



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

<b>Case Reference</b>	<b>:</b>	<b>MAN/00DA/OCE/2021/0013</b>
<b>HMCTS (paper, video, audio)</b>	<b>:</b>	<b>Hearing</b>
<b>Property</b>	<b>:</b>	<b>The Wellesley Hotel AKA City Central Wellington Street Leeds LS1 4EA</b>
<b>Applicant</b>	<b>:</b>	<b>City Central Leeds Freehold Ltd (Nominee Purchaser)</b>
<b>Representative</b>	<b>:</b>	<b>Bury &amp; Walkers LLP/ Bruce Collinson</b>
<b>Respondent</b>	<b>:</b>	<b>Fairhold Holdings No.3 (APPTS) Ltd</b>
<b>Representative</b>	<b>:</b>	<b>Lucy Walsh/ Gary French</b>
<b>Type of Application</b>	<b>:</b>	<b>Application under section 24 of the Leasehold Reform, Housing &amp; Urban Development Act 1993</b>
<b>Tribunal Members</b>	<b>:</b>	<b>N Wint BSc (Hons) FRICS ACI Arb J Faulkner BSc Hons FRICS J Oliver</b>
<b>Date of decision</b>	<b>:</b>	<b>1 November 2023</b>
<b>Date of Determination</b>	<b>:</b>	<b>4 December 2023</b>

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**DECISION**

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## Decision of the Tribunal

1. The Tribunal determines that the premium to be paid for the freehold of the Property under the terms of the Leasehold Reform and Urban Development Act 1993 is £284,500.

## Introduction

2. This is an application to determine the premium payable to the Respondent ('R') by the Applicant ('A') to have the freehold of The Wellesley Hotel (also known as City Central) Wellington Street Leeds LS1 4EA ('the Property') under the Leasehold Reform Housing and Urban development Act 1993 ('the Act').
3. The Act provides the right for the qualifying majority of leaseholders to compel a landlord to sell the Freehold to them. Once the Freehold is in the hands of the Lessees they own, run & have control of the building themselves.
4. The Applicant was incorporated on 28 October 2020 to act as Nominee Purchaser on behalf of the leaseholders of 49 apartments out of a total of 65.
5. The participating tenants all have the benefit of 999-year leases granted on 1 January 2000. The leases are identical except 12 apartments that have a parking space and several other leases that do not contain a covenant prohibiting a sale without the permission of OM Peverel Ltd, a company that has no involvement with R.
6. The ground rent payable by each flat on the date of the Notice was £200 per annum producing a total residential ground rent of £13,000 per annum.
7. The leases contain identical rent review provisions. This provides that the ground rent shall be reviewed every 21 years and increased to such sum as is the same percentage of the '**Review Value**' of the Building as the Rent is of the '**First Value**' of the Building, subject to certain safeguards.
8. The rent review date is, therefore, 1 January 2021.
9. The '**First Value**' of the Building is defined as being the total of the open market value selling prices achieved by the Lessor of all the Dwellings in the Building.
10. The '**Review Value**' of the Building is defined as being the total of the open market selling prices achieved by the Lessor of all the flats in the Building ... on a vacant possession sale ... and ... assuming that each Dwelling is sold individually and its sale is not inhibited by the sales of any other Dwelling in the Building.

11. In summary, the increase applicable to the ground rent payable is to be equal to the proportionate increase in the collective value of all the flats as at the valuation date i.e. if the collective value has increased by say 10% the ground rent is to increase by 10%.
12. In triggering the rent review provisions, the lessor's proposal shall be specified in a written notice given to the lessee any time within 12 months prior to the 21st anniversary of the of the Commencement Date. If the lessee serves a counter notice within 3 months (time being of the essence) of the lessor's notice disputing the increase, then the rent shall either be agreed or determined.
13. The ground and basement floors were demised by Country & Metropolitan Developments Ltd to Hollowcharm Ltd by way of a lease dated 16 November 2000 for a term of 999 years less 5 days at a peppercorn rent. This was amended by a deed of rectification dated 19 November 2004. These are the commercial premises registered in favour of Anthony Walker, Robert Pudney, and Trevor Rush. Five units within those premises have been sublet for commercial premises – four units on the ground floor and one on the basement.
14. There is therefore no rental income from the commercial premises.
15. As the leases were granted for 999 years from 1 January 2000 there is effectively no value in the reversion.
16. In addition, there is a 70-year lease agreement granted to Yorkshire Electricity at nil rent of the ground floor electric substation annexed to the main building.
17. On 4 December 2020 a notice 'Notice of Claim' was served by A on R pursuant to section 13 of the Act. The Notice named A as the Nominee Purchaser and the person seeking to acquire the freehold and become the new landlord.
18. The Notice to exercise the right to collective enfranchisement in respect of the Property is also pursuant to s1(1) of the Act in respect of the freehold interest in the basement, ground floor, first floor, first floor mezzanine, second to eighth floors and the electricity sub-station described and the ('Specified Premises') and registered at the Land Registry under title number WYK393918 and pursuant to s1(2)(a) in respect of the freehold interest in the ('Additional Freeholds') namely the car park areas, external common area and external access areas at the Specified Premises.

19. For the building to qualify it must:
- Not have more than 25% of the internal floor area of the property as being non-residential, and
  - At least two-thirds of the flats must be let to 'qualifying leaseholders'

Basically, enough of the qualifying leaseholders must participate, being at least half of the total number of flats in the building. Where there are only two flats in the building both leaseholders must participate.

20. The minimum number of leaseholders that are needed for a successful action must:
- Not be less than half of the total number of flats in the building. For example, if there are 15 flats in the building at least 8 of the qualifying leaseholders must participate.
  - However, where there are only two flats in the building, both leaseholders must participate.
21. On the 4 February 2021 R served a counter notice under s21 of the Act admitting the entitlement to claim the freehold of the Specified Premises and the Additional Freeholds.
22. The purchase price proposed by A was £211,667 for the freehold of the Specified Premises and £5,000 for the Additional Freeholds. However, in its statement of case A submits a revised valuation of £235,000.
23. By way of counter notice, R proposed a purchase price of £935,820 and £53,000 for the freehold of the Additional Land.
24. On 23 July 2021 A made an application to the Tribunal for the determination of the premium to be paid. Paragraphs 11 and 13 of the counter notice had requested particular terms be incorporated in the conveyance however paragraph 1 of the application does not seek a determination of those terms.
25. The Tribunal issued its Directions to the parties requiring the parties to submit and exchange written evidence. The parties were also directed to exchange any documents (including a statement of case and valuation) and to submit these to the Tribunal.

26. An inspection was carried out by the Tribunal on the morning of 10 July 2023 and the hearing followed in the afternoon and the following day on 11 July 2023. On second day Judge Oliver was taken ill part way through the hearing. The hearing was adjourned for a short while however it became clear that unfortunately Judge Oliver would not be able to continue. The parties were invited back into the hearing and advised of the medical emergency, and it was agreed that the hearing would continue with Nicholas Wint FRICS sitting as Chair as he is a Valuer Chair in the Midland Region of the First Tier Tribunal (Property Chamber).
27. For the Applicant the Tribunal received a statement of case from Bury & Walkers LLP ('**B&W**') dated 4 November 2022 and an expert witness valuation report prepared by Mr Bruce T Collinson ('**BTC**') of Adair Paxton dated 7 November 2022 and a second report (amended) dated 12 December 2022.
28. On behalf of the Respondent the Tribunal received a statement of case from Lucy Walsh ('**LF**') dated 8 November 2022 and an expert witness valuation report prepared by Mr Gary French ('**GF**') of Friend & Falke dated 1 November 2022 and supplementary report dated 7 December 2022.
29. David Nuttall ('**DN**') of St Ives Chambers - Counsel for the Respondent – provides a Skeleton argument dated 5 July 2023 to highlight the main points of the dispute for the Tribunals benefit.
30. In accordance with s.1(8), sch. 6 para. 1(1) of the Act, the price payable is determined as at the date on which the tenants gave notice to enfranchise. The valuation is an open market basis for a sale by a willing seller – sch. 6, para. 3(1) as per below.
31. The valuation date is therefore 8 December 2020.
32. Both parties have prepared their Reports in accordance with the requirements of the RICS Practice statement for surveyors acting as an expert witness and include a Statement of Truth. The Tribunal is also satisfied that both parties valuations have been prepared by suitably qualified and experienced valuers.
33. The Tribunal has carefully considered the evidence submitted by the parties and has also had regard to its own experience, knowledge and judgement in coming to its findings and decision.

## **The Property**

34. The Tribunal inspected the Property on 10 July 2023 in the presence of the parties.
35. The Property comprises a large detached 10-storey period building in the heart of Leeds city centre situated on Wellington Street a short distance from the railway station and close to the main shopping areas.
36. The Property was converted from a hotel in the late 1990's/ early 2000's to form commercial premises on the lower ground and ground floor levels and on the remaining eight floors above, 65 apartments numbered 1 to 66 (excluding No. 13).
37. On floors one to six are 1- and 2-bedroom apartments and on the seventh floor 3-bedroom duplex apartments. The Tribunal inspected:
  - i) Apt. 2 - on floor one which is partially refurbished comprising a hall, through living/ dining room, open plan kitchen and bedroom on a mezzanine floor with bathroom including WC, WHB and shower over bath. The refurbishment extended to new floor coverings, underfloor heating and kitchen units.
  - ii) Apt 46 – on floor 5 which is un-refurbished comprising a hall, living/ dining room, fitted kitchen, double bedroom and bathroom including WC, WHB and bath with shower over. Heating is provided by electric wall mounted units.
  - iii) Apt 42 – on floor 5 which is unrefurbished comprising a hall, living room, open plan galley style fitted kitchen, double bedroom and bathroom including WC, WHB and bath. Heating is provided by electric wall mounted units.
  - iv) Apt 63 – on floor 7 which is an unrefurbished 2-story apartment comprising a hall, through living/ dining room and kitchen, toilet, two double bedrooms (main bedroom with en-suite and shower cubicle) and bathroom including WC, WHB, bath with shower over. Heating is provided by electric wall mounted units.
  - v) Apt 58 – on floor 7 which is a refurbished 2-story apartment comprising through living room/ fitted kitchen, utility, toilet, 3 double bedrooms (main bedroom with en-suite and shower cubicle) and bathroom with WC, WHB, bath with shower over. The refurbishment extended to new floor coverings, underfloor heating, kitchen, plumbing and electrics.

- vi) Apt 22 – on floor 3 which is partially refurbished comprising a hall, open plan living room/ fitted kitchen, 2 double bedrooms, bathroom with WC, WHB and double shower cubicle. Heating is provided by electric wall mounted units. The refurbishment extended to the bathroom only.
38. The Tribunal also carried out an external inspection of the Additional Land which was being used for car parking to the side of the building. Part of this area has been marked out for 12 car parking spaces belonging to the flats and part as a fire escape access area. Access to and from this area was also subject to an arm-barrier but is not manned or managed. The Tribunal also inspected externally the electricity substation.

### **The Law**

39. The relevant law is contained in the Leasehold Reform Housing and Urban Development Act 1993.
40. Schedule 6 of the 1993 Act establishes the method for the acquisition of a residential freehold reversion and establishes the basis for the price payable of specified premises.
41. Paragraph 2 of Schedule 6 of the 1993 Act provides as follows:

“(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of-

(a) the value of the freeholder’s interest in the premises as determined in accordance with paragraph 3,

(b) the freeholder’s share of the marriage value as determined in accordance with paragraph 4, and

(c) any amount of compensation payable to the freeholder under paragraph 5. 15 (2)

Where the amount arrived at in accordance with sub-paragraph (1) is a negative amount the price payable by the nominee purchaser shall be nil Paragraph 3 of Schedule 6 provides:

(1) Subject to the provisions of this paragraph, the value of the freeholders’ interest in the specified premises is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions-

(a) on the assumption that the vendor is selling for an estate in fee simple-

(1) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but

(2) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;

(b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant

(c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraphs (a) and (b) the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchase of the freehold's interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7. (1A) a person falls within this sub-paragraph if he is-

(a) a nominee purchaser, or

(b) a tenant of premises contained in the specified premises, or  
(ba) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or (c) an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).

(2) It is hereby declared that the fact sub-paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the valuation date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub-paragraph



(3) In determining that amount there shall be made such deduction (if any) in any respect of any defect in title as on a sale of the interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Where a lease of any flat or other unit in the specified premises is to be granted to the freeholder in accordance with section 36 and Schedule 9, the value of his interest in those premises at the valuation date so far as 16 relating to that flat or other unit shall be taken to be the difference as at that date between-

(a) the value of his freehold interest in it, and

(b) the value of his interest in it under that lease, assuming it to have been granted to him at that date; and each of those values shall, so far as is appropriate, be determined in like manner as the value of the freeholder's interest in the whole of the specified premises is determined for the purposes of paragraph 2(1)(a).

(5) The value of the freeholder's interest in the specified premises shall not be increased by reason of-

(a) any transaction which-

(i) is entered into or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before this date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by a qualifying tenant of a flat contained in the specified premises: or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

(6) Sub-paragraph (5) shall not have the effect of preventing an increase in value of the freeholder's interest in the specified premises in a case where the increase is attributable to any such leasehold interest with a negative value as mentioned in paragraph 14 (2).

Paragraph 4 provides-

(1) The marriage value is the amount referred to in sub-paragraph

(2), and the freeholder's share of the marriage value is 50 per cent of that amount. (2)(Subject to sub-paragraph 2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when

regarded as being (in consequence of there being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value-

(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price. 2(A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

42. Section 48 of the 1993 Act prescribes that if a premium is not agreed it can be referred to the First-tier Tribunal (Property Chamber) where it can be assessed in accordance with the formula in Schedule 13 to the Act.

### **Issues in Dispute**

43. The issues in dispute are:
- i) Calculation of the revised Ground Rent; and
  - ii) Capitalisation Rate; and
  - iii) Whether any compensation is due under section 13 of the Act in respect of the Additional Land (car parking spaces and internal areas); and
  - iv) The value of R's interest under Schedule 6 para. 3 of the Leasehold Reform, Housing and Urban Development Act 1993 – Enfranchisement Price.
44. In calculating the open market value, the Tribunal has therefore had regard to the factors in respect of the determination of the ground rent and yield/capitalisation rate.

45. In respect of the calculation of the ground rent R's approach is to consider various indices broadly over the relevant period as well as actual sales data over a similar period with an adjustment up to the review date using the HMLR index. A's valuation approach is simply based on several market transactions that have occurred from within the Premises around the review date and from these arrives at an estimated growth rate of approx. 17.5%.
46. The capitalisation rate is the rate which investors use to compare property investments to one another. It is the relationship between the income received and its capital value and can be used to calculate the price payable.
47. For R, GF identifies two different methods – Equated Yield of the Current Rent ('EYC') which considers the current rent and the rent payable after the first review date and Equated Yield ('EYF') which considers assumed future growth and reflects, on an incremental basis, the increases in rent going forward. In effect the difference between the two approaches is the assumption as to future growth; EYC implicitly reflects future growth and EYF explicitly reflects future growth. The latter approach therefore requires an assumption to be made concerning future rental growth.
48. The Tribunal must therefore decide the method by which the capitalisation rate should be used to come to the value, and whether future growth should be accounted for i.e. whether EYC or EYF should be applied.
49. The Tribunal also has to decide on the revised ground rent which is outstanding which will then determine the aggregate value of all the flats in the Building.

### **Issues Agreed**

50. The following matters are agreed:
 

- Date of Valuation	8 December 2020
- Unexpired Term	978.07 years
- No. of Flats	65
- Existing Ground Rent	£13,000 per annum
- Rent Review Date	1 January 2021
- Unexpired Term to Review	0.07 years
51. The parties are also agreed that there is no hope or development value relating to the common areas within the Building. It is also agreed that there is no reversionary value.

### **Applicants Submissions**

52. The Applicants statement of claim prepared by Bury & Walkers LLP dated November 2022, sets out the valuation basis of calculating the price payable as being the open market value of the freeholder's interest plus 50% of the marriage value (which can include development value) plus reasonable compensation for loss as a result of the enfranchisement.

53. The expert witness evidence prepared by Mr Bruce T Collinson FRICS of Adair Paxton ('BTC') for the Applicant values the interests as follows:

- Open Market Value	£235,000
- Marriage Value	£0
- Compensation	£0

### **Review Notice**

54. The lessors served notice on the leaseholders on 7 October 2020. In the Notice it specified that the ground rent would be reviewed using the House Price Index ('HPI') but failed to specify a particular rent. On 27 April 2021 the lessors notified the leaseholders that the ground rent of £256.06 per annum had been calculated using the Retail Prices Index ('RPI'). This was corrected in a subsequent letter dated 29 April 2021 clarifying that the rent had in fact been calculated based on HPI.

55. The Applicant considers that the lessor's initial notice was served incorrectly as it failed to specify a proposed new rent as required under the review provisions in the lease namely clause 3.2. Further the lessor failed to follow the valuation basis provided in the lease agreement namely clause 3.1 which provides for the increase to be '...such sum as is the same percentage of the Review Value of the Building as the Rent is of the First Value of the Building' and not based on HPI.

56. A's case therefore is that the review is not linked to any index but to the actual value of the flats in the Building and in effect ties the ground rent to the level of capital appreciation of the flats.

57. As regard the Rent Review Notice itself, A's position is reserved in respect of the right to challenge the amount and have the matter determined by a third party appointed under the terms of the lease agreement.

### **Ground Rent**

58. It is the Applicant's position that the ground rent should be £235 per annum per flat per annum equating to £15,275 per annum for the entirety.

59. In the first instance, A considers the R's proposal exceeds the current annual premium in the Leeds area of £250 which sets a cap on the permitted increase and contends that if the ground rent were to be increased to £256.06 it would exceed 0.1% of the capital value potentially causing lending issues. In addition, the A suggests that the leases would be treated as assured shorthold tenancies by virtue of the Housing Act 1988.

60. Mr Collinson is also of the opinion that if the ground rent exceeds £250 per annum per flats it may dissuade lenders and potential occupiers/ investors; the overall effect being to depress demand for the flats resulting in lower market values.
61. Mr Collinson calculates that the proposed ground rent increase to £256.06 represents an uplift of 28.03% whereas the value of the flats in the Building have only increased by approx. 17.5% based on actual market transactions. This compares to the Respondents approach of adopting various indices and in particular RPI which shows an increase 76.8% and Land Registry prices of flats in Leeds which show values having increased by 234%. Mr Collinson also concludes from this that this demonstrates the underperformance of the flats in the Building.
62. In Mr Collinson's opinion there is sufficient market evidence not to have to rely on any indices. Mr Collinson's approach is to take the median price of the market transactions which broadly show sale prices have been '...little better than static...' and if inflation is considered have in fact dropped in value in real terms.
63. Mr Collinson also refers to other similar type schemes in the locality which he considers support his evidence and conclusions that the values of the flats in the Building have performed no better and contradict the indices evidence.
64. Mr Collinson suggests the Tribunal should make a reasoned assumption as to the likely outcome of the rent review and the ground rent to which the capitalisation rate below can be applied to calculate the price payable for the Landlords interest.
65. Mr Collinson therefore concludes that the ground rent per flat should be £235 per annum equating to £15,275 per annum for the whole Building.

### **Capitalisation Rate**

66. It is A's position that the capitalisation rate on an all-risks EYC basis should be 6.5%. Alternatively, on an EYF basis the rate would also be 6.5% as the growth rate is nil.
67. Mr Collinson's evidence concludes that there is in fact no difference between EYC and EYF as there has been no growth shown by the actual market transaction evidence.
68. Mr Collinson provides a spreadsheet setting out all known sale prices across all 65 flats as well as providing a cross check of the '... sales most relevant...' to the valuation date.

69. In particular, Mr Collinson refers to the following specific sales:
- i) Flat 43 – sold for £80,000 and resold on 29 January 2021 at £137,500 representing an increase in value of 72% however Mr Collinson suggests that the flat was originally sold off-plan at a significant discount.
  - ii) Flat 12 – sold for £186,000 and resold on 12 March 2021 for £193,000 representing an increase in value of only 3.76%.
  - iii) Flat 3 – sold for £245,000 and resold on 17 June 2021 for £230,000 representing an increase in value of minus 6%.
70. Mr Collinson does not consider it necessary or appropriate to provide a valuation of each individual flat because he is of the view that the hypothetical purchaser would approach the valuation exercise by estimating the capital value of the flats by reference to the overall percentage increase since the date of the original sales. Furthermore, Mr Collinson considers it would not be sensible to value each flat individually as it would not be practical to measure or inspect each flat as it would be cost prohibitive. The hypothetical purchaser would therefore seek to formulate its bid for the Premises based on publicly available records.
71. This, Mr Collinson suggests, excluding some ‘...outliers...’ shows that growth in capital values since 2000 has been poor. And the reason for this poor performance is suggested due to the nature of the Building and its location. Mr Collinson considers that when originally sold there was a significant new build premium and that the Building and conversion is of low quality that will result in increased management/ insurance and repair costs in due course. Furthermore, there are a large proportion of 1-bed flats in the Building which tend to be more difficult to sell and that many of the flats EPC ratings are poor which may make them difficult to sell in the near future. There is also the uncertainty over government policy toward the private rented sector, the potential impact of the Hackitt Report into building safety (given the Building exceeds 18m) and that the commercial tenants in the Building are a nuisance due to cooking smells, noise and late night opening. Finally, only 12 of the flats have parking spaces.
72. In Mr Dionysios Rentzeperis’s (DR) - tenant of Flat 37 and Director of the Applicant - witness statement dated 7 November 2022 he confirms that a number of complaints have been made by the residents of the Building concerning the commercial tenants and issues relating to the use of the car parking/ service area, general safety concerns, rising insurance premium and various noise and nuisance issues arising from the commercial parts of the Building. DR concludes that this explains in part why the values of the flats have underperformed and are expected to continue to underperform in the future.

73. Mr Collinson refers the Tribunal to *Nicholson v Goff (2007)* in respect of the determination of capitalisation rates and the factors relating to its calculation namely; length of lease term, security of recovery, size of ground rent, provision for review and the basis.
74. Mr Collinson also refers the Tribunal to *Cedars (Belmont Hill) Ltd v Mr A D Shamash and Mr D Shamash (LON/00AZ/OCE/2018/0120)* in relation to the adopted capitalisation rate and the lease similarities as well as the costs applicable to the calculation of the ground rent. Mr Collinson suggests that the costs in this case are significant which would be another consideration for a potential purchaser estimating that the valuation costs would be in the order of £8,000 to £10,000.
75. Mr Collinson also refers the Tribunal to *St Emanuel (Freehold) Ltd and Others v Berkley Seventy Six Ltd (CHI/21UC/OCE/2017/ 0025, 26 and 29)* known as the All Saints case which determined a capitalisation rate of 3.35%. However, Mr Collinson discounts this decision on the basis that the premises are more modern, valuable, located on the southeast coast and subject to RPI uplifts every 15 years. The sale was also part of a portfolio sale and the price driven by a fall in gilt yields and a flight to more secure income streams with index linked increases. Thus, Mr Collinson considers that the subject Building is a far less attractive investment given the uncertainty and poor rental growth prospects.
76. Mr Collinson goes on to say he considers that future capital growth of the flats will continue to underperform the market as evidenced by the performance over the previous 21 years and this will therefore influence a hypothetical purchasers bid and require a higher capitalisation rate to be applied to the ground rent.
77. As regard to specific evidence as to the appropriate capitalisation rate to be applied, Mr Collinson refers to a number of investment sales showing yields of 4.8 to 6.8% but if adjusted to remove any reversionary value then the range is between 6.4 to 6.8% in respect of the portfolio of flats referred to in para. 7.7.1.
78. Mr Collinson also refers to a suggested hierarchy of yields dependant on whether the ground rents are fixed, subject to RPI, stepped increases or review to capital value. Mr Collinson discounts the *All Saints* case as an ‘...outlier...’ in the hierarchy and places greater weight on *Cedars* starting at 4.75% but adjusting it to reflect the lower capital growth, freeholder liabilities, mixed use, rising insurance premiums and rent review costs arrives at an overall yield of 6.5%.
79. Mr Collinson also refers the Tribunal to the sale of the actual building in June 2006 when the ground rent was £13,000 per annum and produced a yield of 6.35%. Based on this and having regard to all the potential valuation issues concludes that a yield of 6.5% is therefore fully justified.

80. In conclusion, A considers that the total ground rent of £13,000 should be increased to £15,275 and multiplied by a capitalisation rate of 6.5% to arrive at a capital value of £235,000 for the purchase of the Building.

### **Additional Land Compensation**

81. A refers to 4 areas within the Additional Land that do not belong to the residential leases. The remaining spaces (x12) belong to the flats and are part of their leases. There is no street parking permitted.
82. The first area is near a cycle lane along the pavement and as a result vehicles entering must enter at a wide angle. There are also yellow lines marking out an area at this point to restrict car parking however if a vehicle is parked in this area, it can cause a pinch point and restrict emergency vehicles. Additionally, this is the entrance to the basement commercial unit where the bin areas. The second area is a drop-off zone and located opposite the communal car park entrance and exit to the building used by the commercial tenants and on occasion for emergency vehicles and service vehicles attending the Building. The third area is nearest the barrier on Whitehall Road and vehicles parked here overlap on to Flat 19's space. The final area is in front of the substation and is not part of the demise and is unregistered land and claimed by Yorkshire Electricity/ Northern Powergrid. It is therefore not part of the enfranchisement.
83. A states that the commercial tenants use the 'reserved areas' referred to above for extended periods of time causing access issues for the residential tenants and problems with loading/ servicing. The area was previously managed by a parking fine company but is no longer in place despite A's requests to the freeholder to seek their approval to appoint a car park management company.
84. DR's witness statement also confirms that A has no authority to enforce or supervise the commercial tenants/ leases. In particular, A has no records of gas safety certificates, fire risk assessments, vent cleaning certificates, electrical wiring certificates, PAT testing in respect of the commercial tenants and has never been consulted by R in respect of the commercial tenants.
85. The bicycle room, caretakers room/ lobby are within the demise and the remaining rooms in the basement house electric meters, water tanks and pumps, and fuse boards for the common areas. Mr Collinson therefore concludes there is no hope value applicable to these areas and no development value and so no compensation payable.



86. A considers there are no ‘communal parking spaces’ (save for a short term drop off point) and it is not possible to create additional spaces. Further Mr Collinson considers that the ‘additional parking spaces’ are neither designated nor demised for residents parking. However, Mr Collinson revises this opinion to £1,000 on the basis of ‘long term hope value’ as confirmed in the Applicants Reply dated 13 December 2022 and his supplemental report dated 12 December 2022.

### **Respondents Submissions**

87. The Respondents statement of case dated 8 November 2022 prepared by Lucy Walsh (‘LF’) confirms an agreement has not been reached and that the Respondents position accepts the Applicant’s right to acquire the freehold interest in the Building and Additional Land and also requires the Applicant to pay £935,820 for the Specified Premises and £53,000 for the Additional Freehold.
88. Mr Gary French FRICS (‘GF’) of Friend & Falke is appointed on behalf of R as their expert witness in the matter and in his report values the interest in the Specified Premises at £495,549 and the Additional Freehold at £30,000.
89. Mr French’s expert report confirms that he inspected the exterior of the property on 26 January 2021 and again on 29 September 2022 but has not carried out an internal inspection of the flats.
90. The basis of Mr French’s valuation of the flats is on the assumption that they are in an unimproved condition following the requirements of the Act and following the decision in *Sharp v Cadogan (Earl) (1998) (LT) LRA/33 & 95/1997 (Unreported)*.
91. The Skeleton Argument provided by DN deals with a preliminary point concerning the fact that A has submitted a document entitled ‘*Respondent’s Statements of Case – Analysis*’ which was not included in the hearing bundle but which they intend to rely on regardless. R’s position is that the Tribunal’s Directions require the parties to submit Statements of Case and Statements of Reply and any evidence is to be confined to expert evidence. Both parties adhered to these Directions however A has subsequently provided a further Document extending to 674 pages which DN considers extends to expert evidence. This, DN contends, is contrary to the Tribunal’s Directions and specifically Rule 19. DN also contends that the Reply is partial and not subject to the required Expert Declaration and safeguards provided by the RICS, is unclear as to where the evidence has come from, is not signed or supported with a statement of truth, is of unknown authorship, and is unnecessary as valid expert evidence has already been submitted by Mr Collinson on behalf of A. DN therefore invites the Tribunal to exclude it for these reasons.

## Ground Rent

92. It is the Respondents position that the ground rent should be £256.06 per annum per flat equating to £16,643.90 per annum for the entirety.
93. In coming to his opinion, Mr French's valuation approach is to rely on indices and then, as a check, have regard to several market transactions.
94. As at the valuation date - 8 December 2020 – Mr French considers there was a considerable degree of uncertainty in the market given impact and effects of the covid pandemic and that this was recognised in the valuation markets and by the RICS which required a statement to be made in valuation reports to that effect.
95. Notwithstanding this Mr French considers the market recovered strongly in mid-2020 and the market was reasonably active at that time as a result. Further, Mr French is of the view that the Leeds market has shown steady growth since 2015 as evidenced by Land Registry Indices ('LRI') although accepts values fell during lockdown in 2020. According to Mr French the LRI for Nov 2020 shows a 5% increase in values on the previous year.
96. Mr French does however accept that LRI should be treated with caution given the variables applicable but based on these suggests it shows that since January 2000 values have increased by a factor of 3.26 in the wider Leeds area.
97. Mr French has also considered the Nationwide Indices ('NI'). This suggests values have an increased by a factor of 1.99 in Leeds. However, as most sales in the Building took place in 2002 Mr French has taken his starting point as January 2003 and based on this both Indices show growth rates that are similar at 1.87 and 1.89 respectively.
98. Mr French therefore contends that the average of the two indices is 1.88 which is equivalent to an annual percentage increase of 3.58%.
99. In considering the original sale prices of some flats namely Flat 8, 57, 1, 58, 54, 35 and their subsequent sold prices Mr French suggests that the values may have been distorted by a '*...new build premium...*'. The actual increases shown are evidently below the indices figures even after adjusting for the difference in valuation dates. However, based on these sales Mr French has averaged the increases to arrive at factor of 1.28 which applied to the existing ground rent produces a revised figure of £16,732.02 rounded down to £16,644 per annum.
100. Mr French therefore concludes that based on the market evidence and indices his contention of an increased ground rent to £16,644 per annum is justified.

## Capitalisation Rate

101. It is the Respondents position that the capitalisation rate should be 3.357% on an EYC basis or alternatively 6% on an EYF basis.
102. Mr French considers that the Building is substantial in nature and would offer a degree of ground rent growth potential to an investor and is an inflation hedge. Based on this Mr French prefers an equated yield (EYF) basis rather than a single all-risk rate.
103. In support of this Mr French considers the Building would appeal to institutional investors and refers to the *All Saints* case which adopted an equated yield of 3.35% where the reviews were every 15 years to RPI. In addition, Mr French refers to *Cedars* where the capitalisation rate was set at 4.75% and *Alec Court* where the rate adopted was 4.5%.
104. However, Mr French discounts both latter cases due to the size of income and the fact they would appeal to different markets compared to that of the subject Building.
105. Having had regard to the fact that *All Saints* used the EYC approach Mr French concludes that it would still be appropriate to use the same approach for the subject property but adjusted for potential future rental growth and the resultant expected increase in investment value. In Mr French's opinion the future rental growth should be more consistent with the general market and if a multiplier of 1.88 is applied equates to 3.58% per annum rounded to 3.5% per annum which he has applied to determine the rent at future reviews.
106. As Mr French considers the Building and the nature of its income stream would appeal to an institutional investor he compares this with the yield applied in *All Saints* and concludes it is consistent with a capitalisation rate of approximately 6% given there are fixed rent increases during the term and based on a normal rent review pattern. On the assumption of a 6% capitalisation rate target, with a 3.5% per annum average growth rate produces an Equated Yield (EYC) of 3.357%.
107. Mr French therefore disagrees with Mr Collinson's approach of adopting an all-risks yield of 6% and suggests that applying a 6% rate on an EYF basis equates to an assumed growth rate of less than 1% per annum which he says is inconsistent with the market evidence. Furthermore, given the lack of reliable market transactions considers it has not been possible to analyse appropriate capitalisation rates. Mr French does however refer to 4 transactions in this respect which show initial yields of between 3% and 4% but suggests the performance of the investments vary considerably and shows a less sophisticated valuation approach of applying a straight Years Purchase (YP) to the rental income.

108. Mr French considers that an investor would expect the value of the flats to start to improve in the future. The NI index shows the long-term average over the past 45 years was 7.25% per annum whereas since 2002/03 it has averaged around 3.75% per annum according to the NI and LRI. Mr French therefore suggests his valuation approach of adopting an equated yield reflecting a long-term rental growth of 3.5% per annum is more appropriate and is supported by the market data. This is equivalent to an initial yield of 2.62% (increasing to 3.36%) at review. This also reflects an EYF rate of 6%.
109. In Mr French's supplementary report, he refers to the capitalisation rate used by Mr Collinson and shows the effect of assumed capital growth on the EYC rate; the higher the growth rate the lower the EYC rate. Mr French suggests that an EYC of 6.5% assumes no growth which would only be applicable to a fixed ground rent income and high collection costs. In support of this Mr French refers to several Tribunal decisions which show the rates adopted. Based on this Mr French concludes that the EYF capitalisation rate should be between 5.5 and 6% to reflect the potential for rental growth.
110. Based on this Mr French concludes that the freehold value is £495,549 for Specified Premises.

### **Additional Land Compensation**

111. Mr French considers the 'common areas' offer future development potential but no hope value.
112. As regard the car parking/ service area Mr French considers there is potential to create more parking spaces. Mr French believes that 3 extra spaces can be created without causing any access issues. These spaces could therefore be let or sold and considers have a market value of between £15,000 and £20,000 each and to reflect the risks and costs associated arrives at a 'hope' value of £10,000 per space.
113. Based on this Mr French includes a total value of £30,000 for the additional spaces. The total valuation therefore being £525,549.

### **Tribunals Decision**

#### **Ground Rent**

114. The Tribunal is not acting as an arbitrator of the rent review and is simply invited by the parties to make an assumption as to the review figure based on the evidence submitted by the respective expert witnesses; the purpose being to arrive at a revised ground rent from which to apply an appropriate capitalisation rate in order to then calculate the price payable for the freehold interest.

115. The ground rent increase is to rise by the same proportion that the aggregate values of the flats has risen from when the leases commenced up to the review date of 1 January 2021.
116. The Tribunal has considered the parties respective approaches. Mr French's approach is to broadly rely on indices supported by actual sales data (adjusted where necessary to reflect the period up to the review date). Mr Collinson's approach is to rely on the most recent transactions that have been agreed around the rent review date.
117. The Tribunal prefers the evidence of the Applicant/ Mr Collinson which is based on actual market transactions relating to the Building itself. The difficulty with relying on indices evidence is the very nature of their construction and the need for various valuation adjustments to make them fit a particular property. The Tribunal finds that the root of any valuation should begin with actual market evidence, if available, and in the absence of this only then should other sources of evidence come into play.
118. The Tribunal therefore prefers and is persuaded by the evidence and approach submitted by the Applicant and Mr Collinson and finds that evidence of actual sales that have taken place from within the Building must be by definition more reliable than general indices relating to a wider market albeit from the same city and area.
119. The Tribunal therefore finds and assumes for the purpose of this dispute that the ground rent shall be £15,275 per annum.

### **Capitalisation Rate**

120. The parties have adopted different approaches to calculate the capitalisation rate. The central issue is the anticipated rental growth in the future. A considers there will be no or very limited growth and R considers the opposite, both for the reasons set out above.
121. The statutory valuation requires the parties to establish through a hypothetical sale in the open market as at the valuation date what a hypothetical willing purchaser and seller would agree upon as being the premium for the freehold interest in the Building.
122. The determinants of the premium payable are the ground rent and the capitalisation rate.
123. In assessing what the appropriate capitalisation rate is, consideration must be given to what factors the market would take into account in respect of the likelihood that the rental income will increase in the future at the subsequent review dates. In effect this is an estimation as to the likely performance of the investment and the return it would give an investor.

124. Given that the ground rent income is determined by the increase in value of the flats over the rent review period the factors the market would consider as potentially detrimental - risk factors - are matters such as market conditions/ trends, size and quality of accommodation, any noise and nuisance issues as well as general management and insurance costs, potential high rise building safety issues as well as the actual valuation costs of calculating the revised rent at review, the effects of inflation and review pattern. It is also reasonable to assume that a potential investor would also have some regard to past performance as a guide and more specifically the increase in the values of the flats since they were first sold. It is reasonable to expect that a potential investor would therefore be acting knowledgably and prudently in this respect.
125. It is accepted that evidence of investments sold based on 'Capital Value' increases determining the ground rent receivable is limited compared to 'Retail Price Index' increases. The cases the parties have referred to are on different assumptions as regard the basis for calculating the increases and so need to be treated with caution. The subject property was however sold in 2006 at 6.35% when the rental income was £13,000 per annum which albeit historic is helpful to the Tribunal.
126. The Tribunal finds that the evidence suggests that values may have increased marginally over the period since the flats were first sold following the Buildings conversion but not to the degree suggested by Mr French.
127. The Tribunal accepts that there is a high degree of uncertainty in assessing the market value of each flat as at the valuation date and further uncertainty over future capital growth which in turn impacts on the ground rent receivable. The evidence leads the Tribunal to conclude that the capitalisation rate must be at least 6%.
128. The Tribunal finds in favour of the of the all-risks EYC approach adopted the Applicant and concludes that based on the evidence and submissions made by the parties applies a rate of 6% having regard to all the factors considered above.

### **Additional Land Compensation**

129. The Respondent considers that there is potential for 3 additional car parking spaces which he has valued at £10,000 each. The Applicant is of the view that there are no potential spaces due to the various physical restrictions and inability to control and manage the area.

130. At the hearing the parties considered their positions further. Mr Collinson was of the opinion that if there was an opportunity to increase the number of spaces then surely a developer would have already exploited this. Mr French was of the view that a purchaser would identify this area as an opportunity and considered the value to be £30,000. When pressed Mr Collinson conceded that there was a possibility of 3 extra spaces available and would value these at a total of £25,000.
131. The Tribunal finds that the value to be attributable to the additional land is £30,000.

### **Valuation**

132. Having regard to the evidence adduced by the parties and the findings above the Tribunal determines that the value of the premium payable by the Applicant for the subject Property is calculated as follows:

#### **1. Freehold Interest in Building**

##### Term 1

Ground Rent	£13,000	
YP 0.07 years @ 6%	<u>0.06998</u>	£909.74

##### Term 2

Ground Rent	£15,275	
YP in perpetuity @ 6%	<u>16.6667</u>	
	£254,583.84	
PV of £1 in 0.07 years at 6%	<u>0.995929</u>	£253,547.42

**2. Additional Land** £30,000

**3. Marriage Value** £0

**Premium to be paid by Leaseholder** **£284,457.16**

**SAY £284,500.00**

### **Decision**

133. The Tribunal determines the premium payable by the Applicants at **£284,500 (Two Hundred and Eighty-Four Thousand & Five Hundred Pounds)**.

### **Appeal**

134. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) stating the grounds upon which it is intended to rely on in the appeal.

**Name: Nicholas Wint FRICS**

**Date 1 November  
2023**