the market was badly informed or operating illogically or inappropriately in order to invite the tribunal to replace actual market forces with what are suggested to have been more logical or appropriate considerations.*

Gorst v Knight [2018] HLR 42, a decision of HHJ Paul Matthews dated 28 March 2018 concerning the interpretation of long leases and air space subsoils and subterranean space.

L.M. Homes Ltd and others v Queen Court Freehold Company Ltd [2018] UKUT 367 (LC), a decision of Martin Rodger QC, Deputy President Upper Tribunal (Lands Chamber) dated 30 October 2018 concerning the right to acquire leases of air spaces and sub-soil in a collective enfranchisement.

65. Mr Pack cited:

26/28 Inverness Terrace Ltd v Kalex Investments Ltd [LON/ENF/853/03] a decision of the LVT dated 3 October 2003 in which the tribunal attributed hope value to two vaults and included values of £3,750 and £1,250 into the valuation of the freehold interest.

The specific claims

65. In paragraph 28 of his written closing submissions Mr Pack stated that:

"Under Paragraph 5 of schedule 6, a freeholder has to be compensated for his loss arising out of the enfranchisements. This includes losses from the development value at the property."

Mr Pack cited a passage adopted by Mr Hutchinson [2/208] from *Lyall v Inland Revenue* to the effect:

"If development or other value can be realised by agreement between parties, then it is admissible to assume that a deal will be done, adjusted for the likelihood of a deal happening.

Mr Pack then went on to itemise several areas of claim.

The vaults

66. Below the street level at the frontage of the property there appear to be three vaults. The probability is these were originally constructed to store coal or fuel for use within the property. The parties appear to have assumed that the vaults are within the registered title to the property and thus within the specified premises, as defined.

67. In general terms Mr Pack sought to rely upon *26/28 Inverness Terrace* and submitted there was hope value for a potential deal with regard to the vaults. Mr Pack also submitted that other properties in Ladbroke Grove and Ladbroke Crescent had the use of pavement vaults which demonstrated there was a value to them.

68. Mr Pack had originally attributed a value of £20,000 to all three vaults.

Vault 1

69. It was not in dispute that:
    - the vault is not demised to the lessee of Flat 1;
    - the only access to the vault is from within Flat 1;
    - when the lease of Flat 1 was granted the entrance door to the vault was boarded up;
    - the lessee of Flat 1 has removed the boarding, has created a step down into the vault and has installed a washing machine/tumble dryer into the vault and may also be using it for storage;
    - the vault is difficult to access the doorway being just under 4 feet in height, but once inside the vault, the height is just over 6 feet albeit obstructed by some overhead pipework;
    - the floor area is 35 sq ft;
    - the lessee did not seek or obtain permission from the freeholder to carry out the above works and the lessee is trespassing; and
    - the vault is damp.

70. In his original report Mr Pack ascribed a capital value of £46,795 arrived at by 35 sq ft x £1,337 psf and claimed that sum as compensation [2/343].

71. In cross-examination Mr Pack conceded that the claim could only arise if it fell within paragraph 5 of schedule 6. Mr Pack withdrew the claim to £46,795 and substituted it with a claim to £6,300. This was based on the hypothetical purchaser having a damages claim in trespass for six years at £5,250 per year (£100 per week) being 2014 – 2020 which amounted to £31,500. Mr Pack accepted that there was a risk that such

a claim might not be successful and attributed a hope value of 20% to arrive at a claim for £6,300.

Mr Pack accepted that he had not researched the market and he had no evidence to support the basis of his claim as now put.

72. In his written closing submissions Mr Pack attributed a value of £15,898. This was made up as to:

Gross value	£46,795
Less cost of works	£15,000
	£31,795 – shared 50/50 = £15,898

73. Mr Fieldsend submitted the question was what would the hypothetical purchaser pay for the 'hope' of successfully recovering damages from the lessee of Flat 1. The informed hypothetical purchaser would have regard to:

- The legal basis of such a claim;
- The value of the claim;
- Assessment of the risk inherent in such a claim and costs; and
- The evidence required to support a claim

Mr Fieldsend submitted that Mr Pack had not adduced any evidence to support any of his claims in respect of the vault.

74. The evidence of Mr Hutchinson was that in his opinion the hypothetical purchaser would not ascribe any value to potential to obtain money from the lessee of Flat 1 with regard to the vault.

Discussion

75. We prefer the evidence and submissions made on behalf of the applicant. We ascribe a value of £nil to the claim. The vault is only accessible from within Flat 1. There is no scope for the freeholder to do a deal with any party other than the lessee of Flat 1. We find it most improbable that the lessee of Flat 1 would pay the full going rate £psf for the right to use such inferior space, let alone a rate of £1,337 psf.

76. We are far from persuaded that the hypothetical purchaser would conclude that he would be entitled to damages for trespass that occurred prior to his purchase. We can see that he might conclude there might be a claim to damages going forward but there was risk the lessee might simply decide to cease using he space. Having regard to the costs of litigation. the risk of failure, the risk of an adverse costs order and the uncertainty about how much, if anything, might be recovered, we conclude it is most unlikely that a hypothetical purchaser would make any allowance for this head of claim when formulating his bid.

Vaults 2 & 3

77. Vault 2 is accessed from the basement common parts. Breezeblock has been erected to create a wall separating it from what has been referred to an Vault 3. Neither party adduced any evidence as to when or why the breezeblock was erected and what might lay behind it.

Mr Pack is of the opinion that the area of the two vaults is 75 sq ft.

Vault 2 houses five meters, water pipework and lessee's refuse. In the opinion of Mr Pack the gas meters can be relocated externally in the basement area.

78. In his original report Mr Pack estimated a rental value of £48 per week, He adopted a yield of 6% to arrive at a value of £40,625. He equated that to £541 psf; about 60% lower than his full value of £1,337 psf. Mr Pack thus claimed £40,625 compensation.

79. In cross-examination Mr Pack conceded that in arriving at his value he had not allowed for the cost of removing and relocating the gas meters and water supply. He suggested those costs might be about £5,500. He also allowed £2,500 for legal costs, thus reducing his claim to £32,625.

80. In his written closing submissions, Mr Pack formulated his claim in a slightly different way.

Rental value	£40,625
Less apparatus removal	£ 5,000
	£35,750

Apportioned as to Vault 2 £15,400 and Vault 3 £20,350.

Mr Pack also took issue with Mr Hutchinson's evidence that a drain extends beneath vault 2 and that vault 2 was used for storing lessee's rubbish.

81. Mr Hutchinson dealt with this issue in section 8 of his original report [2/210] and section 7 of his supplemental report [5/13]. As mentioned above he drew attention to the a manhole cover in the basement in front of vault 2 and a drain which runs beneath the vault. He also states the vault has a domed ceiling with a maximum height of less than 1.5 metres; is damp and is used for lessees' rubbish. He also raises the question that if the vaults are lettable, why has the respondent not let them. Mr Hutchinson also stated that he has carried out a considerable number of collective enfranchisements across most of the big estates in and adjacent to PCL, all represented by professional valuers and he has never had to agree a payment for under-pavement vaults similar to those in question.

82. Mr Fieldsend reminded us of the general approach of the informed hypothetical purchaser mentioned in paragraph 73 above. He also submitted that Mr Pack had not provided any evidence of the market, or of costs of relocating apparatus, or even that vault 3 exists. He also

submitted that *26/28 Inverness Terrace* that Mr Pack sought to rely upon is not evidence of the market or value. Mr Fieldsend urged us to prefer the evidence of Mr Hutchinson .

Discussion

83. We find that before making an allowance in his bid the hypothetical purchaser would have regard to the ability to achieve a letting, the risk that the lessees assert or are successful in asserting a right to use the vaults, the amount of rental income (if any) that might achieved, the cost and practicality of relocating apparatus and risks generally.

84. On the evidence before us we cannot see that a case has been made out that the hypothetical purchaser would include in his bid anything like £35,000. We find that is far too speculative.

85. We take into account Mr Pack's original professional view that the value of all three vaults was £20,000. We prefer and accept Mr Hutchinson's evidence of his extensive negotiation of enfranchisements in or near PCL that freeholders do not seek compensation for under-pavement vaults similar to those in question. This evidence strikes a chord with the experience and expertise of the members of the tribunal.

    In contrast with the extent of Mr Hutchinson's experience, Mr Pack told us in evidence that his transactional experience in PCL was very limited.

    We are further reinforced in our conclusion by the absence of any evidence that the subject vaults have been rented out in the past and that the freehold of the Property was sold at auction in January 2014 for £32,000.

86. Accordingly, we conclude it is most unlikely that the hypothetical purchaser would make any allowance for this head of claim when formulating his bid.

Rear extension to Flat 1

87. A licence to erect a rear extension was granted to the then lessee on 22 August 2013 [2/417]. The licence does not make any reference to payment of a premium. The permitted works are defined by reference to drawings annexed to the licence. The licence imposes an obligation of the lessee to complete the works in accordance with the drawings and to obtain from all competent authorities all permissions that may be required under the Planning Acts.

88. Planning consent was granted on 10 June 2013 [2/438].

89. The respondent alleges that the extension as built is not in compliance with the annexed or approved drawings in a very minor particular. It is said that the bifold doors leading into the extension are flush with the rear elevation of the existing building and they should be rebated by 300mm.

90. In his original report Mr Pack stated the discrepancy gave to the lessee an additional 6sq ft of space. On the basis of a value of £1,337 psf he calculated the compensation payable was £8,022.

In addition Mr Pack contended that the extension as constructed is in breach of planning.

In cross-examination Mr Pack conceded that his approach was flawed and he withdrew the claim to £8,022. Instead he argued the extension was an improvement carried out in the absence of consent and the whole area of the extension fell to be considered. He suggested the floor area of the extension was 100 sq ft, which at £1,337 psf gave a gross value of £133,700. He assumed land value at 33% = £44,121 and he said that one half of that would be payable for a consent. He thus arrived at a premium of £22,000. He placed the hope value of an application for consent at 15% to 20% and arrived at a compensation figure of £4,400. Mr Pack said his advice to the hypothetical purchaser would have been to allow £4,400 in his bid – 'subject to legal advice'. No relevant legal advice has been submitted.

In his written final submissions Mr Pack adopted the same line of argument but refined his arithmetic to arrive at a claim for £4,412.

91. Mr Hutchinson took the view the difference (if any) in the 300mm rebate was so minimal as to be irrelevant. In his opinion the extension as built is within the local planning authority's policy and that the prospect of any enforcement action was negligible. He stated that the extension did not breach Policy CL9 regarding extensions in that the extension does not extend beyond rear elevation.

92. Mr Fieldsend was highly critical of Mr Pack's new approach as being the 'back of fag packet' valuation. Mr Fieldsend drew attention to paragraph 81 of the *All Saints* decision in which the tribunal was critical of a valuer adopting a 'back of fag packet' assessment.

Mr Fieldsend again drew our attention to the approach that the informed hypothetical purchaser would adopt.

Discussion

93. We find it is by no means clear that the extension as built is not in accordance with the drawings annexed to the licence. The evidence before was not convincing. We accept there might be a case that the extension as built in not compliant with a planning drawing in a very small particular. We were not persuaded that a breach of planning (whether technical or not) amounts to a breach of the licence, still less that any such breach might be actionable such that a court would award damages. We find a freeholder would struggle to establish damage.

94. We find that the hypothetical purchaser is most unlikely to include in his bid any prospect of obtaining a net return on a claim for breach of

the licence. We consider that such a purchaser would regard the time, trouble and costs of pursuing a claim and the risk of an adverse costs award far outweigh the amount of any award that might be achieved.

Additional extension into the rear garden

95. In his original report Mr Pack included a claim for £33,091. His opinion was that the lessee might wish to erect a further extension into the rear garden and would be willing to pay a premium for consent to do so. He considered a further extension might create 75 sq ft of space, which at £1,337 psf would achieve a value of £100,275, and that the freeholder could expect to receive 33% of that. Hence a claim to compensation of £33,091.

96. In cross-examination Mr Pack conceded his approach to valuation was wrong and he withdrew the claim to £33,091. He accepted that if this claim did not fall within paragraph 5 of Schedule 6 it falls away. His revised approach was a claim for £1,283.

This was arrived at by

The value of the extension if built	£100,275
Less build cost	£ 22,500
	£ 77,775

Premium payable for consent £25,667. Hope value that lessee might seek a consent at 5% = £1,283.

97. In his written closing submissions Mr Pack adopted a different approach. His arithmetic does not quite work. Mr Pack arrived at a land value of 33% which he said = £25,666. He said the lessee might share that 50/50 so the premium for the consent would be £12,833. Mr Pack accepted the hypothetical purchaser might not pay the full amount of the premium but would pay 'hope value' of 20% = £2,567. No evidence as to how the 20% was arrived at was put forward.

98. The opinion of Mr Hutchinson was that flats do not have permitted development rights and that with the Property being in a conservation area the local planning authority was generally very resistant to any extensions beyond rear closet wings. He thus concluded that the hypothetical purchaser would not attribute any value to the future prospect achieving a premium for a consent to extend into the rear garden.

99. In his closing submissions Mr Fieldsend again likened Mr Pack's revised approach to the 'back of a fag packet'.

Discussion

100. We preferred and accept the evidence of Mr Hutchinson on this matter. On the evidence before us we find that on its current policy the prospect of the local planning authority granting permission for such an extension to be negligible. It is also very speculative that at some

future unspecified time the lessee of Flat 1 would seek permission to extend further.

101. Accordingly, we conclude it is most unlikely that the hypothetical purchaser would make any allowance for this head of claim when formulating his bid.

Combining Flats 4 & 5

102. In his original report Mr Pack gave the opinion that if Flats 4 and 5 came into common ownership the lessee might want to carry out works to the stairs to combine them into one unit. If this was done it might release an additional 80 sq ft of living space. Mr Pack adopted a value of £441.21 £psf being 33% of £1,337 psf. That equates to a value of £35,297. Mr pack adopted a 'hope value' of 10% to arrive at a claim for £3,530.

103. In cross-examination Mr Pack conceded his approach to valuation was wrong and he withdrew the claim to £3,530. Mr revised his claim to £1,352. He allowed for conversion costs of £25,000 to reduce the net value to £81,960. One third of that = £27,046 which is the premium the lessee might be willing to pay. He adopted a 'hope value' of between 5% and 7.5% to arrive at a claim for £1,352. No evidence to support that was adduced.

104. Mr Hutchinson was critical of the lack of evidence provided by Mr Pack to support the notion that an owner of Flats 4 and 5 might wish to combine them. He was doubtful that planning would be achieved due to the loss of a residential unit and the market was stronger for smaller units, rather than larger ones.

105. The opinion of Mr Hutchinson was that the hypothetical purchaser would not attribute any value to such a speculative future circumstance.

106. Mr Fieldsend submitted this was not a claim under paragraph 5 of Schedule 6 as it concerned the specified premises and not 'other' premises. Mr Fieldsend again drew our attention to the approach that the informed hypothetical purchaser would adopt. An additional risk factor was the obligation on the freeholder of the 'so-called' right of first refusal arising under s5 Landlord and Tenant Act 1987.

Discussion

107. We prefer the evidence of Mr Hutchinson and the submissions of Mr Fieldsend. We find that the prospect of the two flats coming into common ownership and the lessee willing to incur the substantial costs in combining the flats is so remote that the hypothetical purchaser would not attribute any value to the prospect of achieving a premium at any future time.

Flat 1 sub-basement

108. In his original report Mr Pack included a claim for £17,000 on the basis that the lessee of Flat 1 - a basement flat might wish to create a sub-

basemen beneath the existing building and beneath the garden. Such a sub-basement might have an area of 700 sq ft . The claim was arrived at as being a premium of 25% of the value of the basement at £1,000 psf = £175,000 and allowing for a 'hope value' at 10%.

109. In cross-examination Mr Pack conceded this was not a paragraph 5, Schedule 6 claim because it was within the specified premises and he withdrew the claim. Instead Mr Pack put the claim at £4,375. This was arrived at:

Gross value 700sq ft at £1,000 psf =	£700,000
Less buildings costs	£350,000
	£350,000
Land value at 25% (due to risk) =	£ 87,500
Hope value at 5% =	£ 4,375

110. Mr Pack said in cross-examination that he had no evidence of planning or build costs. In his written closing submissions he asserted that space was at a premium in Notting Hill and that many people prefer to carry out rear or basement extensions as it is cost effective compared to the cost of moving and other costs such as stamp duty. No evidence to support these assertions was provided.

111. Mr Hutchinson described the notion as far-fetched and he was surprised Mr Pack gave it any credence. Mr Hutchinson raised issues such as planning, financial viability, cost of re-location whist the works were carried out and market resistance to underground dwellings. He said such a project was 'completely unrealistic'.

112. Mr Fieldsend again reminded us of the approach of the hypothetical purchaser.

Discussion

113. Again for the reasons explained above we prefer the evidence of Mr Hutchinson. It strikes a chord with the experience of the members of the tribunal.

114. Accordingly, we conclude it is most unlikely that the hypothetical purchaser would make any allowance for this head of claim when formulating his bid.

Additional areas common parts £587 and ground /first floor infill £76

115. For the sake of good order we record that these two claims were withdrawn and abandoned at an early stage of the hearing,

Overview and final conclusions

116. Having considered carefully the claims to additional compensation and having rejected each of them we have stood back to reflect where we are. That is a rent and reversion value of £26,490. We find that is a fair and realistic value arrived at in accordance with the provisions of Schedule 6. We are reinforced in this conclusion by the fact that the freehold was sold at auction in January 2014 for £32,000. That was a market transaction.

117. Mr Pack sought to explain the very substantial increase in value from £32,000 in June 2014 to £188,000 in June 2018 by the fact that Mr Haeems was able to identify the scope to increase value which the market had missed at the auction in June 2014.

We readily accept that prospective purchasers might have in mind a range of factors to release value when formulating their bids but such a dramatic increase is inexplicable in such a sophisticated market.

Mr Fieldsend reminded us of the passage in *Mundy* to the effect that it is not open to a party discussing the market at a date in the past to suggest the market was badly informed or acting illogically or inappropriately.

118. For the above reasons we find that the sum payable by the applicant to the respondent for the freehold interest is £26,490.

Judge John Hewitt
20 June 2019

ANNEX - RIGHTS OF APPEAL

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

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

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

4. 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.

5. 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.

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

18 Ladbroke Crescent, London W11 1PS
Collective enfranshirement Valuation date 8 June 2018
Leases expire
Flat 1 27/03/2138 119.8 yrs unexpired Ground Rent £500 pa fixed
Flate 2 - 5 31/12/2162 144.56 yrs unexpired Ground Rent £300 pa per flat fixed
Capitalisation rate 7.5% Flat 1 valued at £960 psf x 610 sq ft = £585,600
Loss to Freeholder
Ground Rents
Flat 1 £500 119.8 yrs @ 7.5% 6,666
Flats 2 - 5 £300 144.56 yrs @ 7.5% x 4 16,000
22,666
Loss of Reversion
Flat 1 585,600
PV 119.8 yrs @ 5% 0.0029 1,698
Flats 2 - 5 Agreed reversionary values 2,126
Premium Payable 26,490