



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

Case Reference : **LON/00BK/OLR/2023/0238**

Property : **Flat 6, Connaught Court, Connaught Street,
London W2 2AJ**

Applicant : **Bilton Propco Limited**

Representative : **Mr Richard Galbraith MBA MRICS of
Shedgwick Turner Ltd together with Mr Soban
Khawaja Director of the Applicant and
Sameena Hussain**

Respondent : **Church Commissioners for England
Breathfull 1786 Ltd (1)
Connaught Residents Management Ltd (2)
the intermediate landlords**

Representative : **Mr Mark Loveday of Counsel with Ms Vanda
Kelsey MA MRICS of Knight Frank LLP**

Type of Application : **Application under section 48(1) of the
Leasehold Reform Housing & Urban
Development Act 1993 (lease renewal)**

Tribunal Members : **Judge Dutton
Mr R Waterhouse FRICS**

Date of Hearing : **17th October 2023 by video**

Date of Decision : **1 November 2023**

DECISION

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DECISION

The tribunal determines that the premium payable for the lease extension of the property flat 6, Connaught Court, Connaught Street, London W2 2AJ is £1,090,927 as set out on the attached valuation.

BACKGROUND

1. On 14th July 2022 the then owners of the property Mr and Mrs Jacqueson served notice on the Respondent (the Respondent) seeking to extend the terms of their lease by way of section 42 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act). The notice related to the third floor flat at Flat 6 Connaught Court, Connaught Street, London W2 2AJ (the Property). The notice proposed a premium of £860,000 and the sum of £322 in respect of other matters covered by Schedule 13 of the Act.
2. On 26th July 2022 the rights under the initial notice were assigned to the present Applicant Bilton Propco Ltd. The Applicant acquired the Property at an auction in July 2022 when the sum of £500,000 was paid.
3. On 20th October 2022 a counter notice was served on behalf of the Respondent admitting the Applicant's right to the extension of the lease but making a counter proposal of a premium of £1,541,100 together with a sum payable under Schedule 13 of the Act of £325 in effect in respect of the intermediate leaseholders' interest.
4. Terms could not be agreed between the parties in respect of the premium, although we are advised that the lease has been agreed, and the matter therefore came to the Tribunal by way of an application dated 26th March 2023.
5. Prior to the hearing of this application, which took place on 17th October 2023 by way of video, we were provided with a bundle of documentation as well as experts' reports from Mr Richard Galbraith for the Applicant and Vanda Fay Kelsey on behalf of the Respondent. These reports arrived only the day before the hearing and somewhat late in that day and accordingly the hearing was scheduled to commence at 11.30am on the 17th October.
6. The bundle provided to us contained copies of the register of title of the freehold, the Applicant's lease and the intermediate lease interests together with copies of those leases. Insofar as they were relevant to the matters for us to determine we have taken note of the contents.
7. Somewhat unusual in this case are the terms of the lease for which an extension is sought. The lease for the Property is dated 15th February 1989 between Yencourt Ltd (1) and Mr and Mrs Jacqueson (2). The lease is for a term of 50 years from 25th March 1975. Accordingly at the time of the valuation date, which is 14th July 2022, there were around 9.6 years remaining on the lease. The Respondent is the freehold owners of the building. A head lease had been granted again for 57 years from 25th March 1975 to 25th March 2032 leaving approximately 9.7 years remaining and having a reversionary interest of some additional 14 days. An intermediate lease was granted for the term of 57 years

expiring on 15th March 2032 accordingly having an intermediate reversionary interest of an additional 4 days.

8. Appended to Ms Kelsey's report was a statement of agreed facts and matters in dispute, which she has signed, but Mr Galbraith had not. However, we do not think there is any contention in setting out below the matters that we understand to be agreed. They are as follows:
 1. The lease is dated 15th February 1989 for a term of 57 years commencing on 25th March 1975 with an unexpired term of 9.66 years.
 2. The notice of claim was dated 14th July 2022 and is therefore the valuation date.
 3. The Property comprises a flat of six rooms, kitchen, bathroom and separate cloakroom together with entrance hall located on the third floor of a small mansion block at the junction of Connaught Street and Edgware Road.
 4. The gross internal area is 148.6 square metres or 1,600 square feet.
 5. The capitalisation rate is agreed at 6% and the deferment rate at 5%.
9. This means that matters remain in dispute of the (a) existing short lease value, (b) the freehold long lease value, (c) and extended lease value at 9.66 years and accordingly the premium that is payable.
10. Prior to the hearing Mr Loveday had submitted opening submissions as well as a bundle of authorities. In his opening submissions he pointed out that they had been prepared before he had had sight of Mr Galbraith's proof but for the purposes of the case the Respondent now sought a premium of £1,125,100 of which £375, which is payable to Breathfull 1786 Ltd.
11. The skeleton argument set out Miss Kelsey's position in respect of the freehold vacant possession (FHVP) value and relativity, which were considered to be the two main areas of contention. We noted all that was said.
12. For the Applicants we heard first from Mr Galbraith. His report is dated 14th October 2023 and sets his experience as a surveyor leading to his present position as a director of Sedgwick Turner Ltd, a general practice with offices in Chiswick and Birchington. His report went on to describe the location of the Property and the condition together with the accommodation, the services and the lease. Under the heading Relevant Law reference is made to the Local Government and Housing Act 1989 Schedule 10, although this did not form part of any of the submissions made to us. As to the deferment rate, whilst we noted all that was said, this does not seem to be an issue and was agreed between the valuers at 5% and the capitalisation rate at 6%.
13. Mr Galbraith then moved on to the valuation and a market commentary. We have noted all that he has said in his report concerning this. His view appears to be that it was difficult to determine an accurate opinion of value for either the extended long lease or the proposed extended term. The problems seem to be exacerbated by the market. There were he says in his report greater economic, political and social influences that the market has suffered significantly over the last few years. We have noted what has been said. As to the present position, he

relied on a term that he used of 'material valuation uncertainty' as set out in the RICS red book Global. This appeared to be something that needed to be considered not only as a recommendation by the RICS but in respect of professional indemnity insurance.

14. In respect of the long lease value, he went into some detail as to the location and the fact that it was above a restaurant where Shisha was smoked at pavement tables, which he was of the view affected the Property and its worth.
15. To determine the extended lease value he placed great emphasis on the attempted sale of the flat by the previous lessees Mr and Mrs Jacqueson as well as the current attempt by the claimant to sell. He told us that between 3rd January 2020 and 29th April 2022 the Property was offered for sale at a price of £1.5m. At that time the flat was, we were told, in a dated condition, although there is no evidence to support any of these issues and thus, we have only Mr Galbraith's report to rely upon. We were provided with an email from Mr Jacqueson concerning the attempted sale which had not taken place and were told that in the end the Property had been put up for auction, which resulted in the Applicants acquiring the Property at a price of £500,000.
16. He indicated that the current Applicants have spent in the order of £225,000 in updating the flat and that it is currently up for sale at a price of £1.6m but there has been no interest. There have been a number of viewings but apparently no offers have been made and we noted the anecdotal reasons put forward by the manager of the agents handling the sale. His view was that the market was moribund certainly from the period of the valuation date in July 2022 to July of 2023. He adopted an assumption that there had been no change in the value between the valuation date and the hearing.
17. Relying on the unsuccessful sale of the flat before the valuation date, he came to the conclusion that as it had not sold it could not have been worth £1.5m. Further, considering the matter as at today's date, the fact that more than £200,000 had been spent but the Property had still not sold at £1.6m, meant it was not worth that. As he put it in his report, "*it is my professional judgement reliant on the evidence we do have relating to the actual experience from marketing the flat, that the likely valuation of the flat would have been between £1.4m (£875 per square foot) and £1.45m (£906 per square foot)*".
18. He then went on to propose that there should be some adjustments to this, to fall within the range of 'non-negligent' values. These he set out and we have noted. He considered that it would be appropriate to allow a 10% leeway in respect of the valuation and with this in mind he then appeared to consider comparable properties, one being at Flat 3 Connaught Court which sold on 8th March 2019 for £950,000 giving a rate per square foot of £960. He was of the view, which appeared not to be contested, that the size could affect the price but that it was difficult to quantify that without further evidence. However, he did go on to suggest that a way of dealing with this was to accept the rate of £960 per square foot for the first 1,200 square feet, then to reduce that to £720 per square foot for the remaining 400 square feet giving an adjusted value of the Property of £1.44m. He then made further adjustments to reflect the outlook of the Property bringing the rate per square foot to £864.

19. This resulted in a value of approximately £1,382,400. He then reconsidered this applying a 5% adjustment to reflect the detriment of the pavement dining which reduced the value further.
20. He then considered other comparables at Meridien House as well as properties in the Water Gardens and Park West. However, having considered these other comparables he came to the conclusion that he preferred the transaction of Flat 3 Connaught Court. In his professional opinion there would need to be some allowances for the difference in size, outlook and the nuisance value of the external dining. He could find no evidence to guide him in differentiating the relevant differences in value, however, again in his professional opinion, he was of the view that there would be a 12.5% allowance to cover both the quantum outlook and the nuisance meaning that the relative value of the Property was based on a square footage rate of £859 reflecting a value of £1,375,000 for a 100 year lease and adjusted this by 2% to reflect a long extended lease and a further 1% to reflect the FHVP value which he assessed at £1,416,500. He stepped back from this and concluded that the long lease value of the flat should be £1,400,000 with a FHVP value of £1,414,000.
21. In respect of the extended lease value, because this would be relatively short at approximately 100 years, he relied on the principle set out in the Upper Tribunal case of *Deritend Investments (Birkdale) Ltd v Treskonova* [2020]UKUT0164(LC), the case which had been included by Mr Loveday in his bundle of authorities. Mr Galbraith relied on the Savills and Gerald Eve graphs for 100 years and set out the relativity adopting the average of 96.3% giving a value of £1,361,682. On the existing lease value, he relied on the auction sale at £500,000 and then applied the 'no act world' percentage. To achieve this he used the difference between the unenfranchiseable relativity and the enfranchiseable relativity published by Savills for unexpired lease terms of 10.25 years. This gave percentages for enfranchiseable leases of 32.9% and unenfranchiseable leases of 25%. This was of course for 10.25 years. Relying on these he adopted an adjustment of 75.987% resulting in an unenfranchiseable equivalent value of £379,939. He stepped back from this and reviewed the relativity as against the FHVP value and as a consequence considered the figure that he adopted was correct. He relied solely on the sale of the Property as a short lease at auction together with his assessment of the no act rights rather than considering any other relativity issues on short leases to provide any additional evidence.
22. In respect of the marriage value, he set this out and included a quote from a speech by Michael Gove concerning possible alterations in the legislation relating to leaseholders and whilst indicating that was a indication or rather an indictment of the present system he accepted that we must follow the Act. However, he used this as amplification to consider the reasonable valuation that he had referred to previously. He then provided three separate valuations reflecting the 100% allowance and then his two reductions of 5% and 10% and we have noted all that he has said. In the end he concluded that the premium payable by the Applicant should be £815,000.

23. In evidence to us at the hearing, he confirmed that he stood by his report but of the view that it was difficult if not impossible to provide a value. He placed great reliance on the experience had by the previous owners who he said were committed sellers and had offered the Property initially at £1.5m but an offer of £1.4m had been made but was not accepted. His view was that it was reasonable to consider a range of values but it was subject to a cap of £1.4m as it had not sold at that price at around the valuation date.
24. At this point Mr Khawaja interjected and told us about their attempts to sell the flat, having modernised it at a cost of some £200,000, it being on the market for £1.6m. Although there had been viewings, there had been no offers made.
25. After Mr Khawaja had spoken, Miss Hussain also told us of the concerns that they have had in living in the Property. Apparently the shop beneath at ground floor level was a bakery when they acquired the Property but had now been converted into a Shisha restaurant with tables on the pavements outside, which affected their enjoyment of the flat due to the noise, smoke and anti-social behaviour. She told us also that the block was in poor repair and that in her view the service charges were too low to enable the Property to be properly maintained. Further, of the 12 flats only three were owner-occupiers.
26. Mr Galbraith was then asked questions by Mr Loveday and he confirmed that there were two significant issues; the first was the FHVP value and the second was relativity. The first discussion was about the relativity issue. It was accepted by Mr Galbraith that discussions with the Respondent's representative about lease extensions in the past were not relevant to this case and Mr Galbraith confirmed that it was his current opinion of value although it had remained consistent. We were referred to a copy of sales particulars purportedly relating to the auction, although subsequently challenged by Mr Khawaja showing a cost of some £950,000 to extend the lease. It was put to him that as the lease was now shorter £950,000 would result in a higher value.
27. As to the FHVP value he accepted that he had concentrated on the evidence arising from his experience of trying to sell the Property in the past. In addition he had considered the sale of Flat 3 Connaught Court, which he considered supported the prime evidence relating to the experience of trying to sell the flat. He had also relied on comparables at Meridien House, which was located directly opposite. He confirmed that he had considered properties in the Water Gardens and Park West when reaching his view on the FHVP value. It was put to him that he had chosen comparables which supported his original contention as to the rate per square foot based on the unsuccessful sale. He denied this and said that he had used his professional judgement to test the plausibility of flats fitting in within the range with which he considered appropriate.
28. Asked about making adjustments for time, he was of the view that the market had been benign and although he had not produced the HMLR price index he did not think that they showed any particular increase. He was questioned upon the relevance of the properties at Meridien House and the other comparables. Attention was drawn to the fact that at the flat in Meridien Court there was no outside tables and it was not therefore a true comparable. Further no sales particulars or HMLR details had been produced to support his contentions on

figures. Indeed he did not appear to know the existing lease length, which turned out to be only 39.25 years and he accepted that that being the case his views on the comparability of the property at Meridien House was not appropriate. He was nonetheless surprised that when one applied the relativity to Meridien House that it gave a price of around £1,291 per square foot, which he thought, went beyond the reasonable bracket.

29. Insofar as the properties are Water Gardens were concerned he had used these to test the plausibility of the sale of the subject property but again had no real information concerning neither the flat nor its position within the block. The same applied to the properties in Park West where it appears he got details from RightMove but did not get any HMLO details. This proved to be an issue because it would seem that his comparable in fact sold for £100,000 more than he understood.
30. He considered Flat 3 at Connaught Court as being the main comparable. However, he drew to our attention that the property did not sit above the restaurant and looked over Connaught Square rather than Edgware Road. He was asked to explain why he had split the rates per square foot at £960 for the first 1,200 square feet and £400 per square foot for the balance. This he thought reflected that fact that larger flats will sell at a lower rate per square foot but he could not give any indication, as in other cases, where this split between the value of the square foot in the flat was, say for example, when there might be limited head height, had been put forward. He again said that he was exercising his professional judgement.
31. It was put to him again that in reaching his assessment he relied heavily on the experience of trying to sell the Property at around the valuation date. His view was that there was no evidence to differentiate the values and that he had to make plausible adjustments. He considered that he had done the best he could to achieve the values that he put forward on behalf of the Applicant. Returning to the relativity point, Mr Loveday again referred to the fact that the Savills Graph did not go down to the 9.66 years left on this lease and therefore it could not be relied on.
32. In answering questions from the Tribunal he confirmed that the market was stagnant and that as long as he had known the flat it had been occupied as a family house. Asked about the changed layout, he confirmed that he understood the Property was being modernised with four bedrooms but did not know whether a licence for any variations had been obtained.
33. We then heard from Miss Vanda Kelsey, a salaried partner at Knight Frank. As with Mr Galbraith she had produced an expert's report, which was dated 12th October 2023. Her report ran to some 125 pages but the bulk of that was taken up with appendices.
34. After describing the Property and its location she moved on the deal with the lease details which are uncontentious and tenants' improvements indicating that as far as she was aware no licence for alterations had been sought. In any event there were no improvements to take into account. She confirmed the date of the valuation was 14th July 2022 and then moved on to the calculation of the

premium. She started with the freehold value and relied on a 8 comparable properties, of which five were preferred, but at the hearing this was reduced further to two properties, one Flat 7 Westchester House, Seymour Street and the other Flat 3 Connaught Court, Connaught Street.

35. She took us through these two properties telling us that the Westchester House was a purpose-built block occupying a similar corner site to the subject Property but located one block to the South at the junction of Edgware Road and Seymour Street. It was a considerably larger flat than the subject Property at 1,829 square feet but was on the third floor of the block. It has sold in November 2020 with some 62.34 years remaining at a price of £2,050,000 or £1,121 per square foot. We were told that it had a similar floor plate to the Property but no outside space. She did however feel that this property had benefits over the subject Property in that it had a porter and there was a better arrangement of the accommodation with four bedrooms, three shower rooms and bathroom. She made an adjustment downwards of 2.5% for the porter and £90,000 for the better bathroom facilities. When making these allowances she concluded that the adjusted freehold figure on a price per square foot was £1,280.
36. The next comparable that she placed emphasis upon was at Flat 3 Connaught Court which was in the same building but at the first floor level. In March of 2019 with just over 103 years remaining it sold for £950,000 with a square footage rate of £956. It had a similar aspect to the subject Property but did have a small balcony and in addition, it appeared that it did not sit immediately above the restaurant at ground floor level. She considered that the balcony would make it more attractive for a purchaser but the first floor less attractive. She considered that the property having two bedrooms with an en suite shower room and separate bathroom would be considered to be more attractive than the subject Flat. Accordingly she made adjustment downward of 2.5% for the balcony and £30,000 for the additional bathroom facilities, with a further adjustment upwards to account for the better floor of the subject Property. This gave an overall adjustment of -.05% and equated to an adjusted freehold figure of £976 per square foot.
37. Her report did set out details of flats at 31 Grosvenor Court Mansions, 27 Grosvenor Court Mansions and 16 Grosvenor Court Mansions. In a schedule she also included three further properties at Westchester Court, Grosvenor Court Mansions and Lanchester Court but she did not place any emphasis on these.
38. Accordingly, taking these matters into account she was of the opinion that the freehold value of the Property should be in the region of £1,656,000.
39. As to the existing lease value, this she accepted needed to be valued in the hypothetical 'no act world'. As with Mr Galbraith, she relied on the Upper Tribunal case of Mundy which provided guidance as to how valuers should deal with this element. In this case of course, there was a sale on the subject property in the same month of the valuation date and accordingly she adopted the Mundy approach as the primary basis for assessing the existing lease value making an allowance for what she considered to be the 'no act world' rights. To contrast this she also followed the route of graph evidence utilising Gerald Eve and Savills graphs which gave her some support to the view that she reached that the no act

right should be 28%, this also reflecting those deduction of rights which had been considered by the Tribunal in the past. Accordingly on the sale of a lease at £500,000 less 28% for the no act rights gave an existing lease value without rights of £360,000 and a relative value of 21.74% based on the unimproved freehold value that had been contended for. To double check this relativity she made use of the Savills and Gerald Eve graphs and achieved figures of 22.86% and 22.82%. Taking these matters into account she concluded that a relativity based on method A would have been in the region of 22% and accordingly it is consistent with her approach using Mundy but also using graph evidence as back up, although that was not her preferred approach.

40. In respect of the extended lease value, she adopted the Gerald Eve 1996 unenfranchiseable graph less 1.5% to give a relativity of the FHVP value of 96.33%. The yield and deferment rates were agreed. Taking these matters into account as shown on her valuation, she concluded that the premium payable for 90 year lease extension would be £1,125,100.
41. On giving evidence to us at the hearing she was asked whether there had been any adjustments for time, and she referred us to the schedule, which was included within her report which showed that there had been assessments to reflect the different timescales. Asked about her views of the sums offered for the Property at £1.4m she considered probably that this had not been high enough and of course had been offered with a promise of a lease extension. Her view was that any prudent purchaser would make a discount where there was only a promise. As far as the restaurant below was concerned, she took the view that Edgware Road was full of restaurants of different sorts being a colourful and vibrant part of London. She also gave some comments as to the use of other comparables by Mr Galbraith at Meridien House and Park West neither of which she thought were of assistance.
42. Mr Galbraith had no questions but Mr Khawaja, one of the Applicant directors did ask certain questions concerning the Property. Asked about the promise to extend the lease and why a discount would be necessary, Ms Kelsey answered that the certainty of buying a flat with an extended lease would have removed such a discount. He also asked why there was a difference between the figures shown on the initial counter notice and sought at the hearing today. Her response was that it was common for figures to be stretched in each direction by the tenant or the landlord and which was not really relevant to the hearing today. There were discussions concerning the siting of the comparable at Flat 3. The evidence that we heard indicated that the bulk, if not all of, the windows of Flat 3 looked out over Connaught Street with the potential for a view of Connaught Square. There were various other questions concerning the comparables which did provide any particular assistance to us.
43. In submissions Mr Loveday reminded us that there were two issues, the FHVP value and relativity. As far as relativity was concerned he felt he had covered in his skeleton argument and referred to the guidelines set out by the Upper Tribunal in the Mundy case. Reference was also had to Deritend case but the lease lengths there were more than the subject property. He referred us to Ms Kelsey's report at paragraph 12.3.18 which set out the various allowances made for no act rights, which were in truth somewhat higgledy-piggledy with, for

example, a property at Portland Place having 11.82 years remaining achieving a 20% deduction for rights yet a property in the Cadogan Square vicinity with 17.8 years remaining attracting a 25% deduction for rights.

44. Insofar as the FHVP value was concerned, Mr Loveday submission was that the non-sale of the flat was not helpful. Evidence of a sale must be preferential to evidence of a non-sale. He submitted that Mr Galbraith had considered comparables to support his evidence and not the other way round. In his view Ms Kelsey had adopted a conventional valuation approach whereas Mr Galbraith appeared to have adopted a standing back approach to achieve the figures that he suggested.
45. Mr Khawaja made a final submission to us confirming he was relying on his experts report and indicated that he was concerned that the comparables had been North of the flat. In fact they were in the main South of the flat. He did say, however, that he had spent £500,000 acquiring the Property, some £200,000 to upgrade it and the cost of a new lease at potentially at £1,125,000 would take it beyond the market level that would be open to acceptance by him if he was to sell.

FINDINGS

FHVP

The Subject Property

46. Connaught Court is a residential block on the corner of Connaught Street and Edgware Road. The entrance to the block is on Connaught Street. The location of the block and the internal configuration of the flats means that some flats face Connaught Street and some face Edgware Road. Edgware Road is a busy through fare running North/South from Marble Arch and is popular with commercial users including restaurants. Connaught Street is off Edgware Road and is quieter and leads to Connaught Square, a desirable residential Square.
47. The Property is a five-bedroom third floor flat in the block, comprising a kitchen and a bathroom with a separate cloakroom/WC. There are shower cubicles in two of the bedrooms. Beyond the entrance hall, the rooms are, taken from the Applicant's evidence, oriented as follows:
 - Living Room with dual aspect to Edgware Road and Connaught Street
 - Bedroom Two facing Edgware Road
 - Bedroom Three facing Edgware Road
 - Bedroom Four facing Edgware Road
 - Bedroom Five facing Edgware Road
 - Bedroom One facing Connaught Street
 - Bathroom
 - Cloakroom/WC
 - Kitchen facing Edgware Road

The area agreed between the parties is 1,600 square feet. Below on the ground floor is a restaurant, which benefits from a pavement licence, utilised by dining

tables on the pavement. The Restaurant, Voug Shisha Restaurant (formally, Maroush Bake House) offers the facility of Shisha smoking pipes.

48. There was discussion as to the standard of the block. The Applicant noting the service charge was in the region of £2,500 per year but this included the provision of hot water and heating. The Applicant noted that of the 12 flats on the block all but two were let out. There was the Applicant felt a sense that the blocks maintenance had been neglected for some time. We have already set out the marketing history of the Property.

FHVP – from unsold status

49 Mr Galbraith seeks to use the fact that the Property as at the date of hearing has not sold, as evidence of a cap on the value of the Property. In the current case the Property is for sale at £1.6m, and the agents have suggested that the asking figure could be brought down by £50,000 to stimulate interest. The Respondent in their evidence noted reasons why a property has not sold, of which there may many, but the evidence of a lack of sale cannot be taken as evidence of value. Additionally, the Respondent noted that identical flats offered to the market, one with a 100 year lease and the other with the promise of a 100 year lease are will attract different prices.

50 We note that the valuation date is 14th July 2022, which is some time before the current market and so caps on value implied by the non-sale, if they were to carry weight, are greatly reduced. Additionally, we believe that the pool of individuals willing and able to purchase the short lease with the promise of the longer one are very limited and so a downward force on the price should be expected. We do not place weight on the lack of a sale as evidencing the value.

FHVP – from comparables

51 Mr Galbraith made much of the uncertainty of the market in recent years but brought forward two comparables, the first being Flat 3 Connaught Court. There was much discussion on the specific location of the flat within the building. No 3 is on the first floor. The rooms of No 3 face Connaught Street as does the small balcony. From the marketing details compiled by Cluttons, the property consists of two bedrooms, bathroom, en-suite shower room, reception/dining room, reception room/study, kitchen, guest WC, sauna, balcony and lift. The lease expires on 1st March 2122, having been granted on 17th May 2013, as can be seen from the HMLR details provided by Ms Kelsey in her report. The flat was sold on 8th March 2019 with a value of £950,000. Mr Galbraith's view on time adjustment was that the market between the sale and the valuation date was "benign". The flat is smaller at 994 sq. feet.

52. This comparable is agreed by both parties to be strong. There are several potential adjustments needed to align it with the subject Property. Notably:

- Floor level – in general a first floor flat in London is less desirable than a third floor flat from the point of view of light and street noise reduction. The

property has a lift, so issues of the stairs are not of relevance, assuming of course the lift is working.

- Size – there is a difference in size of the two properties Flat 3 is 994 square feet and the subject Property is 1600 square feet. It appeared to be accepted that generally smaller properties attract a higher rate per square foot.
- Specification - the present flat layout of the Property is unclear. At the valuation date it had five bedrooms (one could be a dining room) with one independent bathroom and separate WC. There also appeared to be shower cubicles in two bedrooms. In contemporary terms this layout offers less bathrooms per habitable room than would be anticipated.
- External space – there is a narrow balcony for Flat 3 and none for Flat 6.
- Orientation of flat – Flat 3 faces Connaught Street a quieter street and without the restaurant premises beneath. Flat 6 faces the busier Edgware Road and has the restaurant premises below. We note however, that it is said that the restaurant did not come into being until after the valuation date, it being a bakery before.

53. Mr Galbraith's analysis and adjustment to subject Property gave a rate of £859 per square feet. We are not completely clear how he reached this rate when one considers, for example, his values for 100 year leases.
54. The second comparable, Flat 15 Meridien House, sold for £950,000 in July 2022 on an area of 1048 square feet. Mr Galbraith noted that the property, unlike the subject Property did not need refurbishing. However, evidence from the Respondent showed that the lease length was 32.29 years not a long term as the Applicant had submitted was the case. Upon cross examination Mr Galbraith noted that adjusting for the length of lease would require a 42% increase in the rate per square feet to £1,291 which caused him surprise and went beyond what he considered to be a reasonable bracket.
55. A further three comparables were presented by him; 110 The Water Gardens - a three bedroom and two bathroom, in a modernised condition with balcony; 155 Park West – a four bedroom in modernised condition; and 629 Park West – a three bedroom in fair condition. We noted these but did not consider them to be of assistance. Indeed, Mr Galbraith used them to test his plausibility theory, plausibility featuring in his report, together with 'material valuation uncertainty' and did not consider them directly comparable. The more so as it appears he was relying on the wrong sale price for 155 Park West, which it would appear sold for £100,000 more than he records.
56. Ms Kelsey presented five comparables, of which two were submitted as being key. The first, Flat 3 Connaught Square, which analysed initially as £956.00 per square foot, but allowing for adjustment for lacking bathrooms - £30,000; adjustment for floor 2% upwards; adjustment for balcony 2.5% downwards gave an adjusted rate of £976 per square foot FHVP value.
57. Flat 7 Westchester House Seymour Street sold November 2020 with unexpired lease of 62.34 years, for £2,050,000, which equates to £1,121 per square foot. Entrance to the block is off Seymour Street so this equates to subject Property entrance on Connaught Street in that is neither is off Edgware Road. The flat is

on the third floor. Both comparable and subject Property are in unimproved but in lease condition Westchester has benefit of porter and better layout in terms of bathrooms to bedrooms ratio. Adjustments downwards of 2.5% for the porter and £90,000 for bathrooms were made. This leads to £1,280 per square foot for the adjusted freehold value. Discussion was had on the orientation of the flat from the plan and photographs the parties concluded the majority of the flat faced Seymour Street rather than Edgware Road. From the photograph of the property, it can be seen that on part of the ground floor there is an entrance to a commercial premises called Shisha Bar, but this did not directly impact on the comparable.

Tribunal Analysis

58. We should say at the outset that we preferred the expert evidence of Ms Kelsey. She had followed the normal route and relied on sales she considered to be comparable to the subject Property. Mr Galbraith had placed great reliance on an unsuccessful sale of the Property before the auction and we cannot help but feel that his comparable evidence had been garnered to support his proposition that the unsuccessful sale set the level of value. In addition, he had put forward some unique, at least in our experience, differentiation between larger and smaller flats, in using a split on the rate per square foot on a quite arbitrary basis, without reference, for example, to any reduced head room which did not, in any event, apply in this case. He produced a report without paragraph numbering and did not supply any sales particulars or details from the HMLR to evidence the comparables he used to support his case. It is for these reasons that we preferred Ms Kelsey's report and evidence.
59. We intend to use Flat 3 Connaught Court and Flat 7 Westchester House as being the most similar comparables requiring the least adjustment and hence the most reliable. We have also reviewed those at Grosvenor Court Mansions, which front Edgware Road. In our finding the greatest weight is attributed to the comparable in the building because it requires least adjustment and takes into account the relative state of repair of both blocks and their relative prestige.
60. We preferred Ms Kelsey's analysis of Flat 3 to that of the Appellant. However, we find that an adjustment to reflect the quieter location compared with the subject Property we should make an allowance of 3%, thus reducing the price per square foot to £947.
61. With Flat 7 Westchester House, we find it appropriate to amend Ms Kelsey's analysis of the property to reflect the more prestigious nature of Westchester House over Connaught Court. She has made an allowance of 2.5% for porter and £90,000 for bathrooms, but we feel, using our expertise, a further allowance is needed to reflect the superiority Westchester House building over Connaught Court for this we make a 5% allowance (from the respondents table £1280) taking the pounds per square foot to £1216. Finally, a further 2% allowance is made to the rate of £1,216 per square foot, which produces £1,192 per square foot. Substituting the figure of £1,192 per square foot for £1,280 for Westchester and averaging the table from table 1 produces a revised rate for the FHVP of £1,011 per square foot.

Comparable	Resp adj/analysis psf	Tribunal adjustments psf
Flat 7 Westchester House	£1280	Deduct 5% for subject premises being less prestigious £1216 Deduct 2% to reflect comparable 2/3 on quieter street one third on Edgware Road £1192
Flat 3 Connaught Court	£976	£976 none Deduct 3% because whole of comparable on quieter side road £947
31 Grosvenor Court Mansions	£1064 (already on Edgware Road)	£1064
27 Grosvenor Court Mansions	£929 (already on Edgware Road)	£929
16 Grosvenor Court Mansions	£925 (already on Edgware Road)	£925
	£1035	£1011

Extended Lease Value

62. The lease extension is 90 years, so the resulting extended lease is just short of 100 years. The Applicant has applied a 96.3% derived from two graphs Savills 94.6 %, Gerald Eve 98% giving 96.3%. The Respondent has deducted 1.5% from freehold to long leasehold and applied to the Gerald Eve 1996 graph of 96.33%. The two figures are nearly identical, so the Tribunal adopts the more precise one, we adopt 96.33%.

Value of Existing Lease

63. The subject flat was sold for £500,000 in July 2022. The Applicant has applied a rate of 75.987 % derived from two Savills graphs for leases with 10.25 years outstanding. The subject premises has a still shorter lease, and the Applicant has adjusted. Producing a reduction of 24.013%. Ms Kelsey has applied 22% deduction for “Act rights” utilising not only the guidance in Mundy but also reviewing on the basis of graph evidence producing a figure of £364,320. We are attracted to the levels shown by a number of previous decisions and determine 23% for the unexpired lease length here.

Deferment Rate

64. The Applicant and the Respondent are on common ground with the at 5%.

Capitalisation Rate

65. The rate of 6% is agreed between the parties.
66. The value we have determined is as set out on the attached valuation at £1,090,927

Judge: *Andrew Dutton*

A A Dutton

Date: 1 November 2023

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.