



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

Case reference : LON/00AW/OLR/2023/0823

Subject property : 9 Kensington Court Gardens,
Kensington Court Place, London W8
5QE

Applicant : W8 Property Ltd

Representative : Mr Piers Harrison of counsel

Respondent : Mountview Estates PLC

Representative : Ms Nicola Muir of counsel

Type of application : Section 42 of the Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal members : Judge S Brilliant
Mr R Waterhouse FRICS

**Date of hearing and
venue** : 11 March 2025 at 10 Alfred Place,
London WC1E 7LR (Remote)

Date of decision : 09 May 2025

DECISION

Summary of the Tribunal's decision

The appropriate premium payable for the extended lease of the Flat is £2,504,461.

Background

1. This is an application made by the applicant company pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), for a determination of the premium to be paid for the extended lease of flat 9, Kensington Court Gardens, London W8 5QE (respectively "the Flat" and "the Building").

2. The applicant is the lessee of the Flat under a lease dated 04 November 1960 ("the Lease"). The respondent, the immediate landlord, is the lessee under a headlease dated 03 March 1999, for a term of 999 years from 29 September 1998.

3. By a notice of claim dated 13 March 2023, served pursuant to section 42 of the Act, the applicant's predecessor in title, Ms Meikle, exercised the right to acquire an extended lease of the Flat ("the Notice").

4. The applicant proposed to pay a premium of £2,081,150 for the extended lease.

5. On 23 March 2023, Ms Meikle assigned the benefit of the Notice to the applicant.

6. On 16 May 2023, the respondent served a counter-notice admitting the validity of the claim and counter-proposed a premium of £3,762,000 for the grant of the extended lease.

The application

7. The applicant duly applied to the Tribunal for a determination of the premium of the extended lease of the Flat.

8. We were told that there remains the possibility of one of the terms of the new lease not being agreed. It was decided that, if that disagreement persisted, there would be a further hearing, probably on the papers, to determine solely that issue.

9. Directions were given on 10 April 2024.

The hearing

10. The hearing in this matter took place in person on 11 March 2025. The applicant was represented by Mr Piers Harrison of counsel. The respondent was represented by Ms Nicola Muir of counsel.

11. Neither party asked the Tribunal to inspect the Flat and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.

12. The applicant relied upon the expert report and valuation of Mr Kevin Ryan FRICS, a consultant at Carter Jonas LLP, dated 26 February 2025. The respondent relied upon the expert report and valuation of Ms Jennifer Ellis FRICS, a consultant at Fifield Glyn Ltd, dated 03 March 2025.

Location and description of the Building and the Flat

13. The Building is one of two substantial Victorian red brick mansion blocks in Kensington arranged on lower ground, ground and six upper floors. It was built between 1887 and 1889 by Moir Wallis & Co.¹

¹ The Times first advertised flats at Kensington Court Gardens in January 1889 at a rent of between £195 and £250 per annum. Its most famous resident has been TS Elliot.

14. The Flat is located on the third floor of the Building. It requires total and comprehensive refurbishment. We were shown photographs.

15. The Flat comprises an entrance hall, WC, two or three reception rooms, kitchen, three or four bedrooms, en suite bathroom and a further bedroom. There is a lift.

16. The GIA (gross internal area) of the Flat has been agreed at 2,380 square feet.

Repairing obligations under the Lease

17. By clause 2(4) of the Lease, the lessee covenanted at all times during the Lease to keep the interior of the Flat, including the central heating system and all additions thereto and the lessor's fixtures and fittings therein in good tenantable repair.

18. By clause 2(5) of the Lease, the lessee covenanted to decorate the interior of the Flat in the last month the term.

Agreement between the experts

19. The valuation date is agreed as 14 March 2023, when the unexpired term of the Lease was 7.64 years.

20. Relativity is agreed as:

Over 850 years (the respondent's reversion)	99.75%
140 – 200 years (some comparables)	99.00%
102 – 113 years (some comparables)	98%
97.64 (the leasehold claimed)	97.36%

21. The deferment rate, less risk of holding over, is agreed at 5%. The capitalisation rate is agreed at 4%.

22. As will be seen below, the location of the appropriate comparables are agreed, as is the value per square foot according to Saville's index to adjust for the passing of time.

23. The difference in floor of the comparables should be adjusted by 2% per floor.

24. £90,000 should be deducted from the sale price of the comparable 10 Kensington Court Gardens because of the parking space, and £68,000 added for the lease extension.

25. The condition of the Flat at the relevant time was that it was uninhabitable.

The remaining issues

26. Two issues remain for us to decide.

27. The first issue is the freehold value of the Flat. This depends on any adjustment for condition, and (in one case) for a balcony.

28. The second issue is the current short leasehold value of the Flat. This depends on the relativity for the short lease value.

The agreed comparables

29. The agreed comparables per square foot, adjusted as above for the passing of time, are as follows:

	Property	Floor	GIA (ft ²)	Sale rate per ft ²	Sale date	Term at sale (yrs)	Adjusted sale per ft ²
1	10 Roxburghe Mansions	4	2,300	£1,696	May 2022	102	£1,717
2	25 Kensington Court Gardens	4	2,817	£1,687	Feb 2022	973	£1,690
3	81 Kensington Court Gardens	2	2,184	£1,740	Feb 2022	952	£1,742
4	96 Kensington Court Gardens	4	2,632	£1,824	Jan 2022	952	£1,831
5	15 St Albans Mansion	5	2,149	£1,722	Nov 2021	112	£1,768
6	9 St Albans Mansions	5	2,311	£1,731	Sep 2021	113	£1,784
7	12 Kensington Court Gardens	4	2,670	£1,866	Mar 2021	145	£1,866
8	10 Kensington Court Gardens	3	2,670	£ ²	Jan 2018	180	£1,688

30. The average adjusted rate is £1,758 per square foot.

10 Roxburghe Mansions

31. A refurbished four bedroom fourth floor flat with open views front and rear.

32. The agreed adjusted rate for the passing of time above was £1,717 per square foot.

33. Mr Ryan describes this as a well laid out flat with en suite facilities to two bedrooms and an additional shower room and cloakroom. Completely refurbished in 2009 and still presenting well. He adjusts by minus 17.5% (£300 per square foot) for condition, and by minus 2% for floor level (agreed). This comes to £1,382 per square foot.

34. Ms Ellis deducts 2% for two en suite bathrooms and 2% for floor level (agreed). This comes to £1,648 per square foot.

25 Kensington Court Gardens

35. A four bedroom fourth floor flat with open views front and rear.

36. The agreed adjusted rate for the passing of time above was £1,690 per square foot.

37. Mr Ryan describes this as a well presented flat with en suite facilities to two bedrooms and an additional bathroom. It provides comfortable and quite satisfactory accommodation. He adjusts by minus 17.5% (£296 per square foot) for condition, and by minus 2% for floor level (agreed). This comes to £1,360 per square foot.

38. Ms Ellis deducts 2% for two en suite bathrooms, £50 per square foot for

² See paragraphs 60 - 62 below.

condition, and 2% for floor level (agreed). This comes to £1,572 per square foot.

81 Kensington Court Gardens

39. A four bedroom second floor flat with a pleasant outlook front and rear.

40. The agreed adjusted rate for the passing of time above was £1,742 per square foot.

41. Mr Ryan describes this as a well-presented flat with en suite facilities to one bedroom, and an additional bathroom and cloakroom. The reception room has three pairs of French doors to a balcony. He adjusts by minus 17.5% (£305 per square foot) for condition, plus 2% for floor level (agreed), and by minus 2% for the balcony. This comes to £1,437 per square foot.

42. Ms Ellis adds 2% for floor level (agreed). This comes to £1,777 per square foot.

96 Kensington Court Gardens

43. A four bedroom fourth floor flat with a pleasant outlook front and rear.

44. The agreed adjusted rate for the passing of time above was £1,831 per square foot.

45. Mr Ryan describes this as a well presented and appointed flat with good all round views, en suite facilities to two bedrooms and an additional bathroom, shower room and cloakroom. He adjusts by minus 17.5% (£320 per square foot) for condition, and by minus 2% for floor level (agreed). This comes to £1,474 per square foot.

46. Ms Ellis deducts 2% for floor level (agreed). This comes to £1,795 per square foot.

15 St Albans Mansions

47. A three/four bedroom fifth floor corner flat in good order with all round open views.

48. The agreed adjusted rate for the passing of time above was £1,768 per square foot.

49. Mr Ryan describes this as a well-presented and appointed flat with good all round views and en suite facilities to two bedrooms and an additional bathroom. He adjusts by minus 17.5% (£320 per square foot) for condition, and by minus 4% for floor level (agreed). This comes to £1,388 per square foot.

50. Ms Ellis deducts 2% for two en suite bathrooms, £50 per square foot for condition, and 4% for floor level (agreed). This comes to £1,662 per square foot.

9 St Albans Mansions

51. A four bedroom second floor corner flat in good order with all round open views.

52. The agreed adjusted rate for the passing of time above was £1,784 per square foot.

53. Mr Ryan describes this as a well-presented and appointed flat with good all round views flat and en suite facilities to two bedrooms and an additional shower room. It provides comfortable and quite satisfactory accommodation. He adjusts by minus 17.5% (£312 per square foot) for condition, and by plus 2% for floor level (agreed). This comes to £1,507 per square foot.

54. Ms Ellis deducts 2% for two en suite bathrooms, adds £50 per square foot for condition, and 2% for floor level (agreed). This comes to £1,834 per square foot.

12 Kensington Court Gardens

55. A refurbished four bedroom fourth floor flat in good order with all round open views.

56. The agreed adjusted rate for the passing of time above was £1,866 per square foot.

57. Mr Ryan describes this as a well-presented flat with en suite facilities to two bedrooms and an additional bathroom/shower room. He adjusts by minus 17.5% (£296 per square foot) for condition, and minus 2% for floor level (agreed). This comes to £1,502 per square foot.

58. Ms Ellis deducts 2% for two en suite bathrooms, and 2% for floor level (agreed). This comes to £1,791 per square foot.

10 Kensington Court Gardens

59. An unmodernised four bedroom third floor flat with open views front and rear.

60. Mr Ryan describes this as a flat across the landing from the Flat in similar unmodernised condition. Unlike the other comparables, this flat was sold with a parking space. In the original page 303 in the bundle there was an agreed deduction of £90,000 for the parking space, and the remaining term was agreed at 180 years. This gave the agreed adjusted rate for the passing of time of £1,688 per square foot.

61. At the hearing Mr Ellis introduced additional pages 303A and 303B. The former reduced the remaining term to 90 years, giving an adjusted figure for the passing of time of £1,703 per square foot.

62. The latter increased the remaining term back to 180 years, but added £68,000 to the sale price for a lease extension. This gave an adjusted figure for the passing of time of £1,693. We propose to take the average of the three figures for the passing of time, which comes to £1,688 per square foot.

Summary of rival figures for the comparables as adjusted above

63. The rival figures, per square foot, for the comparables as adjusted above are therefore as follows.

		Mr Ryan	Ms Ellis
1	10 Roxburghe Mansions	£1,382	£1,648
2	25 Kensington Court Gardens	£1,360	£1,572
3	81 Kensington Court Gardens	£1,437	£1,777
4	96 Kensington Court Gardens	£1,474	£1,795
5	15 St Albans Mansions	£1,388	£1,662
6	9 St Albans Mansions	£1,507	£1,834
7	12 Kensington Court Gardens	£1,502	£1,791
8	10 Kensington Court Gardens	£1,688	£1,688

64. Mr Ryan takes an average of his Kensington Court Gardens figures: (£1,497)³ x gross internal area of 2,380 square feet = £3,562,860.

65. Ms Ellis takes an average of all her figures: (£1,721)³ x gross internal area of 2,380 square feet = £4,095,980.

³ Assuming 10 Kensington Court Gardens is valued at £1,688 per square foot.

The assumed condition of the Flat

66. The hypothetical state of the Flat which the 1993 Act requires is that as let in November 1960. The repairs are to be carried out according to the original specification, unless regulatory controls have increased the specification required.

The applicant's case on comparables

67. Mr Harrison makes the argument that:

(a) No work is required under the general covenant to repair and keep in repair until there is damage or deterioration to the relevant item of plant or equipment which is the subject matter of the covenant (Woodfall 13.029).

(b) There is therefore no need to assume a “modernised” condition. Unmodernised does not equate to a want of repair.

(c) “Absent physical damage, the fact that the building suffers from defects in design or construction, or a lack of amenity, or that it is in some way inefficient, or that it is otherwise unsuitable for, or incapable of, beneficial occupation for its intended use, is irrelevant so far as liability under the covenant to repair is concerned.” (Dowding and Reynolds 8-05).

(d) The fact that an item of plant is elderly or old-fashioned, or that it is less efficient when compared with its modern equivalent, or that the market would not regard it as suitable, is not, of itself, enough to bring a repair covenant into play (Dowding and Reynolds 13-04).

68. Mr Harrison says that the covenant to decorate internally can be ignored as it only bites at the end of the term.

69. He submits that a comparison with a modernised flat is wrong in principle because the Flat is not required to be modernised as explained above.

70. Mr Ryan’s approach is to consider the nature of the market in London W8, and envisage that the Flat is most likely to be purchased by a developer or an owner occupier who would seek to refurbish it comprehensively. The adjustments for condition he makes for seven of the comparables (17.5%) are based on the Flat being stripped out. There are no deductions in respect of 10 Kensington Court Gardens, as it is on the same floor and was in a similar uninhabitable condition.

The respondent's case on comparables

71. Ms Ellis disagrees with this. She says that assuming the Flat is in good tenable repair, a complete refurbishment is not a necessity. She says the Flat would neither be tired or in need of modernisation. The Flat is capable of immediate occupation by someone who wants, and can afford, a flat in that vicinity.

72. Ms Ellis takes the view that if the Flat was in repair in accordance with the obligations under the Lease, it would be in a condition similar to the condition of most of the comparables.

73. She deducts £50 per square foot for the condition from just two of the comparables. She deducts 2% for no en-suite bathrooms in the case of five of the comparables. Again, there are no deductions in respect of 10 Kensington Court Gardens

Discussion of comparables

74. We prefer the approach of Mr Ryan to that of Ms Ellis. It is not right to compare the condition of the Flat as it ought to have if in repair with the condition of the modernised comparables. We accept Mr Harrison’s arguments above.

75. We do not agree with the approach set out in paragraph 4.4.8 of Ms Ellis’ report that one assumes that the decorations are neutral, clean and tidy and no touching up is required, or that the electrical installation complies with update

requirements, or that the bathroom fittings are modern.

76. We therefore prefer the figures of Mr Ryan.

77. We conclude that a figure of £1,497 per square foot is appropriate, giving a freehold value of £3,562,860, which we round to £3,563, 000.

The applicant's case on short lease value

Mundy

78. Mr Ellis referred to The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC) [168]:⁴

...it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act."

79. Mr Ellis then referred to the statement of agreed facts and noted there are three short lease sales namely 4, 9 (the Flat itself we are concerned with) and 20 Kensington Court Gardens. He believes the Flat itself is the only one worth considering as it required no adjustment for lease length, time, condition, or floor level.

80. Turning to consideration of the appropriate deduction for a "No Act World", Mr Ryan has had regard to Mundy. Where the unexpired lease terms were 41.32 years and 37.71 years respectively there was a deduction of 10%, and with a term of 23 years the deduction was 20%. Mr Ellis also takes into account the decision in 82 Portland Place (Freehold) Ltd v Howard de Walden Estates Ltd [2014] UKUT 0133 (LC), where for leases of unexpired terms of 11.81 and 11.82 years a 20% reduction was made.

81. Extrapolating from this, Mr Ryan considers that for the 7.64 years' unexpired lease of the Flat, an increase from the 20% discount is appropriate. A rate of 22.5% is adopted.

82. If the sale price of £985,000 is discounted by 22.5%, a figure of £763,375 is arrived at. This figure is close to the 21.42% of our freehold figure of £3,563,000.

Graphs

83. Mr Ellis cites the Gerald Eve 1996 and 2016 Graphs and the Savills 2015 Enfranchisable Graph applied to the sale of the Flat at its date of sale in March 2023 with a lease of 7.674 years remaining. He says that the Gerald Eve 1996 is the most widely adopted in Prime Central London.

<u>Sale Price</u>	<u>Adjust to Freehold</u>	<u>Adjustment Rate</u>	<u>Relativity</u>
£985,000	£3,545,716	1490	Savills 2015 Enfranchisable
£763,375	£3,764,177	1582	Gerald Eve 1996
(£985,000			

⁴ The unsuccessful appeal to the Court of Appeal (Mundy v the Trustees of the Sloane Stanley Estate [2018] EWCA Civ 35) did not affect this proposition.

less 22.5% for rights)			
£763,375 (£985,000 less 22.5% for rights)	£5,175,242	2175	Gerald Eve 2016

84. Mr Ellis considers his figure of £763,375 to be supported by the analysis above.

The respondent's case on short lease value

85. Ms Ellis in calculating the short lease value starts with the sale price of the short lease of the Flat at £985,000 as at 22 March 2023.

86. To this is added £238,000 for condition and £18,000 for breaches of covenant. This gives a short lease value of £1,241,000 in good repair and free of breaches of covenant. Mr Ryan notes this translates to 30.2% of the freehold value of £4,100,000 that the respondent is adopting.

87. The comparable of Flat 4 Kensington Gardens is next considered. It sold on 01 May 2021 for £967,000, with 8.15 years unexpired. Adjusted for time, this produce, £981,500. To this Ms Ellis adds £100 per square foot (£264,000) for condition and £18,000 for breaches of covenant, giving a figure of £1,264,000 (£478 per square foot). There is then an addition of 5% because the comparable is on the ground floor and a deduction of 1% because the Flat's lease is shorter. This results in a rate of £497 per square foot. This gives a value for the short lease of £1,182,860, which is 28.8% of the freehold value of £4,100,000.

88. Ms Ellis notes that Upper Tribunal's guidance is to look at two reputable graphs of opinion. At 7.64 years unexpired, Ms Ellis considers there is only one graph applicable, that of Gerald Eve. At 7.75 years this shows 14.96 %. Applied to the freehold value of £4,100,000, this gives £613,380 (£258 per square foot). Ms Ellis, on balance, concludes the appropriate figure is £650,000 (£273 per square foot) which is 15.85%.

Discussion of short lease value

89. We prefer the valuation approach of Mr Ryan. The strength of the approach is to consider the short lease value of the Flat and to adjust, whilst triangulating with the Savills and Gerald Eve Graphs.

90. In considering Ms Ellis' valuation, we note significant assumptions being made of putting the Flat into repair and addressing the breaches of covenant. These are relatively subjective and combined with the number of adjustments renders Ms Ellis' approach less reliable in our view than that of Mr Ryan.

Valuation of Premium

91. We have reached the figure of £1,497 per square foot, close to the £1,510 per square foot of Mr Ryan. We also prefer Mr Ryan's short lease valuation as set out above.

Conclusion

x. We have stated the premium at the commencement of this decision. Our calculations are set out in appendix A attached.

Name: Judge Simon Brilliant **Date:** 09 May 2025

Appendix:
Rights of appeal

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

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

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

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

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

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