FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00LC/OLR/2024/0032
Property	:	19 Merrals Wood Court, Wells Road, Strood, Rochester, ME2 2PN
Applicant	:	Groves Property Group Limited
Representative	:	Mr Robinson, MRICS, Chartered Surveyor instructed by Paul Robinson Solicitors LLP
Respondent	:	Samra Property Investment Limited
Representative	:	Mr Gifford of counsel instructed by Johnsons Solicitors Limited
Type of Application	:	Section 48(1) Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Member(s)	:	Judge J Dobson Mrs J. Coupe FRICS
Date and venue of hearing	:	21st August 2024, Havant Justice Centre
Date of Decision	:	4th December 2024

DECISION

Summary of the Decision

1. The Tribunal determines the value of the new lease is £41,300.00.

The background facts

2. The Applicant is the leaseholder of 19 Merrals Wood Court, Wells Road, Strood, Rochester, ME2 2PN ("the Property"), having purchased the lease of the Property ("the Lease") from the previous lessee on 28th July 2023 (although registered 8th September 2023) for the price of £58,000.00.

3. The Respondent is the freehold owner of Merrals Wood Court, having purchased that for the sum of £420,000.00 and been registered as the owner on 24th August 2023. There are no intermediate interests between that of the Applicant and the Respondent.

4. The flat comprises a hallway, living room, kitchen, one bedroom and bathroom, served by electric storage heaters and has a "D" EPC rating. The photographs provided revealed a three- storey block comprising retail and commercial use to the ground floor and residential flats to the first and second floors. There is a shared entrance door to the rear from the carpark, lobby and stairwell. There is no outside area to the flat. The lease grants the right to use one car parking space. The flat is situated on the second (top) floor.

5. By written notice dated 24th July 2023 [53- 56], the then lessee Ms Weeks claimed to exercise the right to acquire a new lease of 19 Merrals Wood Court pursuant to Section 42 Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). That notice was served on David Fish Limited, the then freehold owner. The Applicant proposed a premium of £19,300.00.

6. The vendor assigned to the Applicant the benefit of the notice by a deed dated 28th July 2024 [58-60].

7. The Respondent served a counter notice [61], pursuant to Section 45 of the 1993 Act, dated 2nd October 2023, and accepted an extension to the term of 189 years from the start of the original term at a peppercorn rent and the terms remaining as before but did not agree the premium, which is therefore the only matter requiring a decision from the Tribunal. The premium counter- proposed was £45,254.00.

8. The following matters further were agreed and do not require any determination:

Valuation date:	24/07/2023
Unexpired term:	49.93 years
Ground rent at valuation date:	£50.00 (16 years) rising to £75.00

Extended Lease Relativity: 99% of the notional freehold value with vacant possession (FHVP)

The sale to the Applicant on 28th July 2023 was a private sale.

9. The matters in dispute were therefore:

   i) the value of the loss of ground rent and hence diminution in value of the freehold and applicable rates
   ii) the value of the new lease (and from that the FHVP)
   iii) the value of the existing lease- and this in particular.

10. The Applicant's valuer argued for a higher figure for the value of the existing lease and a lower one for the new lease, which would have produced a lower marriage value (see explanation below). He argued for a slightly lower figure for the value of the loss of ground rent. The Respondent's valuer adopted the opposite positions.

The Application and history of the case prior to the hearing

11. The Applicant sought determination of the premium payable for the new lease by way of an application dated 14th March 2024 [3- 12]. At that time the figure proposed by the parties were as above, although by the hearing the Respondent contended for the slightly lower figure of £42,039.00.

12. Directions were given dated 27th June 2024 [13- 17]. The Directions gave the parties permission to each rely on expert valuers and for the valuers to give evidence. Correspondence provided to the Tribunal indicates that the parties' experts did not communicate in the manner intended but the Tribunal does not comment further on that at this time, there being no identifiable impact on the substantive matters for determination.

13. The Directions also provided for the Applicant to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Applicant produced a PDF bundle amounting to 159 pages in advance of the final hearing.

14. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page-numbering.

15. This Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made

for the purpose of deciding the relevant issues remaining in these applications. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

16. The Tribunal did not inspect the Property, there being no identifiable need to do and no request from the parties.

The Lease

17. The existing lease of 19 Merrals Wood Court was granted back on 25th February 1975 for a term of 99 years commencing on 28th June 1974.

18. There is a rising rent as agreed, commencing at £25.00 per year, currently £50.00 per year and in due course would have been £75.00 per year but for the terms of the new lease as agreed save for the premium.

19. There is a full set of terms identifying the rights and responsibilities of the parties and their successors. The Tribunal does not identify anything which is required to be set out in this Decision.

The relevant Law

20. The Leasehold Reform, Housing and Urban Development Act 1993 gives to qualifying lessees (described as tenants) of flats the right to acquire a new lease on giving notice in accordance with section 2. Section 56 provides that where such notice has been given, a new lease extending the existing lease by 90 years shall be granted and accepted in substitution of the existing lease upon payment of the premium payable under Schedule 13.

21. The law recognises that the granting of the new, extended lease enhances the value of the lessee's interest and reduces the value of the landlord's reversion. Paragraph 2 of Schedule 13 provides that the premium payable for the new lease is the sum of:

    (a) the diminution in the value of the lessor's existing interest (the Act describes the lessor as the landlord) resulting from the grant (determined as provided for in paragraph 3);
    (b) the lessor's share of the marriage value at 50% (determined as provided for in paragraph 4(1)) and
    (c) any compensation payable to the lessor for other loss (provided for in paragraph 5).

22. There are various assumptions made in paragraph 3 in respect of calculating the value of the lessor's interest, including that any increase in the value of the flat which is attributable to an improvement carried out by the lessee at the lessee's own expense is to be disregarded. The diminution in value of the landlord's interest is the sum which is the difference between the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and the value of his interest in the flat once the new

lease is granted. That is to say the value on a notional sale on the open market with the features provided for.

23. The concept of marriage value on extensions of leases or acquisition of freeholds is a familiar one to valuers and lawyers working in the field but perhaps a confusing one for others. It is essentially here the difference in the aggregate values of the freehold and leasehold interests in the Property with the existing Lease in place as compared to them upon the grant of the new lease. The determination of the various values is provided for, save that where the unexpired term of the existing lease exceeds 80 years, marriage value is £nil.

24. Hence, valuations of the existing lease and the new lease, and of the landlord's interest in the flat before and after the grant of the new lease are all required to enable the required calculations.

25. The 1993 Act requires that the existing lease be valued on the assumption that there was no right to an extended lease under the 1993 Act ("without Act rights").

26. Caselaw identifies that the new lease to be granted to a tenant under section 56 "shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date", subject to certain potential departures from these existing terms as provided for in section 57. As there was no dispute about any of the terms save for the premium, it is not necessary to say more about the law regarding such other terms.

27. There have been numerous decisions of the Upper Tribunal and many more by this Tribunal over the years in respect of determination of a premium. It is neither practicable nor necessary to refer to any more than a few of those. The Tribunal does refer to five in respect of the value of the existing interest at the relevant date in particular and in respect of the method of determining the value.

28. One method of establishing the value of an existing lease is by consideration of sales of other short leases in the same block or nearby. The other is by the use of a "relativity", that is, a percentage figure that calculates the value of the existing short lease by reference to the FHVP- the shorter the remaining term, the lower the relativity. The cases are summarised as appropriate immediately below.

29. The first of those is *Roberts v Gardner* [2018] UKUT 64 (LC), which Mr Gifford provided with his Skeleton Argument, although did not refer to on this point in that document. The valuers had agreed that there was sufficient sales evidence not to rely on graphs of relativity. The Upper Tribunal said that "The Tribunal has consistently indicated a preference for market evidence where it is available, and has warned that graphs should only be considered if the market evidence is inconclusive." and "we now have sufficiently reliable market evidence before us to obviate the need to rely on graphs".

30. The second is *Mallory v Orchidbase Limited* [2016] UKUT 0468 (LC) to which reference is made both by Mr Gifford in his Skeleton and by Mr Robinson in his report. The Upper Tribunal described the dispute as to existing value as a "'market evidence v relativity graphs' point". It was explained that "the use of graphs was only appropriate in the absence of market evidence, since there were shortcomings in the graphs". The Upper Tribunal said "We endorse and reiterate the Tribunal's preference for market evidence over the use of relativity graphs, as long as it can be shown that the market evidence is reasonably comparable and does not require artificially extensive manipulation in order to apply it to the subject valuation".

31. As outlined by Mr Gifford, the decision in *Mallory* identified that the existing leasehold interest is to be calculated by reference to "market evidence [that] is reasonably comparable" but in the absence of that to relativity graphs. There is discussion of what the quoted phrase means.

32. The third is a decision of the Upper Tribunal in a case not referred to by the parties of *Daejan v Collins* [2024] UKUT 26 (LC). The last is another decision of the Upper Tribunal, *Brickfield Properties Limited v Ullah and others* [2022] UKUT 025 (LC).

33. The Tribunal is very much mindful that neither of the parties made reference to those last two cases. However, the Tribunal considers that both are authorities known to practitioners in the field and *Daejan* considered and applied both *Roberts* and *Mallory.* Further, the arguments presented by the parties indicate a clear awareness of the principles and the particular cases apply those to specific situations. The Tribunal considered whether it ought to seek specific further representations but concluded in the overall circumstances that was not necessary.

34. As will be seen below, of the two additional cases, the Tribunal primarily has regard to *Daejan v Collins* in which there was a contemporaneous sale of the particular property, although not as contemporaneous as in this application. It is also the more recent of the two decisions. *Brickfield* involved two sales of the property in question within two weeks at what set were described as "radically different" sale prices. That is not the situation encountered by this Tribunal, so whilst there was discussion of the reliability of sale prices as market value in that context the issue determined was a quite particular point which does not arise here.

35. Both decisions grapple with the various relativity graphs which are referred to in cases such as this one. In *Brickfield* in particular it is identified that the most helpful graphs and tables tend to be regarded as those produced in 2016 by Savills and Gerald Eve [141- 148 as produced by Mr Robinson in his report] with regard to what is described as Prime Central London following another decision of the Upper Tribunal (*Deritend Investments (Birkdale) Limited v Tresknova* [2020] UKUT 01644 (LC)), although in *Daejan v Collins* there is discussion about potential issues with different graphs.

36. The Tribunal does not seek to out other matters from either case at this point but rather refers to relevant aspects as and when appropriate in the course of its consideration of the material presented to it and the circumstances of this case.

37. Whilst on the subject of graphs, Mr Robinson referred to *Trustees of Barry and Peggy High Foundation v Zucconi and Anor* [2019] UKUT 242 (LC) and referred to the "two graph blended approach" (the two being the Savills and Gerald Eve ones) endorsed there but as identified above also referred to in *Brickfield* (and in various other authorities).

38. There are certain other case authorities mentioned below briefly but none which do not set out long established and uncontentious principles and which require any discussion.

The Hearing

39. The hearing was conducted at Havant Justice Centre in person.

40. The Applicant was represented by Mr Adam Robinson MRICS, the surveyor instructed on behalf of the Applicant by the Applicant's solicitors. There was no attendance by those solicitors, although there was no suggestion that they had ceased to act and the Tribunal had certainly not been contacted in that regard.

41. The Respondent was represented by Mr Noah Gifford of counsel. He was accompanied by Mr Sethi, the Respondent's solicitor; Mr Steven Collins MRICS, the Respondent's valuer; and two directors of the Respondent, Mr Singh and Mr Samra.

42. Mr Gifford provided a Skeleton Argument, although only immediately before the start of the hearing. Mr Robinson was somewhat taken aback at the late provision of that document, which Mr Gifford had sought to give him outside and he had refused to take in light of the timing. The Tribunal could understand Mr Robinson's concern and firmly considers that Skeleton Arguments should not be provide to other parties at such a late juncture, irrespective of whether directions given provided for any earlier cut- off or not. However, on balance and as the matters referred to in the Skeleton Argument were ones which could otherwise have been addressed in longer oral closing submissions, the Tribunal considered the Skeleton Argument in addition to the oral submissions of both sides. That said, the usefulness of the Skeleton Argument as an aide to the Tribunal in preparing for the hearing was entirely removed by the late timing of its provision and the fact that, inevitably, the Tribunal had by then read the bundle.

43. One matter which the Tribunal had identified but which Mr Gifford rightly pointed out in his Skeleton was that both the statement of Mr Robinson and the second statement of Mr Collins had been served out of time as compared to the dates provided for in the Tribunal Directions. As the parties were only permitted to rely upon evidence submitted in accordance

with the Directions, it followed that those statements could not at that stage be relied upon. Mr Gifford submitted that the Tribunal should either disallow both statements or to permit both parties to rely on their statements. Mr Robinson did not argue the contrary.

44. The Tribunal considered the submissions and noted its power under rule 6 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to regulate its own procedure; the specific example of such powers in rule 6(3)(c), including the ability to extend the time for complying with any rule; the specific power in rule 8(2) where a party had failed to comply to take such action as it considers just, including amongst other options, waiving the requirement and implicitly, although not expressly, the power to vary a requirement and finally, the over- riding objective explained in rule 3.

45. The Tribunal determined that the appropriate course was to permit the parties to rely on the statements. The Tribunal identified that as providing the best evidence, noted neither side objected to that course, considered prejudice and the balance of that and concluded that overall it was in the interests of justice to permit reliance.

46. The Tribunal received oral evidence from both Mr Robinson, who was questioned by Mr Gifford and further by the Tribunal where the Tribunal considered that appropriate, and from Mr Collins, who was questioned by Mr Robinson and then insofar as appropriate by the Tribunal. The Tribunal considered there were weaknesses with the evidence of both, although more so Mr Collins, who was unconvincing and accepted unfamiliarity with such matters.

The evidence received as to the premium

47. The Applicant provided written evidence that it had purchased the Property on 28th July 2023 for the sum of £58,000.00. That is very much contemporaneous with the relevant valuation date of 24th July 2023, indeed it could hardly be more so, being a mere four days different.

48. The other written evidence received by the Tribunal consisted of reports of the parties' experts. That of Mr Robinson was dated 12th August 2024 and it is apparent that a report was prepared by Mr Collins dated 25th September 2023 [73- 92]. However, more specifically in these proceedings, the written evidence comprised- given the Tribunal permitted later evidence to be relied upon- a Witness Statement from Mr Collins [68- 72 plus his incorporated report], an Expert Witness Report from Mr Robinson [93- 154] and a Second Witness Statement from Mr Collins [155- 159]. The Tribunal has given those documents the titles given by the parties and so the titles have no greater significance. Both valuers provided calculations.

49. The oral evidence of Mr Robinson and Mr Collins added to that written evidence. The Tribunal does not set out here but rather refers to the relevant aspects in respect of each of the elements for determination by the Tribunal when it addresses those below.

50. It was identified that Mr Collins is based in Winchester and the point unsurprisingly made on behalf of the Respondent that there is quite a distance between Winchester on the one hand and Rochester on the other. Mr Collins said that he undertakes work in various locations, including in Strood. He explained that he used to live in Kent and that he worked there for 25 years. Mr Robinson highlighted that he as worked in the area of the Property for many years.

The Tribunal's findings and determinations

51. There are a number of relevant determinations to be made and the Tribunal takes those one at time, identified by sub- headings.

Valuation of the extended Lease

52. Mr Collins had measured the Property as 37.30 sqm (405 sq.ft), describing it in his report as "compact". Elements were somewhat dated and double-glazing ill- fitting in places. Features that may not enhance the appeal of the Property were noted. Mr Robinson measured the Property as 38 sqm. He noted that the Property is situated within 200 metres of the M20 motorway, and that excessive traffic noise was evident. For the avoidance of doubt, the Tribunal considers that the difference between the surveyors as to the size of the flat- 0.70 sqm- is inconsequential for these purposes.

53. The Applicant's written case relied principally on the sale prices of four flats said to be comparable to the Property, three of which were other flats with Merrals Court- Flats 11, 11a and 17. For the three flats at Merrals Court, the prices were variously £118,000.00 (April 2022), £125,000.00 (October 2021) and £165,000.00. The fourth flat sold for £170,000.00 although in a different block, much as one of a similar nature. Those amounts require adjustment to the relevant date, at which the middle figures for example would have been £119,000.00 (Flat 11a), £131,000.00 (Flat 11) and £159,000.00 (Flat 17). Mr Robinson arrived at a valuation of £116,162.00.

54. Mr Robinson described two of the four comparables as "close to like for like" (Flats 11 and 11a) and the other two as larger flats, 17 Merrals Court and 59 Wells Road, used as a "sense check".

55. The Respondent's written case relied primarily upon research undertaken by Mr Collins. He also identified the 3 sales of flats in Merrals Court. In addition, he said that he had contacted a local estate agent who it was asserted knew the block well and who gave the advice that a value of £130,000 t0 £140,000 is appropriate. It was said that Mr Collins considered that in conjunction with the evidence of recent sale prices of flats in the block [77] and that advice, arriving at a valuation of £135,000.00, proportionately a good deal higher than Mr Robinson's valuation. £135,000.00 is midway between the figures advised. Mr Collins identified no other sales since the dates of the respective reports.

56. Mr Gifford criticised the approach taken by Mr Robinson within his Skeleton Argument suggesting no "rhyme or reason" for that approach. Mr Gifford highlighted that the lowest sale (Flat 11A) was for a flat with a sitting tenant and asserted that the relevant two sales were those at the middle values of the range, which he contended support Mr Collin's figure. As identified below, the Tribunal does not agree with Mr Robinson but it does not accept the criticism of him to be made out or agree with Mr Collins.

57. In oral evidence, Mr Robinson repeated essentially how he had valued in response to Mr Gifford's suggestion of a lack of reasoning. He added that he had averaged £119,000.00 and £131,000.00 and then reduced to take account of improvements which he rejected as being an attempt to depress the value. Mr Robinson did not accept the description of Flat 11a as having "a sitting tenant" was appropriate where that was under an assured shorthold tenancy and suggested that the assertion that a property with a tenant could not be described as vacant was splitting hairs. In any event, he suggested that could increase the value as appealing to an investor, which he asserted would be the likely purchaser.

58. Mr Robinson rejected the valuation of flats in Merrals Court as between £130,000.00 and £140,000.00, citing what he described as "outstanding comparables" being the actual sales of equivalent flats and regarding it inappropriate to rely on the estate agent, even as a cross- check. It was established that the improvements said to be relevant to the reduction to £116,000.00 were not obviously identifiable in the report, a point which Mr Gifford reminded the Tribunal of in closing. In response to questions from the Tribunal, Mr Robinson said that he had identified £10,000.00 worth of improvements, comprising £4000.00 for double- glazed windows, £4000.00 for an updated kitchen and £2000.000 for modern night storage heaters. He accepted that the kitchen was functional when the flat was built but maintained it was better now. He did not know the heating system (if any) at that time.

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59. In his oral evidence, Mr Collins stated he had considered the comparables, weighed the location, size and specification and photographic evidence and reached a value judgment. He accepted a lack of evidence for any allowances made or indexation undertaken but denied he had simply taken the figure of £135,000.00 from the estate agent, asserting that information to be "a general window into the market". Mr Collins gave other explanation in response to various questions from Mr Robinson but did not present as especially confident in his replies and accepted his attempt to explain how he had calculated the freehold value failed to adopt conventional methodology and that he had not allowed for "without Act rights". Mr Collins accepted it could be inferred that he had placed a lot of weight on the estate agent, although he denied doing so.

60. The Tribunal determined, having considered the evidence, that the extended lease value is £125,000.

61. The Tribunal does not consider that the comparables support a figure as low as that advanced by Mr Robinson, although it has noted his experience in the locality. Equally, the Tribunal applies caution to the advice of an unidentified estate agent talking generally to Mr Collins and not about the Property. The Tribunal does not regard selecting the mid- point of the range suggested by that estate agent to be appropriate.

62. The Tribunal notes that the block is not especially attractive. The view from the front as shown on the photographs of various vehicles parked on the forecourts to the commercial premises does not assist that. The rear entrance by commercial rear doors and air conditioning units has little to commend it.

63. The Tribunal considers that the closest comparable is Flat 11 but that is presented in the photographs produced by Mr Robinson as in a better condition, such that the Tribunal considers the value of this Property could be a little lower.

64. The tenanted 1-bedroom flat, Flat 11a, has that feature, provided a logical reason for the lower sale price of that flat. The Tribunal accepted potential appeal to an investor but agreed with the Respondent that there was rather less appeal to other potential purchasers, so reducing the pool and value. It is also notable that it was advertised for a cash buyer. Otherwise, save for being also revealed by photographs to be in better condition than the Property, it was a close comparison and would have been as good a one as Flat 11. The Tribunal considers that 10% should be added to arrive at a proper comparison with the Property to allow for the above features, producing a similar figure to that for Flat 11.

65. Of the other comparables, the Tribunal agrees that they can be utilised to check the outcome from the first two comparables but no more than that. 59 Wells Road has 3 bedrooms, is laid out across two floors and is more than double the size, such that it provides little indication of the value of this Property. 17 is a 2- bedroom flat of 58 sqm, approximately 1.5 times the size, so whilst the sale date of that is closest of the comparables to the valuation date, it is again somewhat different to this Property. The Tribunal therefore sets little other store by those two.

66. The Tribunal noted both of the 1- bedroom flats are on the first floor rather than the second floor. Given the block does not have a lift and to a degree mindful of variance in values more generally, the Tribunal determined that the second floor Property had a slightly lower value. The Tribunal considers that there should be a reduction of £2,000.00 to reflect that.

67. The Tribunal also noted both Flat 11 and Flat 11a to have been modernised more than the Property and had particular regard to the impact on the non- tenanted flat, Flat 11, in that regard. The Tribunal determined that there should be a further reduction from the adjusted price of £131,000.00 achieved for Flat 11 to reflect that.

68. The Tribunal was also mindful that the condition of the Property and the comparables as at the commencement of the Lease in 1974 was relevant. Modern in 1974 was not the same as modern at the time of the sales considered, so adjustment is required to the adjusted sale prices of 11 and 11a to allow for that. There is no suggestion that the kitchen to the Property was in a different condition to that for the other flat in the Building at that time. The Tribunal had regard to the kitchen being small and so brand new now would make only little difference from brand new in 1974, noting the amount spent on such matters and the increase in value are quite different. It is not clear when improvements were made and they depreciate over time. The Tribunal determined, whilst it took them into account, those matters are not of value.

69. Taking into account the above analysis, the figure reached by the Tribunal is £125,000.00. Standing back and taking matters in the round, the Tribunal finds that a sensible figure for the relevant value of this Property and the correct one.

Valuation of the FHVP

70. In accordance with conventional valuation methodology the long leasehold value is adjusted by 1% to arrive at the notional freehold vacant possession value as also agreed between the experts.

71. It follows that the FHVP is £126, 263.

Valuation of the existing Lease

72. This aspect of the case involved the most significant dispute and threw up an interesting issue as to the effect of contrasting values on the basis of a contemporaneous sale of the specific Property at a given price as compared to the value which was suggested by other materials, being relativity graphs.

73. It also arises in the somewhat odd circumstances that it is the party which was involved in the relevant transaction which argues that the sale was not for open market value and the party which was not involved in the transaction which argues that it was. If the sale price was below market value and so the market value was in fact higher, the Applicant benefits because of a potentially lower premium now payable. (If the sale was at market value, the Respondent benefits by that producing a higher premium.)

74. The Tribunal carefully considered the key evidence advanced on each side, notably the sale price of the contemporaneous sale and the graphs of relativity. No reliance was placed on sales of comparable properties with short leases and as the Tribunal received no evidence of the market value of any such comparable flats, necessarily it did not take account of any.

75. It merits recording, and is not in dispute, that Mrs Weeks purchased the Property on 4th October 2010 for £56,000.00.

76. The written evidence of Mr Robinson asserted that the base value was £77,000 as at the relevant date, working from his proposed FHVP of £116,162.00, and that adjustments increased that to £87,425.00.

77. In contrast, that of Mr Collins advanced the position that it was difficult to justify any significant deviation from what he termed an open market transaction, although he did in writing make a small adjustment upward of £3000.00 which he said was to reflect dilapidations. He additionally rejected the adjustments made by Mr Robinson as unnecessary. Consequently, Mr Collins valued the Property at £61,000.00, at least at that point.

78. The oral evidence of Mr Robinson highlighted an email [136] between a director of the Applicant and its bankers as demonstrating the sale to be off- market. He said that the parties were connected but could not point to any evidence. He accepted that there was no acceptance that this was not a willing vendor. Mr Robinson said he had been told that by either his client or the solicitor that the families know each other- which rather went to demonstrate that Mr Robinson at best could relay what someone else, the identity of whom was uncertain, had said to him and had no knowledge of whether it was correct.

79. The oral evidence of Mr Collins added that he considered that although the sale to the Applicant was not a market sale, there was no reason to identify it did not involve a willing seller and was not at arm's length. He described the sale price as "the fact we have". Mr Collins accepted it did not meet requirement e) for valuations pursuant to the Red Book (the RICS Valuation- Professional Standards), lacking marketing evidence and exposure to the market but asserted the other clauses were met. Mr Robinson suggested to Mr Collins that it was odd for the value of a lease with 50 years remaining to be under 50% of the extended value but Mr Collins contended that in his experience there had been other situations with similar results.

80. Mr Collins did not accept the lack of a sense- check against the relativity graphs was an issue and said that he had considered matters in the round and was comfortable with the figures. In response to query from the Tribunal, Mr Collins conceded that it would have been prudent to have checked the indices, although he maintained that it would have taken "quite a lot" to deviate from the transaction itself. In response to a question about why he had made the £3000.00 adjustment in his report but not in his calculation, Mr Collins said that both lessor and lessee were in breach of covenant, and he had allowed in his written report £3000.00 to bring the lessee into compliance. He said that he had dropped that as unnecessarily complicated.

81. Somewhat unsurprisingly, Mr Robinson in closing comments argued that his approach was correct by using relativity graphs and he observed that the off- market sale does not meet Red Book requirements, so he said should be ignored. In contrast and equally unsurprisingly, Mr Gifford

argued that the contemporaneous sale of the specific Property provided extremely good evidence for the value of the Property at the relevant date.

82. Hence the dispute was, as with *Mallory* a "market evidence v relativity graphs point".

83. The Tribunal identified that the sale price of £58,000 is something of an outlier in comparison to figures suggested by the graphs and falls far short of the graph approach at 70.64% of the FHVP, which would give a figure of £89,192.18, so approximately 50% higher. It is also very similar to the price of £56,000.00 for which Mrs Weeks purchased the Property, albeit that there were 13 more years left on the Lease at that time and that will have been relevant.

84. The Tribunal is very much aware that in *Daejan v Collins*, the Upper Tribunal explains that the base of the valuation is a transaction of the property itself, which in that case and like this one was almost contemporaneous with the valuation date. In *Daejan v Collins*, the subject property was sold only three months before the date of the application for the extension of the lease and a date-adjusted value was readily available. Here, no adjustment is required because the sale date is so close to the valuation date.

85. It was explained in *Daejan v Collins* that, "In such cases the value of the lease without Act rights can be calculated without using relativity". However, that related to a sale on the open market.

86. This is such a case in terms of the timing of the sale but not entirely the same as the situation in *Collins* otherwise. It is right to say that there is a dearth of other market evidence around the relevant date. That said, in principle, there can usually be no better evidence of the value of a Property at or about a given date than the amount which it actually sold for at that time.

87. In Brickfield the Upper Tribunal described a sale of the subject property at the valuation date as "ordinarily an unimpeachable starting point for a valuation".

88. If that were the entirely the end of the matter, no more would need to be said. However, the position is not so simple.

89. The Upper Tribunal in *Daejan v Collins* also stated that as such, there is no need to use the relativity tables as "anything other than a cross-check". It was nevertheless said that "if the value calculated without the use of the graphs is adrift from the value in the tables then something may have gone awry and it may be worth looking again at adjustments." The starting point may not be the end point.

90. The Tribunal understands the legal position as set out above. The Tribunal considered the evidence presented to it in applying the law. The outcome applying the law is dependent on the evidence received and accepted. The

Tribunal makes the assessment of the evidence applying its expertise and accepting that a differently constituted Tribunal might validly weigh competing evidence differently.

91. The Tribunal is very much aware that cross checking the sale price of £58,000 against the tables throws up an anomaly. An approximately 50% increase applying the relativity graphs cannot lightly be ignored.

92. Hence, there is an obvious suggestion in this application that something may have gone awry, comparing the actual sale price to the value suggested by the graphs and table and notwithstanding the "shortcomings" of those graphs. Specifically, that the actual contemporaneous sale may have been for a price some distance below the market value.

93. The quite strong indication of an anomaly because of the extent of the difference is more than enough for the Tribunal to pause, to carefully analyse the evidence received, to look closely at how the evidence as a whole fits together and to consider any reason for the anomaly presented. There would then need to be something revealed by that analysis, a reason to depart from the actual sale price.

94. However, the Tribunal after careful consideration and debate concludes that in the particular circumstances in this case there is insufficient to go beyond that actual sale price and to adopt the figure suggested by relativity or any other figure. In doing so, the Tribunal weighed the competing evidence of the sale price and the graphs and considered the limitations of each. The Tribunal determined that the greater weight should be given to the sale price, notwithstanding the limitations of that.

95. The Tribunal determined that the Applicant offered insufficient beyond the graphs and tables, and in particular a lack of evidence as to how the sale price was arrived at, for the Tribunal to depart from the actual contemporaneous sale price.

96. If there has been sound evidence on behalf of the Applicant which provided an explanation for it being at the particular level, revealing it to be below market value and, preferably, the reason for that, the Tribunal would have taken considerable note of that. It may very well be that the Tribunal would have determined that even the contemporaneous sale at the particular value was not sufficient to enable a finding of that as the market value.

97. The Tribunal has carefully noted that the sale in July 2023 was a private sale. It was not the outcome of marketing with a pool of potentially interested purchasers having the opportunity to make offers on the basis of their perception of the value of the Property. Whilst Mr Gifford on behalf of the Respondent contended in his Skeleton Argument that there is "clear market evidence", the Tribunal disagrees with that contention. The market was not tested.

98. The sale price is not unimpeachable. The fact of a private sale is undoubtedly a potential reason to depart from the sale price. There is

plainly scope- and greater scope than a public sale- for the price not to be at market value. However, the more particular question is whether there is enough evidence solely from the fact of a private sale or alternatively or additionally from other evidence that the Tribunal should determine the sale not to be at market value and to depart from it.

99. The Tribunal surmises that the Applicant bought with the intention of extending the Lease- the valuation date created predates completion of the purchase. Equally, the Tribunal infers that the vendor was aware of the fact that the Applicant would extend the Lease- the Applicant's solicitors are named as the solicitors appointed by the vendor for the purpose of the claim on the notice- and was probably aware that the Applicant would incur some expense in doing so. It may be that the vendor did not have the inclination and/ or resources to seek to extend the Lease.

100. There may or may not have been some acute or other event which led to a desire to sell. There may or may not in the event of wider marketing have been other potential purchasers who possessed the desire and resources to extend the Lease and who held any particular view about the Property with the unexpired term at the time. There is of course a dizzying array of possible circumstances which may or may not have been relevant to the sale price or any potential sale price.

101. Whilst Mr Robinson made the assertion that the sale parties were connected, there was no cogent basis presented of that. It was accepted by Mr Robinson that he had no first-hand knowledge of such matters and notable that he was not even clear as to who had told him, still less anything more precise. The assertion, although given in evidence is considered by the Tribunal to barely be describable as evidence, or at least is extremely weak evidence. It is not backed up by cogent evidence from anyone in a position to provide that.

102. It was also it might be added, that the matter was not mentioned at any point in the expert report of Mr Robinson or referred to in any correspondence on behalf of the Applicant which was produced to the Tribunal. That is not to suggest that the Tribunal disbelieved Mr Robinson's evidence as to what he had been told. However, the fact that it came out of the blue in mid- hearing did reduce even further the weight which the Tribunal determined could be given to any potential impact on the price.

103. There could have been witness evidence of witnesses of fact explaining the assertion by Mr Robinson and giving details of the circumstances of the sale, including how and why the sale price was arrived at. The assertion is made on behalf of the Applicant, which was one of the parties to the purchase and fully able to provide that. It may also be that such evidence could have been corroborated by evidence from the vendor. It was entirely in the gift of the Applicant to adduce evidence of how the sale price was arrived at which it considered would assist it.

104. The Tribunal does not know what evidence might have been adduced about any of those by the Applicant but was not. It cannot do. It is not the role of the Tribunal to speculate. The parties, and most pertinently the Applicant, had the assistance of solicitors and valuers. They were able to adduce any evidence and argument that they wished. The Tribunal considers the case on the basis of the evidence that the parties did adduce.

105. So, the parties to the sale might have been connected in some fashion or might not. That may explain why there was a private sale or it may not. It might have resulted in sale at below market value or might not. The Tribunal is, as Mr Gifford put it, being invited to assume that Ms Weeks did not sell seeking market value. He contends such an assumption to be logically flawed.

106. The Tribunal agrees with him. It is not for the Tribunal to assume or speculate. Indeed, if anything, the fact that the party fully able to explain the circumstances of the sale in support of its case did not choose to do so would be more likely to support the drawing of an inference that in fact there is no explanation and imply the sale price to be at market value whatever the relativity might otherwise indicate.

107. The Tribunal therefore finds that whilst the fact of a private sale creates a greater potential for the sale price not to have been at market value, the lack of additional evidence is such that the potential is the limit of the matter. The evidence does not demonstrate an actual basis for identifying the sale to be at below market value simply because the sale was a private one and without more. The difference between the sale price and that suggested by the relativity cross- check is not sufficient without more.

108. The Tribunal does not consider that surmising and general comment provides anything from which it can properly draw any inference in favour of the Applicant's contended value. There is far too great a gap in the evidence for the Tribunal to be able to draw an inference.

109. In this instance all that the Tribunal tangibly has is that there is an obvious anomaly when considering the outcome of the value suggested by the graphs against the actual (private) sale price. Those suggest that the sale price was at below market value and might go to suggest that something related to the fact of the private sale did produce that outcome. However, as identified above, the Tribunal does not know why that might have been, if indeed it was.

110. The Tribunal determines a contemporaneous sale to be the best evidence unless sufficiently called into question. Here, the sale price is called into question, but the Tribunal has determined on its assessment of the evidence received that was insufficiently so to depart from it.

111. There is, it merits specifically noting, no later sale for a "radically different" sum. So, no more is provided by anything like that. Whilst understandably in *Brickfield* the only modestly later sale for a proportionately much greater sum cast significant doubt on one or other or

potentially both sale prices and the market value as indicated by the relativity graphs was consistent with the earlier sale price of the two, that does not arise in this application.

112. For the avoidance of doubt, the Tribunal rejected taking an approach of arriving at an average of the actual sale price and the figure which the graphs would suggest the market value to be. There is no way of identifying which figure in that range ought to be selected and how much weight to give to the sale price and the likely value as suggested by the graphs to identify how far from one figure to another the sum selected should be. The Tribunal concluded that would not be an exercise in valuation applying the relevant law and its expertise but rather one of undertaking a mathematical exercise from two starting points and arriving at somewhere in between which could not be explained in any other way and that in this instance that is not an appropriate approach to take.

113. Hence, in broad summary, in the context of such other limited evidence as is provided, the Tribunal prefers the evidence of the actual contemporaneous sale price to the evidence provided by the graphs of relativity. The Tribunal finds that the best, although as a private sale somewhat imperfect, evidence before it remains that actual contemporaneous sale price. The Tribunal repeats that there are indications that it may not be at the market value, but the weight of such evidence as provided is insufficient.

114. The outcome of that is such that, whilst the evidence of neither side was perfect, on the balance of probabilities, the Tribunal finds on the evidence presented that the contemporaneous sale price was at the market value.

115. For completeness whilst Mr Collins had in his written evidence considered that £3000.00 should be added, he withdrew that sum and the Tribunal did not find support for the earlier approach in any event.

116. The Tribunal determines that there is no need to obtain any date-adjusted value. The Tribunal finds that the overwhelming likelihood is that the value would have been the same on 24th July 2023 as it was on 28th July 2023. So, there is no need to adjust the price for difference in time applying any appropriate indices and no impact on reliability that might produce arises here.

117. That does not make it the relevant value for these purposes given that the Tribunal must allow for a reduction to arrive at the correct figure if there were no 1993 Act rights.

118. The Applicant's valuer did not address that point, having relied solely on the tables. Neither did the Respondent's valuer address it. Nevertheless, the Tribunal necessarily needed to determine the element given the requirements of the Act.

119. The Tribunal determines that percentage deduction to be 6.5%. In doing so, the Tribunal has applied its expertise generally but has had

particular regard to the reduction of 7.5% applied where the remaining term as 45 years (*Nailrile e Ltd v Cadogan & Ors [2009] RVR 95*) and 6% where the remaining term was 52.6 years (*Zucconi*). The Tribunal has taken those from page 17 of *Daejan v Collins* following the relatively simple approach commended in that decision.

120. In respect of this element, undertaking a mathematical exercise is appropriate and sensible. Adopting a linear interpolation between those and reflecting the 49.93 years remaining on the original term produces a figure of 6.5%. Stepping back and considering that percentage, the Tribunal is content that it is an appropriate one. Consequently a 6.5% reduction for no- Act is determined appropriate.

121. That provides for the existing lease value to be £54,230.00.

Valuation of the reduction in value of the freehold

122. The Tribunal first under this heading addresses the extent of the reduction in value of the freehold arising from the loss of ground rent agreed as £50 for the next 16 years and £75 for the subsequent 33 years.

123. The Tribunal determines the appropriate capitalisation rate to be 6%.

124. Mr Robinson in his report referred to 7% for what he described as "modest ground rent income with conventional review periods." He maintained that position in his oral evidence. He did not agree 6%, considering the appropriateness of the percentage depended on the amount of any increase in ground rent within the lease and "dynamics".

125. Mr Collins did not accept Mr Robinson's assertion that 6% was not appropriate because of the low level of the ground rent. He said that the income was secure, it was affordable, usually paid on standing order and there were severe consequences for non- payment. He considered the return was good compared to other investments, although accepted he had no evidence to back that up. Mr Gifford relied on the above authority of *Roberts* as providing 6% as the appropriate rate where ground rent is increased every 25 years.

126. The Tribunal noted that the ground rent income stream, whilst modest, is both secure and subject to a review mechanism. Accordingly, the Tribunal prefers the approach adopted by Mr Collins and accepts a capitalisation rate of 6% as appropriate.

127. The Tribunal next moves to the loss of value of the freehold less the retained value following the extension of the Lease.

128. The Tribunal determined the appropriate rate- the deferment rate- to be 5%. The Tribunal noted that the starting point pursuant to the authority of *Cadogan v Sportelli* [2007] 1 EGLR 153, which Mr Gifford also provided in his bundle of authorities, is 5% for flats outside of London as this one is. Mr Gifford suggested in his Skeleton that the appropriate rate was 6%

when considering the inflation rate at the relevant date, although noting that in fact favoured the Applicant rather than his client. It was quite appropriate for Mr Gifford to highlight the argument following his professional obligations. It also reflected the position taken by Mr Collins in his second statement.

129. Mr Collins in his first witness statement discussed the rate and explained that he had used 6% whereas Mr Robinson had used 5%. He regarded there to be no error, simply a difference of opinion. He accepted in his second statement that 5% was arguable, although he maintained 6% as correct in oral evidence on the basis of a spike in inflation causing erosion of value and the Property falling outside Prime Central London. Mr Collins also asserted that he had undertaken a valuation calculation in September 2023, although not before the Tribunal and he said that he more recently had sought to put his figures in the format used by Mr Robinson.

130. Mr Robinson did indeed apply 5% on the basis of *Sportelli* as the generic rate unless compelling evidence was produced to deviate from that. He maintained that position in oral evidence. Mr Robinson did not regard the rate of inflation, which Mr Gifford suggested to be high and Mr Collins had relied on, was relevant and that the lower level of inflation at the time of *Sportelli* altered matters.

131. Whilst noting the point made for the Respondent, the Tribunal did not consider that 6% was the appropriate rate in this instance. Rather, the Tribunal gave consideration to the circumstances in which the rate might move away from the starting point of 5% but considers that there is no reason to, such that the starting point is also in this instance the end point.

132. Applying those rates, the Tribunal calculates the sum of £920.58 in respect of loss of ground rent. The Tribunal has added to that the value of a reversion in 49.93 years of £11,048.01 and then deducted the value of the freehold after the extension is subtracted. That gives the sum for the reduction in value of £11,830.00.

Calculation of the premium

133. Applying the above figures for the value of the interests before and after the lease extension, the marriage value itself is £58,940 and hence the Respondent's share is £29,470. To that is to be added the reduction in value of the freehold of £11,830.00.

134. The Tribunal attaches a calculation undertaken in the usual manner. The Tribunal sees little merit in repeating any figures further. The outcome of the calculation is shown.

135. Hence the appropriate price to pay for the extension of the Lease of £41,300.00.

Decision

136. The effect of the above determinations is that the Tribunal determines the premium payable pursuant to the Act to be £41,300.00.

Applications in respect of costs and fees

137. The Respondent argued, including in the Skeleton Argument of Mr Gifford, that the Respondent is entitled to its costs pursuant to section 60 of the 1993 Act.

138. Mr Gifford advanced a further argument in his Skeleton Argument that the Respondent should be paid its costs by the Applicant pursuant to rule 13 of the Rules, necessarily premised on the Applicant having behaved unreasonable in the pursuit or conduct of the proceedings.

139. The first argument is unquestionably correct, subject to an assessment of those costs, although an assessment will need to be undertaken on the basis provided for.

140. In respect of the latter, it was said that the rule 13 aspect would be expanded upon at the hearing, although in the event it was not.

141. The Tribunal understands it to be premised on fault on the part of the Applicant in facilitating discussions between the valuer experts. The Skeleton Argument in its chronology of events refers to inviting the Applicant to exchange reports in April 2024 and the Applicant declining. The bundle contains correspondence [61-62], which also asserts that the Applicant failed to respond to the counter- notice but issued proceedings.

142. The Tribunal notes in contrast, Mr Robinson's report concluded with communications he sought to send to Mr Collins 31st May 2024 to 22nd July 2024, although only on the last date is it said the Applicant's solicitors were informed. There was then a further attempt on 6th August 2024. Mr Collins responded the day after stating that the previous emails had not made it through. That is a logical explanation for the lack of response, although as to why communications apparently sent to a correct email address for the company did not arrive is unclear and it is a little surprising that Mr Collins did not make any enquires about potential contact.

143. The premium determined by the Tribunal is very close to the figure advanced by the Respondent, although not arrived at in quite the same way. That demonstrates that the Respondent was largely successful overall, but that does not render anything by the Applicant unreasonable in itself.

144. If the Respondent wishes to pursue the rule 13 argument, it will need to inform the Tribunal of that and directions in respect of that application will then be issued.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email a

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.