



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

Case reference : **LON/00AG/0AF/2019/0006**

Property : **12 Prince Arthur Road, London
NW3 6AU**

Applicant : **Pragma Hampstead Limited**

Representative : **Howard Kennedy LLP**

Respondent : **Tyran Properties Limited**

Representative : **Gregory Abrahams Davidson LLP**

Type of application : **Section 9(1) of the Leasehold
Reform, Act 1967**

Tribunal members : **Judge Pittaway
N Martindale FRICS**

**Dates of hearing and
venue** : **16 – 18 July 2019 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **21 October 2019**

DECISION

Summary of the tribunal's decision

The appropriate premium payable for the freehold of the property is **two million six hundred and sixty five thousand four hundred and fifty one pounds (£2,665,451)**.

Background

1. This is an application made by the applicant tenant pursuant to section 9 (1) of the Leasehold Reform Act 1967 (“the **1967 Act**”) for a determination of the premium to be paid for the freehold of 12 Prince Albert Road Hampstead London NW3 (the “**property**”).
2. By a notice of a claim dated 6 December 2017 the applicant's predecessor in title gave notice under section 5 of the 1967 Act, of her desire to acquire the freehold of the property.
3. On 7 December 2017 the applicant's predecessor assigned her interests in the property (registered under title numbers NGL310392 and NGL229750) to the applicant together with the benefit of the notice of claim of 6 December 2017.
4. On 19 January 2018 , the respondent freeholder served a notice in reply to the tenant's claim which did not admit the tenant's right and opining that the house should be valued in accordance with section 9(1A) of the 1967 Act. On 22 February 2018 the respondent served a further notice in reply to the tenant's claim in which it admitted the tenant's right to have the freehold of the house and premises in the tenant's notice, and opining that the house should be valued in accordance with section 9(1A) of the 1967 Act.
5. On 8 March 2019, the applicant applied to the tribunal for a determination of the terms of the conveyance, the price and costs.

The issues

Matters agreed

6. The subject property is a semi-detached house, currently configured as four flats.
7. The applicant is the registered proprietor of two leasehold interests in the property, each of which had an unexpired term of 11.81 years at the valuation date.
8. The parties agree that the applicant is entitled to acquire the freehold of the property, and that the valuation should be on the basis of an open market sale of the freehold, subject to the existing leasehold interests.

They also agreed that there were two relevant leasehold interests in the property at the agreed valuation date of 6 December 2017. By a lease dated 25 March 1963 the whole property was demised for a term of 67 years from 29 September 1962 (registered under title number LN229750). By a transfer of 21 April 1971 the leasehold interest in Flats 1 and 2 was assigned separately and registered under title number NGL310392; the ground rent payable under the 1963 lease being apportioned between the leaseholder of Flats 1 and 2 and the leaseholder of the remainder of the property.

9. While the property is currently configured as four flats the lease of 25 March 1963 provides that it should be used as five flats.
10. The existing GIA of the property is 4,950 sqft plus 38sqft for the vaults;
11. Details of the tenant's leasehold interests:
 - (i) Date of lease: 25 March 1963
 - (ii) Term of lease: 67 years from 29 September 1962
 - (iii) Ground rent: £100 per annum throughout the term.
 - (iv) Unexpired terms at valuation dates: 11.81 years;
 - (v) Agreed value of the term: £867.
12. The valuation date: 6 December 2017
13. Basis of valuation: section 9 (1A) of the 1967 Act;
14. Both parties agreed that the valuation should reflect the possibility of the tenant holding over at the end of the lease term under Schedule 10 Local Government and Housing Act 1989 (the "**1989 Act**"), but disagree as to the value to be attributed to this possibility.

Matters not agreed

15. From a legal perspective whether a claimant under the 1967 may rely on the possibility of extending, under the 1993 Act, the existing lease upon which it is relying for its claim under 1967 Act.
16. From a valuation perspective:
 - (a) The freehold vacant possession value of the property;
 - (b) The value of the freeholder's reversionary interest;
 - (c) The existing lease value;
 - (d) The deferment rate;
 - (e) Relativity;

The hearing

17. The hearing in this matter took place on 16 to 18 July 2019. The applicant was represented by Mr Buckpitt of counsel, the respondent by Mr Loveday of counsel.
18. The applicant relied upon the expert report of Ms Marie Joyce and the expert report and valuation of Mr Oliver Saxby both dated 9 July 2019 and the respondent relied upon the expert report and valuation of Mr Julian Briant dated 5 July 2019. These experts gave evidence and were cross-examined at the hearing.
19. The tribunal then reconvened on 30 September 2019 to make its determination.
20. In reaching its determination the tribunal had regard to the submissions made by counsel for both parties and the evidence that it heard from the parties' experts. These are referred to as appropriate in the reasons for its decision.

Inspection

21. The tribunal inspected the property (both externally and internally) and the exterior of all the house and flat comparables referred to by the experts in their reports (with the exception of Flat 3, 62 Baker's passage) on 17 July; namely

Houses

1. 12 Prince Arthur Road itself
2. 11 Belsize Crescent
3. 9 Carlingford Road
4. 14 Prince Arthur Road
5. 108 Fitzjohns Avenue
6. 26 Thurlow Road

Flats

7. 23a Carlingford Road NW3
8. Flat A 7 Denning Road NW3
9. Flat A, 4 Frognaal Gardens NW3
10. Flat 4, 49 Netherhall Gardens NW3
11. Flat 1, 25 Pilgrims Lane NW3
12. Flat 3, 28 Thurlow Road NW3
13. Flat A, 25 Willow Road NW3

14. Second floor flat, 93 Fitzjohn's Avenue NW3
15. Flat 5, 14 Chesterford Gardens
16. Flat 4 19 Netherhall Gardens NW3
17. 27 The Wells House, Wells Walk NW3
18. Flat D 25 Netherhall Gardens NW3
19. Flat 2 12 Lindfield Gardens

The tribunal's determination and reasons

Effect of 1993 Act on claim under 1967 Act

22. The tribunal determine that the tenant's right to serve notices under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 ("the **1993 Act**") is not excluded by service by her/it of a claim under section 9(1) of the 1967 Act, and that this right should therefore be taken into account when determining the value of the landlord's reversionary interest in the property.
23. It was agreed by the parties that the situation in this application is the unusual one of a house being subject to two concurrent leases of different parts; and no underleases. As set out on Mr Loveday's opening submissions, this is contemplated in section 3(6) of the 1967 Act;

"Where at the same time there are separate tenancies, with the same landlord and the same tenant, of two or more parts of a house, or of a house or part of it and land or other premises comprised therewith, then in relation to the property comprised in such of those tenancies as are long tenancies this Part of the Act shall apply as it would if at that time there were a single tenancy of that property and the tenancy were a long tenancy..."

24.

Mr Buckpitt

submitted that at the valuation date the applicant's predecessor in title (who made the section 5 Notice of Tenant's Claim under the 1967 Act which was subsequently assigned to the applicant) had the option of either bringing claims for lease extensions under the 1993 Act, valued under the 1993 Act, or a claim for the freehold, valued under the 1967 Act.
25. Mr Buckpitt agreed with Mr Loveday that it is more likely that tenants of a house will use the 1967 Act to claim the freehold rather than extended leases under the 1993 Act, but submitted that this did not mean that a tenant was precluded from having its right to serve a notice extending its lease under the 1993 Act taken into account. He pointed out that a tenant could have served notices under section 42 of the 1993 Act for each flat before the 1967 Act claim was made and these would be taken into account (albeit suspended during the period of the 1967 Act claim).

26. For the respondent Mr Loveday accepted that at the valuation date the applicant's predecessor in title could have claimed a lease extension of one or more of the flats: *Howard de Walden Estates v Aggio* [2008] UKUT 44; [2009] 1 AC 39. ("**Aggio**"). He did not however accept Mr Buckpitt's argument that a claimant under the 1967 Act may rely on the possibility of extending, under the 1993 Act, the existing lease upon which it is relying for its claim under 1967 Act, where no notice of claim under the 1993 Act has been served at the valuation date.

27. In support of his contention that the right to extend the existing leases under the 1993 Act should not be taken into account Mr Loveday pointed to

(a) The assumptions in sections 9(1) -9(1AA) of the 1967 Act as to what may be taken into account at the end of the term of the tenant's lease of the house do not refer to lease extensions under the 1993 Act.

(b) The absence of an express assumption in the 1967 Act that at the end of the tenancy the tenant has the right to remain in possession under a 1993 lease extension. The 1993 Act made amendments to the 1967 Act but did not extend the express assumptions in sections 9- 9(1A) include reference to the 1993 Act.

In support of his argument Mr Loveday added a number of supporting points

(c) The assumption would allow a claimant lessee to claim additional 90 year terms on each of the flats in the building although it only had 11.81 years left on its lease of the common parts, an outcome that Mr Loveday commented that *Cadogan v Search Guarantees plc* [2004] EWVA Civ 969; [2004] 1 WLR 2768 (para15) described as bizarre.

(d) The common starting point for 1967 Act valuations is to value the reversion with vacant possession.

(e) The absence of practical examples of the possibility of a 1993 lease extension being taken into account in an actual valuation.

(f) The respondent's predecessor did not seek 1993 Act lease extensions but chose to claim the freehold under the 1967 Act. Mr Loveday postulates that this is because she wanted to acquire the common parts

28. For the applicant Mr Buckpitt referred to sections 8(1) and 8(2) of the 1967 Act (the underlining and emphasising being his);

(1) *Where a tenant of a house has under this Part of this Act a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then except as provided by this Part of this Act the landlord shall be bound to make to the tenant, and the tenant*

to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, **subject to the tenancy and to tenant's incumbrances**, but otherwise free of incumbrances.

(2) For purposes of this Part of this Act "incumbrances" includes rentcharges and, subject to subsection (3) below, personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on that land or interest; **and "tenant's incumbrances" includes any interest directly or indirectly derived out of the tenancy**, and any incumbrance on the tenancy or any such interest (whether or not the same matter is an incumbrance also on any interest reversionary on the tenancy). . .

Mr Buckpitt also referred to section 9(1A) of the 1967 Act; it being agreed that the valuation was under that section;

(1A) . . . the price payable for a house and premises . . . shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:

(a) on the assumption that the vendor was selling for an estate in fee simple, **subject to the tenancy**, but on the assumption **that this Part of this Act conferred no right to acquire the freehold or an extended lease**;

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises;

(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and

(ii) in any other case, under the provisions of Part I of the Landlord and Tenant Act 1954;

(c) on the assumption **that the tenant has no liability to carry out any repairs, maintenance or redecorations** under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense; . .

(f) **on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made** . .

29. For the applicant Mr Buckpitt submitted that

- (a) 1993 Act rights, which the recent Law Commission consultation *“Leasehold Home Ownership: Buying your freehold or extending your lease”* Consultation Paper 238 (September 2018) described as valuable, have to be taken into account in 1967 Act claims;
 - (b) it is illogical to be able to take into account the rights of subtenants but not those of a tenant who has kept all the flats “in hand”; thereby giving the landlord the “windfall” of ignoring the 1993 Act rights;
 - (c) if the lease had contained an option to renew/extend subject to a trigger notice to be served by the tenant such option would be taken into account. 1993 Act rights are in effect options to renew the lease built into the lease by statute;
 - (d) *Cadogan v Search Guarantees*, the case to which Mr Loveday referred predates *Aggio*. *Aggio* endorses the scenario contemplated here, at paragraph 53. It did not go to section 9 (1A);
 - (e) *Hague* (paragraph 9-40) confirms that 1993 Act rights should be taken into account.
“The 1967 Act Claimant may himself be a “qualifying tenant” under the 1993 Act that would entitle him to claim a statutory lease extension of his flat or participate in a collective claim.”
 - (f) it is appropriate to have regard to the assumption (f) in section 9 (1A).
30. Finally Mr Buckpitt referred the tribunal to the first tier tribunal decision in which the tribunal recognised 1993 Act rights in a 1967 Act case: *Trustees of the Gunter Estate v Giorgi* unreported 1998 LVT.
31. While the tribunal accepts Mr Loveday’s submission that the common starting point for 1967 Act valuations is to value the reversion with vacant possession, section 9(1A)(a) of the 1967 Act specifically assumes that the vendor is selling for an estate in fee simple, subject to the tenancy”.
32. The tribunal consider that the appropriate interpretation of section 9(1A)(a) is that only the rights attaching to that lease through the relevant Part of the 1967 Act are to be disregarded, which include the right of the tenant to acquire the freehold. The section does not expressly disregard the right of the tenant under the 1993 Act to apply for an extended lease, and this right therefore needs to be taken into account.
33. The tribunal further agree with Mr Buckpitt’s submission that it is illogical to be able to take into account the rights of subtenants but not those of a tenant who has kept all the flats “in hand”; and that it is appropriate to have regard to the assumption (f) in section 9 (1A).

34. The tribunal agree with Mr Buckpitt that it illogical to take into account any actual notices that might be served under the 1993 Act but not the right to serve them.
35. The effect on valuation of taking the tenant's right to serve notices under section 42 of the 1993 Act is dealt with below.

Freehold vacant possession value ("FHVP")

33. Both valuers looked to comparables to achieve a value per square foot that could be applied to the property.
34. Mr Saxby preferred to value the property on the basis of it being a house arranged as flats; to be reconfigured and refurbished with a use as, potentially, three flats. (It is currently used as four flats and the lease contemplates its use as five flats.) He based his value on whole house comparables, adjusted for time (by reference to Savills Indices for North West Houses (the house index), tenure, location, amenity and certain other characteristics of the individual comparables (such as development potential and off-street parking) to give a FHVP value calculated on a rate per square foot. He then took an average value per square foot of these comparables which he applied to the square footage of the property, to value the freehold vacant possession value at £4,200,000, to which he added £50,000 to reflect the existence of the one off-street parking space. He then checked the value he had reached by reference to a residual valuation.
35. Conversely Mr Briant preferred to consider an adjusted average of the value per sqft of flats on differing floors (which average figure he calculated was £1,010 per square foot) to value the unimproved value of the property at £5,000,000. Using his adjusted flat comparables he considered the average value of a ground and raised ground floor flat to be £1,100 per sq ft, the average value of a first floor flat to be £1,029 per sq ft, the average value of a second floor flat to be £1,049 per sq ft and the average value of a third floor flat to be £853 per sq ft, giving an overall value per sq ft of £1,010 per sq ft which he then applied to the total GIA of the property (including the common parts) to value the freehold with vacant possession at £5,000,000.

Mr Briant also referred to a value of £1,082 per square foot, which he submitted was the average adjusted FHVP value per square foot of three of the whole house comparables; namely 11 Belsize Crescent, 9 Carlingford Road and 26 Thurlow Road.

36. The tribunal considers that the correct approach for a valuation under section 9(1A) of the 1967 Act is to look to house comparables, not flat comparables.
37. The tribunal was concerned that Mr Briant's valuation did not take into account differing values for flats of different floors; it did not take into

account the higher value per square foot that may be attributed to flats with smaller floor areas and it attributed the average value per square foot for the flats to the common parts of the property. Further he adjusted certain of the prices achieved by various percentages to reflect market movement without evidence to support the basis upon which he had adopted the relevant percentages, whereas Mr Saxby's adjustments were by reference to a recognised index.

38. The following were the house comparables referred to by the valuers;

12 Prince Arthur Road itself

The property had been bought by the applicants at auction for £1,605,000. Mr Saxby adjusted this for time and tenure to give a FHVP of £4,424,631; a rate of £856 per square foot. He acknowledged that adjusting from a lease with a term of 11.93 years at the date of the auction was "less reliable".

Mr Briant did not use the property as a comparable, submitting that a sale at auction is not a reliable basis for establishing open market value

11 Belsize Crescent

An unmodernised mid-terrace property arranged as five flats but with a certificate of lawfulness for use as a house which sold in January 2019 for £3,425,000, which adjusted by Mr Saxby (for amenity (-5%) and conversion potential (-5%)) gave a rate of £796 per square foot.

Mr Briant considered that an allowance should be made in the sale price of 6% for market movement and 15% for location and style of building to give an adjusted rate of £1,044 per sqft.

9 Carlingford Road

An unmodernised Victorian terraced conversion consisting of two maisonettes and a first floor flat sold in December 2018 for £2,923,186, Mr Saxby adjusted for location (-7.5%) and hope of conversion potential (-2.5%) to give a FHVP value of £954 per square foot.

Conversely Mr Briant adjusted the sale price by minus 6% for market movement and 5% for location and building style to give an adjusted rate of £1,146 per sqft.

14 Prince Arthur Road

This is the house semi-detached with the property. It was sold in August 2018 for £6,650,000. Its permitted use is as a house. It has an

additional plot of land lying to its western side on which there are two garages subject to leases expiring in 2029.

Mr Saxby deducted £250 per sq ft for its superior condition and then further adjusted the price of £6,650,000 by 25% to reflect amenity and the flanking land to give a FHVP value of £814 per sqft.

Mr Briant did not value the property by reference to this comparable as he considered it would be too subjective, although he conceded that it was a useful starting point in terms of location and date. He said allowance would have to be made for its better condition, additional land and its existing use as a house.

108 Fitzjohns Avenue

A mid-terrace unmodernised house on a busier street than the property (but only approximately 100m away from it) sold as a lower ground and ground floor maisonette with nine letting rooms above in February 2018 for £2,500,000.

Mr Saxby adjusted the price to reflect a less good location (+5%) to give a FHVP value of £808 per sq ft.

Mr Briant referred to the unadjusted sale price of £767 per sqft of this house but made no actual adjustment to it for what he submitted is the more valuable use of the property, as flats rather than bedsits.

26 Thurlow Road

An unmodernised house sold as a house, with a self contained flat on the lower floor for £5,000,000 in March 2016 with the benefit of a single off-street parking space.

Mr Saxby deducted a value of £50,000 to reflect the existence of the parking space and further adjusted the price to reflect the fact it was already a family home with a better garden and better location to give a FHVP of £864 per sq ft.

Mr Briant referred to the unadjusted rate per sqft of this property as £1056 considering it to be in an inferior location and sold in a better market, suggesting that these adjustments cancelled each other out.

35. The tribunal notes that both valuers had regard to development hope value when valuing the FHVP.

36. Mr Saxby submitted that houses in the location of the property are worth more than a house configured as flats; pointing to the evidence of the sale

of the adjacent 14 Prince Arthur Road as a house, and this was conceded by Mr Briant.

37. Mr Briant submitted that there is a potential to reduce the number of units in the building but that he considered it highly likely that the London Borough of Camden would resist its conversion back into its original use as a single family house, although he floated the possibility of obtaining a Certificate of Lawful Use to convert the building back to a house in the future. He further considered that a garden level rear extension would be deemed acceptable by Camden.
38. It was common ground that planning permission would be unlikely to allow less than three units in the property.
39. The tribunal agrees with Mr Saxby's approach of weighting the house comparables, to reflect that the property is unlikely to be convertible into any less than three units of accommodation in the foreseeable future.
40. While noting that Mr Saxby had also undertaken a residual valuation the tribunal did not feel that this added to the exercise he had undertaken, and have not had recourse to this in reaching its valuation.
41. Mr Saxby, on behalf of the applicant, submitted that the property suffered from certain disadvantages. It overlooks Henderson Court, which he described as a low-rise council building providing sheltered accommodation and an Age UK resource centre, and that buses serving the building use the road. He said that this impacted on the outlook from the property. He drew the tribunal's attention to the configuration of the first floor flat which is transversed by the communal hallway, resulting in a disproportionate amount of circulation space in the flat. He also drew the tribunal's attention to the third floor flat having a border of unusable space under the eaves, and the existence of supporting roof timbers in the kitchen and reception room, disrupting the flow and use of these rooms. His report comments on the open and far reaching views from this flat to both the front and rear. Mr Briant, for the respondent, submitted that he did not consider that the aspect onto Henderson Court adversely affected the value of the property. Mr Briant did not comment on the configuration of the first floor flat nor the unusable space under the eaves on the third floor.
42. From their inspection of the property the tribunal did not agree with Mr Saxby that the property's location opposite Henderson Court was as great a disadvantage as he submitted. It accepted that the configuration of the first floor was not optimum but not unacceptable and noted the border of unusable space under the eaves on the third floor. It also noted the good view available from the upper floors of the property. It did not consider that Mr Saxby's adopted adjustments to the comparables placed undue weight on these aspects of the property.
43. The tribunal preferred Mr Saxby's approach to valuing FHVP and, having heard the valuers' evidence and, on the basis of their inspection of the

property and the comparable houses referred to, accept Mr Saxby's suggested valuation of £4,250,000.

The value of the freeholder's reversionary interest:

44. The tribunal has had regard to the following submissions by the parties in determining the value of the freeholder's reversionary interest.
45. Both parties agreed that the valuation should reflect the possibility of the tenant holding over at the end of the lease term under Schedule 10 of the 1989 Act ("**Schedule 10**").
46. Ms Joyce referred the tribunal to various cases heard before the first tier tribunal and the Upper Tribunal in relation to Schedule 10 where the discount on the FHVP value varied from 0% to 20%. Ms Joyce discounted the relevance of Schedule 10 to this property. Under Schedule 10 the landlord has the opportunity to gain vacant possession (via one of the grounds for possession). She submitted that in this case there is a genuine risk of the tenant extending its lease before the contractual term date.
47. Ms Joyce looked at different types of investment where there is a perceived risk that a purchaser of a reversionary interest might not obtain vacant possession. Ms Joyce submitted that where properties are subject to regulated tenancies a discount of 25-30% is normally applied at auction, without providing evidence to substantiate this assertion. Ms Joyce referred the tribunal to the decision in *The Trustees of the Sloane Stanley Estate v Charles Carey Morgan and John Matthew Stephenson* [2011] UKUT (LC) LRA/86/2009 ("the **Vale Case**") where the tribunal deducted 5% from the FHVP value to allow for the landlord being locked out of the property for up to three years. Ms Joyce then considered how much an investor might pay, taking into account the possibility of *Aggio* lease extension claims, postulating that this would be in the region of £1,950,000, which sum she backed with a calculation to show how she had reached the figure.
48. Ms Joyce therefore submitted that an allowance of 20% should be applied to the FHVP.
49. Mr Briant considered that Schedule 10 of the 1989 Act might apply but that the risk was very small. He submitted that a deduction of 2.5% would be appropriate, without adducing evidence to substantiate the quantum of this discount.
50. By reason of the respondent's case being that the 1993 rights were irrelevant Mr Briant did not consider a discount from the FHVP value to reflect these.
51. The tribunal has determined that the tenant of the property has the possibility of exercising its 1993 Act rights during the currency of the term of the existing lease and it necessary to reflect this possibility in the value of the freeholder's reversionary interest. If the tenant exercises this right the

likelihood of the tenant holding over under Schedule 10 of the 1989 Act becomes so remote as to have a negligible effect on the value of the landlord's freehold reversion.

52. If the tenant does not exercise its right of lease renewal under the 1993 Act it is necessary to include in the valuation of the landlord's reversionary freehold interest the possibility of the landlord not obtaining vacant possession at the end of the contractual term of the existing lease by reason of the tenant holding over under Schedule 10 of the 1989 Act.
53. The tribunal consider that Mr Briant's suggested discount of 2.5% is too low as it ignores the possibility of a claim under the 1993 Act. Insofar as Ms Joyce's discount of 20% is concerned the tribunal consider that she has not produced to it sufficient evidence to substantiate this amount of discount.
54. In the absence of sufficient relevant evidence the tribunal has adopted a discount of 10% to reflect the possibility of the tenant holding over under Schedule 10 or making a claim under the 1993 Act, being a discount within the parameters of the discounts proposed by the valuers, and within the Schedule 10 cases to which Ms Joyce referred the tribunal.

Existing leasehold value

55. Ms Joyce valued the tenant's existing leasehold interest(s) on the basis that it has the right to extend the lease(s) and then to collectively enfranchise. She therefore valued the existing leasehold interest with rights under the 1993 Act by reference to the Savills Enfranchisable graph 2015, with no deduction to reflect the "no Act" world. A lease with a term of 11.81 years has a relative value of 35.8% according to that graph. She also considered the auction sale of the property which took place six weeks prior to the valuation date for £1,605,000. Based on a FHVP value of the property of £4,250,000 this would equate to a relativity of just over 38%. Ms Joyce adopted the relativity of 35.8% to give an existing leasehold value of £1,521,500.
56. Mr Briant valued the existing lease at £1,297,725. He said that he firstly looked at transactions around the valuation date; then to his own knowledge of sales of short leases outside the Act, then investment methodology and finally settlement graphs. Mr Briant referred to the decision in *Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC) ("**Mundy**") which prefers market value as the means of ascertaining existing leasehold value. However he considered that the price achieved for the existing leasehold interests at auction was likely to have been inflated by the freeholder having been bidding. Mr Briant also referred the tribunal to his experience in the 1980s of selling leases on the Eyre Estate for terms of 20.5 years at 50% of their freehold value he considered a 10 year lease should be worth 15-20% of the freehold value. He also submitted that on the basis that the property is currently let at a gross annual income of £90,000 per annum, and assuming a deduction of 25% to be the industry norm (without any evidence to substantiate this) and ground rent of £100

per annum, at a yield of between 3% and 3.75% the head lease would be worth between £662,000 and £635,000. He put potential dilapidations at the end of the term at in the region of £75,000 plus VAT. In his actual valuation Mr Briant adopted a relativity of 26.62%, being the relativity set out in the Gerald Eve graph for a term of 11.81 years less 2% (to reflect the “no Act world”). For the 2% deduction (to reflect the benefit of the 1993 Act) he referred the tribunal to the decision in *Reiss v Ironhawk Limited* [2018] UKUT 0311 (LC). The Gerald Eve graph for PCL gives a relativity of 28.62% for a lease with a term of 11.81 years unexpired.

57. Mr Loveday submitted that *Mundy* governs the position for leases with over twenty years unexpired; if there is a market transaction at around the valuation date in respect of the existing lease, then provided that this is “a true reflection of market value for that interest” then the market value will be “a very useful starting point for determining the value of the existing lease” (*Mundy* para 168), with an appropriate deduction for “Act rights” to arrive at a relativity. *Mundy* further states that in the absence of such evidence “one method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act” (*Mundy* para 169). Mr Loveday further referred to the decision referring to the Gerald Eve graph as the “industry standard” (para 63) but that that graph might “overstate relativities” (para 64). He also referred to *Mundy* suggesting the use of the Savills’ enfranchiseable graph and allowing for “Act rights” (*Mundy* paras 169-170).
58. Mr Loveday further submitted that a “relativity “ approach has been adopted with leases of 10-20 years unexpired, citing *Cadogan v Cadogan Square Ltd* [2011] UKUT 154 0311.
59. The tribunal see no reason to depart from the approach adopted in *Mundy*. It does not consider that the sale of the existing leasehold six weeks before the valuation date can be considered reliable evidence of the market value of the lease; noting that it heard evidence that one of the bidders was the freeholder itself.
60. Turning to which of the relativity graphs to use the tribunal do not agree with Ms Joyce’s approach of valuing the existing lease as enfranchiseable. For the purpose of determining its value (rather than the value of the freeholder’s reversionary interest) it should be treated as unenfranchiseable, as contemplated in *Mundy*.
61. The tribunal note that while Ms Joyce referred to the Savills’ enfranchiseable graph she did not mention that the relativity shown on their unenfranchiseable graph for a lease of 11.81 years is 27.4%
62. The tribunal have therefore looked to the relativity graphs and have adopted the Gerald Eve enfranchiseable graph, adjusting the relativity of 28.6% by 2% to reflect the “no Act” world, to give an existing leasehold value of £1,131,350.

Deferment rate

63. For the applicant Ms Joyce argued for a deferment rate of 5.75%. She submitted that it was appropriate to depart from the rates set out in *Sportelli* as the market had changed significantly since the decision in that case. At the valuation date the market was just beginning to fall from its peak.
64. Mr Briant's valuation assumed a deferment rate of 5%. He submitted that he based this rate on the decision in the *Vale Case*. He did not consider that it was necessary to make an adjustment of 0.25% to reflect the management problems inherent in flats. The current position could be distinguished from a purpose built block of flats subject to recovery of communal expenditure through the service charge account; here there are four units, all rented out and not subject to long leases or a service charge payment. He considered that a rate of 5% should apply to a house converted into flats where there is no certainty at the valuation date that the property will have reverted back to a house on the expiry of the lease.
65. While noting the respective arguments of the valuers for departing from the rates set out in *Sportelli* the tribunal do not consider it appropriate to depart from those rates and have adopted a deferment rate of 4.75%.

Name: Judge Pittaway

Date: 21 October 2019

Appendix: Valuation setting out the tribunal's calculation

Rights of appeal

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

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

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

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

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

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

**CASE REFERENCE LON/00AC/OLR/2014/0106
APPENDIX**

**12 Prince Arthur Road
London NW3 6AU**

Enfranchisement

Valuation Date 06/12/2017

Expiry of existing lease 28/09/2029

Existing Term unexpired 11.81

Capitalisation rate % n/a

Deferment rate % 4.75

VP Freehold 4250000

SLHVP relativity @26.62% 0.2662 1131350

Landlords Present Interest

TERM

£867 agreed

REVERSION FHVP 4250000

risk to VP at lease end and
lease extension 0.10 425000

3825000

PV£1 in 11.81 years @ 4.75% 0.5781 £2,211,386 £2,212,253

Tenants Present Interest

VP Value of Present
Leasehold interest £1,131,350

Marriage Value

VP Value of Freehold 4250000

LESS Landlords Present
Interest 2212253

LESS Tenant's Present
Interest 1131350

Marriage Value £906,398

Landlords Share of Marriage
Value 50% £453,199

Landlords Present Interest
plus Landlords Share of
Marriage Value £2,665,451

Enfranchisement Price say £2,665,451

