



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

**Case Reference** : **LON/00AW/OCE/2024/0603**

**Property** : **1 Palace Gate, London W8 5LS**

**Applicant** : **1 Palace Gate Freehold Limited**

**Representative** : **Mr Rupert Cohen, of Counsel together with  
Justin Bennett BSC (Hons) FRICS ACI Arb**

**Respondent** : **Winchester Park Limited**

**Representative** : **Mr Mark Loveday of Counsel together with Mr  
Lawrence Nesbitt FRICS MCI Arb**

**Type of Application** : **Application under section 24 of the Leasehold  
Reform Housing & Urban Development Act  
1993**

**Tribunal Members** : **Judge Dutton  
Mrs S F Redmond MRICS**

**Date of Hearing** : **14<sup>th</sup> May 2025**

**Date of Decision** : **2 July 2025**

---

**DECISION**

---

© CROWN COPYRIGHT

## **DECISION**

The Tribunal determines that the premium payable in respect of the acquisition of the Property 1 Palace Gate, London W8 5LS (the Property) is £1,285,465 as set out on the valuation annexed hereto and as explained in the reasons that follow.

## **BACKGROUND**

1. This was collective enfranchisement claim relating to the acquisition of the freehold interest in the Property held under freehold title BGL5964.
2. There are five residential flats and one commercial unit all held on very long leases and at the ground floor is a unit known as 1D straddling both ground and basement and a further unit known as unit 6 again over the ground and basement floors. These last two units, units 1D and unit 6, are retained as part of the freehold to be acquired by the nominee purchaser.
3. The occupational leases are for a term of 999 years and have an unexpired period of 962.77 years remaining. The valuation date is 8<sup>th</sup> September 2020.
4. In a joint statement by the valuation experts Mr Bennett and Mr Nesbitt dated 11<sup>th</sup> March 2025, it was confirmed that the total ground rent income from the five residential and one commercial unit was £9 per annum and that the participating leaseholders were the proprietors of Flats 2, 3, 4 and 5.
5. The property known as Unit 6 is held on a lease of a term of 20 years from 1<sup>st</sup> September 2010 to 31<sup>st</sup> August 2030 at a rent of £25,000 per annum and is effectively a full repairing and insuring leasehold subject to service charges. The restriction on user is to offices and there are rent review provisions. At the valuation date the unexpired term of the lease was agreed at 9.98 years, as was the passing rent of £25,000 and the fact that the lease was surrendered on 1<sup>st</sup> October 2021. It should be noted that the valuers seem to have strayed to an unexpired term of 9.97 years, but we have proceeded on the basis of the term agreed in the Joint Statement.
6. Unit 1D was on a term beginning on 10<sup>th</sup> November 2020 and ending on 9<sup>th</sup> November 2023. It is held by a company called Le Petit Sud Limited and was granted at an initial rent of £55,000 per annum. The lease is again effectively a full repairing and insuring one subject to the service charge. The user clause permits such use as a restaurant or café within class E of the Town and Country Planning (Use Classes) Order 1987 or alternatively subject to consents as a wine bar. Previously there had been a lease of this unit dated 18<sup>th</sup> June 2014 to a company called J F Brands Limited, which was incorporated on 11<sup>th</sup> July 2013 and dissolved on 19<sup>th</sup> September 2017. It was following this dissolution that the new lease was granted to Le Petit Sud Limited.
7. The floor areas of both units are agreed at 953.9 square feet GIA (88.6 square metres for unit 1D) and for Unit 6 at 439 square feet NIA for those areas with a ceiling height above 1.5 metres and for those under, 30 square feet GIA. The issue with this unit is both the layout and the use to which it is being put at the

valuation date, namely as some form of residential accommodation for which there was no planning permission.

8. It is agreed that there is no marriage value payable and that the capital value of the long leases of Flats 1 to 5 and Unit 1E is £90 with no reversion value.
9. The only matters that we were required to determine was the freehold value of Unit 1D and Unit 6 and in the latter case how this should be valued as either offices or residential, the latter involving an element of hope value.
10. We are very grateful to Mr Bennett and Mr Nesbitt for agreeing so many of the valuing elements and leaving us to deal with the not uncomplicated task of assessing the freehold vacant possession value of the two units. It is right to record, though not in detail, that this matter has been ongoing for some time. The section 13 notice was given in September of 2020, that being the valuation date, but proceedings were delayed whilst the question as to whether or not the non-residential parts exceeded 25%. County Court proceedings were resolved in favour of the Applicant and indeed the matter was subsequently dealt with by the Court of Appeal, who upheld the County Court judgment.
11. The terms of the transfer have not been agreed in full and we will deal with that at the end of this decision.
12. Prior to the hearing we were provided with a hearing bundle which, due to technical difficulties, had to be split in two, but comprised on a PDF basis some 391 pages.
13. Within the bundle was the claim and counter notice, copies of the freehold and leasehold register, the draft transfer, the experts' joint statement and the reports of Mr Bennett and Mr Nesbitt. The Applicant had also produced a summary of issues to be determined but these had not been agreed by the Respondents.
14. In addition to these documents, we were provided with a supplemental hearing bundle running to some 58 pages and a supplemental report prepared by Mr Nesbitt in which he agreed with Mr Bennett to an extent and reduced his valuation from £1,575,500 to £1,525,500.
15. Mr Bennett in a lengthy and detailed report determined that the price that should be paid for the freehold was £1,090,690.
16. In addition to the above, we were also provided with supplemental hearing bundle which contained copies of the documentation before the County Court and a copy of the lease of Unit 1D.
17. An Applicant supplemental bundle was also provided just before the hearing the contents of which are noted. and contain some 11 pages with marketing materials for 35 and 13 Kensington Church Street and a decision of this Tribunal on a property at Flat 2, 6A Gregory Place.

## **EVIDENCE**

18. We will deal briefly with the experts' reports, as these are well known to both parties. We have carefully noted the contents of each report.
19. Mr Bennett's is dated 22<sup>nd</sup> April 2025 on behalf of the Applicant nominee purchaser. It contains introductions and details as to how the Act works. It records that agreement has been reached in respect of all parts of the freehold and leasehold interest in the Property except for the two units we have referred to above. After setting out his experience there is description of the two units and details of the documentation relied upon which includes a report from Jonathan Drew of Drew Planning & Development Limited in respect of town planning matters which was appended to his report.
20. Mr Bennett began by dealing with Unit 1D. He was unable to ascertain what had occurred between September 2017 when J F Brands Limited was dissolved and the grant of the new lease in 2020 to Le Petit Sud at a rent of £55,000 per annum, The unit included the forecourt, shop, basement area and two vaults. A copy of the lease for this Property was included in the supplemental hearing bundle, which confirms that no premium was paid and that the initial rent was £55,000 per annum subject to other matters contained in the lease and with review.
21. At clause 6(2) of the lease, it states that the rent actually paid would be from 9<sup>th</sup> November 2020 to 24<sup>th</sup> December 2020 at £38,500 but that the annual review on the first review date, being 24<sup>th</sup> June 2023, would rise to £60,500.
22. Mr Bennett's report then provided fairly extensive notes on the impact of the corona virus history of lockdown rules noting the dates of the lockdowns and the impact. We have noted these.
23. We were also told that there had been a number of changes of directors in respect of Le Petit Sud and indeed it appears to have become rebranded as Publiq. Apparently during a joint inspection in January of 2025, it was noted that the restaurant was closed and an email from the freeholder's solicitors of 6<sup>th</sup> March 2025 indicates that from December 2024 the only existing lease of the unit had been forfeited. As a matter of comment, it seems that the neighbouring unit 1E, which had been trading as Conspiracy Lounge, was also vacant, the lease having been forfeited on 11<sup>th</sup> November 2024 and still it seems at the time of a visit by Mr Bennett on 1<sup>st</sup> April 2025 unoccupied.
24. In the case of Unit 6, Mr Bennett indicated that the established use for Unit 6 is as offices, although it has been configured as a residential unit and used for that purpose possibly for short-term holiday lets through Hotels.com. At the valuation date there was no planning use as residential and Mr Drew's report, which was used by Mr Bennett as part of his evidence, indicated that there was little chance of planning being granted for residential purposes. It seems also that from a witness statement of Mr Mahpud the property had only been used as residential purposes for some nine months or so. It was also pointed out to us that there would be grave difficulties in seeking to change the use of the premises to that of residential as its layout, lack of natural light and fire escape routes were against it. Photographs were provided.

25. Having considered the background to the two units, Mr Bennett confirmed the location of the Property, which was on the southwestern corner of Kensington Road and Palace Gate, near to the Royal Albert Road, Hyde Park and Kensington Gardens. The Property itself comprises basement, ground and five upper floors with the fifth floor being formed in a mansard roof. We noted all the details concerning the two units we were required to deal with and the photographs in respect thereof. The square footage is agreed.
26. Moving on to the valuation aspects we were referred to the statement by the RICS in November 2020 concerning the impact that Covid was having on the market and that in respect of 1D both parties had agreed that the best evidence for the rental value of this unit was the £55,000 per annum payable under the new lease. Mr Bennett had gone one step further and put a value to what he had set out to be vault 1 and a meter area, which added another £1,550 to the rental value for a new lease.
27. On the valuation of Unit 1D, this can be found at paragraph 4.12 of his report, he assesses the premium payable for the freehold interest in Unit 1D at £774,200 for the reasons set out therein. These included the prevailing market, comparable evidence, the high turnover of occupiers and thus potential difficulty in reletting, and the lack of income for two months. He allowed a yield of 7% based on his analysis of the comparable investment sales evidence.
28. We should say at this stage that there is not a great deal of difference between Mr Bennett and Mr Nesbitt when it comes to most of the valuing exercise. The real difference lies between the yield rates that both apply. Mr Bennett's base yield rate is 6%. However, in respect of these two units, he adds an additional 1% to allow for additional risks of these particular units, and he made a further uplift of 1% for the existing lease at Unit 6 with the additional risk of user and breach of covenant.
29. We have noted the comparable evidence provided in the report and will comment upon these in the findings section of this decision.
30. In respect of Unit 6, again he reminded us that this was being dealt with during the Covid period and that having considered the Property itself and the report from Drew Planning & Developments, was of the view that the Property should be valued as an office with ancillary storage. The unit had been subject to a lease with a passing rent of £25,000 per annum. The user clause was restricted to offices. The lease was however surrendered on 1<sup>st</sup> October 2021. At the valuation date the rate of per square foot was £56.95. In his view the Property was at a rental figure higher than one might expect. He looked at comparables giving a tone of rates per square foot of between £36 and £61.43. He analysed 6 properties in more detail at 5.14 he indicated the two most similar properties which he analyses at £42.44 and £48.01 per sq. ft. Taking all this into account he concluded that in fact the rental of the Property should be £19,755, based on a rate per square foot of £45.
31. Again, he had started with a yield rate of 7% but he was mindful of the fact that there appeared to be an ongoing breach of the terms of the lease, it being used for "residential" purposes, which apparently led to the surrender of same in

October of 2021. Accordingly in his view a hypothetical purchaser would make an adjustment to the yield because of the uncertainty of the rental income, the identity of the lessee and that the rental was excessive, thus settling upon a yield rate of 8% to 2030. He had allowed for void periods prior to completion of the lease and for marketing at the end of the term. As set out at paragraph 5.19 in his report he came to a valuation of £306,400 for the Property to be used as an office and considered whether there was any hope value for change of use to residential, which he thought was limited although gave a 10% chance having assessed the possible additional value as accommodation by reference to the comparables he produced and the Drew report. However, he concluded that a notional “gambling chip allowance” of £10,000 was added to the value. Again, we have noted the comparable evidence, which we will refer to in due course.

32. We have noted the various yields that he says arose from commercial auctions. He concluded that the total price to be paid for the Property inclusive of the £90 agreed should be £1,090,690.
33. Mr Bennett was then asked questions by Mr Loveday. Insofar as Unit 1D was concerned, Mr Bennett agreed that the rent adopted by himself and Mr Nesbitt was £55,000 and he had worked on that. However, he thought the Property was marketed in 2019 and the new lease would be under negotiations at the valuation date so a hypothetical purchaser would have made enquiries into that.
34. He accepted Mr Loveday’s suggestion that the main issue between the parties was the yield rates to apply.
35. Mr Loveday then took Mr Bennett through his various comparables. He was asked in particular about 7 Paul Street, Shoreditch, which had on his calculation, after removing the residential upper part, produced a yield of 9%. Asked by Mr Loveday whether the hypothetical purchaser would have been acquiring the freehold of the whole property, his answer was that it would be, but there was clearly the possibility of different use with a restaurant at ground floor. He accepted that no planning application had been put in. He was asked which his best comparables were and he did accept that that 7 Paul Street and also 632 Fulham Road were his best comparables as stated in his report. He was then taken through these comparables in more detail. His explanation for the higher percentage rate at 7 Paul Street was as we have indicated the development potential that was available and if one took out from the gross sum paid, which would have included development value and leaving the restaurant, this he said gave rise to the 9% yield (6.82% for the whole property).
36. He was asked about his views on the properties in Kensington Church Street which Mr Nesbitt relied upon. He was of the view that these were by and large well beyond the valuation date and not impacted by Covid. He explained that in his view whilst the range for the yields analysed by himself and Mr Nesbitt may be between 4.3 and 6.2% the difference was that he had analysed the comparables that he relied on whereas Mr Nesbitt had just averaged.
37. Moving on to adjustments, he was certain that there would be a notional void at the end of the lease. It was then put to him that the lease for the unit contained amendments to the rental values, which appeared to come as something of a

surprise. He did respond however that the annual increase on 24<sup>th</sup> June 2023 to £60,500 seemed to coincide with the lease falling in.

38. In respect of Unit 6, he repeated that the lease had been granted from the freeholder to an associate company and then sub-let and he was of the view that the rent was too high. Asked about his weighting in respect of this unit, he indicated that he had not applied any weighting but had looked at the table. Asked whether he had made any adjustments for time he said he had not as there appeared to be no index for commercial rents. He had looked at the standard of accommodation of the comparables compared to the subject and used his professional judgement.
39. Asked about his view that the rent for this Property should be £19,755, he said he did not think the unit would achieve the rent of £25,000 once standing back and considering the market. He relied on his own experience. There was a troublesome tenant and that it was over-rented. At the time of the valuation date he was of the view that the purchasers would know that the Property was vacant and had been fitted out as a flat but could not be used as such. Whilst he accepted there was a breach of the lease that might have enabled the freeholder to obtain occupation, there would be a cost in so doing.
40. Asked about his view for the uplift of holiday lets, he said he had considered same. He accepted that Mr Drew had not viewed the Property on the basis of holiday lets but he did not think there would be any distinction on planning. Asked whether it would be obvious to a hypothetical purchaser if it were being let for a holiday basis, he responded that there were just rooms with bathroom, no windows and various other problems with regard to access and fire safety.
41. He was asked whether his allowance of £10,000 for the potential compared to the £70,000 or more that Mr Nesbitt had put forward was reasonable. He indicated that someone would pay for an outside chance but he did not think that there was much chance at all. Asked about the continuing income stream that was apparent at the date of the valuation, he said that he thought that would end when the Local Authority were notified and of course would have been vacant during lockdown. His view there would only be an uplift if planning permission could be obtained and that the premises were not good and indeed felt more like a 'coffin'. There was no re-examination.
42. We then moved on to the evidence of Mr Nesbitt. As with Mr Bennett he had produced an experts' report, which was dated 17<sup>th</sup> April 2025. The report contains photographs of the subject premises and an introduction which were noted. In his report when dealing with Unit 1D, he confirmed that this being a commercial property he had approached the valuation on the basis of treating the rental income as an investment and applying a percentage return in line with the property investment market at the date of valuation. A brief history of the letting was given, and he confirmed that he had applied the rental achieved on a re-letting of the Property, which was £55,000, a figure which was essentially agreed by Mr Bennett. He then capitalised the rental value and relied on a number of Market transactions which were set out at paragraph 17 of his report and which we will return to. It should be noted, however, that in the case of 10 and 35 Kensington Church Street, these were some time after the valuation date.

With these in mind, he applied a yield rate of 5.5%, considering lease terms, security of income and location, and thus a freehold value of £1,000,000.

43. As to Unit 6, there is some dispute as to whether this was to be valued as residential or office. It is accepted that there was no planning permission for residential use, but Mr Nesbitt did not think it could be entirely ignored. The subject Property was let at the time of the valuation date with a rental of £25,000. He had researched comparable office accommodation and that was set out in a list at paragraph 24 of his report. He thought it was satisfactory to take the passing rent as being the office rental value at the valuation date and applied the gross yield of 5.5% giving a freehold value of £454,545.
44. He went on to add a further £70,844 to reflect what he considered to be the potential to use the unit for residential purposes. On this point he had concluded that the Property would be a one bed residential flat let out on short term holiday rates between £160 to £240 per night. After taking away costs of operation, he considered that there could be a net income of £38,290 effectively producing additional value of £241,636. He applied a planning risk discount of 50%. At this point he departed from his original valuation and relying on his supplemental report he agreed that the resulting figure of £120,818, should in fact be deferred for 9.97 years to allow for the existing lease which produced £70,844. The total value for Unit 6 was £454,545 plus £70,844. Hence his total value for the units and the ground rent value was £1,525,500.
45. As with Mr Bennett he was then the subject of cross examination by Mr Cohen.
46. In cross examination he confirmed that he accepted that Unit 6 was long, thin, over three floors, little or no fire prevention equipment and problems with regard to fire escape. He confirmed he would expect anybody who intended to acquire the Property to undertake a full diligence research and look at the fire and building regulations. He also accepted that there was little natural light but thought that if it were used for offices there would be artificial light.
47. He was then asked about some of his comparable properties. It was suggested to him that 81 Cromwell Road and 18 Devere Road were completely different properties to the subject premises as was obvious from the photographs contained in the estate agents particulars which were exhibited to the reports. It was put to him that if these two properties were removed the average rates per square foot fell very close to the passing rent that Mr Bennett was arguing for. He was criticised for putting forward comparables but not attempting to review them to compare with the subject premises. His view was that without knowing each property he was not aware what adjustments would be required but thought taking a spread of eight comparables would ameliorate this problem. He also accepted that he had not factored in any potential void periods in reaching the figures that he had. His view was he would not include void periods as they would be built into the yield applied. He thought you would go through the auction particulars which would have some leases which were near to expiring and an investor would apply a gross yield and not factor in any potential void period.



48. There was then some discussion as to the possibility to seeking a change of use to legalise the apparent residential user. He was of the view that a notional purchaser might still purchase a property even if the use was unlawful but accepted that they would want planning permission. He did agree however that the only use of the unit was class E commercial and that a hypothetical purchaser would make a bid on that basis, although might consider the prospects of a change. He accepted that a nominal purchaser would want to know the prospect of regularising the use for residential purposes and would be aware if proper investigations were made that the present use was in breach of the lease.
49. He was asked questions about the ability to change the use and was referred to Mr Drew's report. His response was that he was not a planning expert but that he could get advice that might indicate that the chances of a change of use were better than that put forward by Mr Drew. He confirmed that the valuation he put forward was based on his own view, as a valuer of some experience.
50. He accepted in cross examination that the Property was in an area with lower foot fall than might be for example in Kensington High Street. Asked about the impact of Covid on the market, he accepted that the market for restaurants was on the weak side but as to offices he confirmed he was not involved in the commercial market but assumed little activity and may have been a weak market at the time.
51. Asked about the position with regard to possible use of the Property for AST instead of long leases he thought they would have the same yield. There was some discussion about the apparent anomalies in relation to the yield rate at 85 The Strand and it was put to him that he had cherry picked figures to give a lower figure, which he denied. When asked about his use of Kensington Church Street, it was put to him that there would be a lesser foot fall in the area where the subject Property was to be found than in Kensington Church Street. He didn't think there was any particular difference for office use but insofar as restaurants were concerned, he thought that they may be something of a 'destination' and therefore the foot fall was not so important. There was he thought a substantial tourist trade and the ability to increase foot fall when events were on at the Albert Hall. There were then some further discussions concerning the comparable properties that had been put forward, but he did not accept that the preferred comparable of Mr Bennett of 7 St Paul Street and 632 Fulham Road were that helpful. St Pauls Street was in a completely different location in Hackney and in a poor location.
52. We then had closing submissions from both Counsels. Mr Cohen went through the comparable properties and considered that the three least reliable were the Steam Packet in Chiswick, which was a pub facing the Thames and would be subject to VAT, 8 Ye Market, South Croydon and 75/1&3 Garrett Lane, Wandsworth, the latter for location purposes. The preferred comparables from Mr Bennett's point of view was 7 St Paul Street, Shoreditch, 632 Fulham Road and 79 Walton Street, London. These he considered were Covid transactions and provided support for an initial base yield rate of 7%. This did include the assessment by Mr Bennett that insofar as St Pauls was concerned, there was a 9% yield rate.

53. Mr Cohen highlighted the differences between Mr Bennett's evidence and Mr Nesbitt's in particular Mr Bennett exhibited all comparables and had made attempts to compare and contrast. He highlighted the letting history of the units under discussion and reminded us that insofar as the restaurant there was no existing lease at the valuation date and that the 7% put forward by Mr Bennett was not much higher than that he had attributed to 7 St Paul Street. Insofar as unit 6 was concerned, any hypothetical purchaser would be concerned as to the use for which the Property was being put. As to the transactions put forward by Mr Nesbitt, it was pointed out to us that at least two of the Kensington Church Streets were not within the Covid period and that Mr Nesbitt had taken the gross yield against the starting rent but had not complied with what was put to him were the requirements under the red book.
54. Insofar as unit 6 was concerned, there was little difference between the valuers on the square footage rates. If the two properties that had been the subject of cross examination that is to say Cromwell Road and 18 Devere Road, were taken out, there was little between them on the square footage basis.
55. Some suggestion had been that Mr Bennett could not rely on Mr Drew's report. It was pointed out that this was not being put forward as an expert report, but a report being relied upon by Mr Bennett to inform his opinion and therefore was perfectly acceptable. In contrast Mr Nesbitt's figures in respect of the potential rental income as a residential unit were all estimates without support and no advice had been taken.
56. There was one further matter that needed to be considered and that related to the transfer, which we will address at the conclusion of these reasons. The issue between the parties was the extent of the covenant for indemnity and we noted what was said by both Counsel and will deal with that in due course.
57. Mr Loveday referred us to his skeleton argument with the comparable properties set out in tabular form. Insofar as the impact of Covid was concerned, he referred us to the extracts from the first national lockdown documentation, which was set out in Mr Bennett's report. He reminded us that there was the 'eat out' incentives given by the Government at this time, which would have assisted the restaurant element of the subject property. The auctions relied on by the valuers were after the second lockdown and in his view a hypothetical purchaser considering yield rates would not have transactional evidence to rely upon. His view was that Mr Nesbitt had been correct to take a basket of properties and to use an averaging exercise. The basket approach would avoid concentrating on individual issues. He did not think it was correct to make adjustments for void periods. Mr Nesbitt he said had chosen yield rates closely bunched between 5 to 5.5% and that 13 Kensington Church Street was a good starting point. On the comparables put forward by Mr Bennett, if one removed 7 Paul Street, then the average dropped close to that which was argued for by Mr Nesbitt. The 9% that this property generated was in his view an outlier.
58. At the valuation date any hypothetical purchaser would be aware of the high turnover of tenants and that the Petit Sud lease, which was entered into shortly after the valuation date, may not have in fact completed. Insofar as the office was concerned, Mr Nesbitt relied on the passing rent, although he accepted that

it had been Mr Bennett's case that the Property was over rented. Insofar as the use of the office as residential was concerned, he was of the view that it was worth more than just a gambling chip.

59. He referred us again to Mr Bennett's comparables, which were set out at 6.41 in the summary of his report, where the average of those properties shown was 5.84% and 7 Paul Street if the gross average yield was taken with removing the restaurant only element at 6.22%. Accordingly, the 6% that Mr Bennett had fixed on before any further uplift fell well between these two.
60. Mr Loveday went on to deal briefly with the use of the evidence from Mr Drew indicating that in his view this was expert evidence for which permission had not been sought and therefore it was not admissible. In his view at the valuation date the question would be for the hypothetical purchaser whether planning would be granted for the development and that this gave rise to the hope value. Mr Drew gave no indication as to what the position might be at the end of the ten-year period when the lease expires and this gave more than just a gambling chip element.
61. In a brief response Mr Cohen argued that in his view the reliance on Mr Drew was nothing more than information provided to Mr Bennett for him to include in his expert report and was not therefore evidence of an expert. He also reminded us that the valuation date was in late 2020 and further lockdowns followed

## **FINDINGS**

- 61 This was a somewhat unusual case for an enfranchisement where ordinarily yield rates do not cause much disagreement between the parties. Here though we had the commercial element that needed to be valued and hence the arguments concerning the yield rates adopted by valuers.

## **Yield Rates**

62. In this regard they had both considered the gross initial investment yield which they derived from analysis of marketed comparables. Each referred to 6 properties, 3 of which were in common. Mr Bennett's were from auction sales in November and December of 2020. Mr Nesbit looked at 2 from the first sale, one from the second and in addition 3 properties in Kensington Church Street from December 2019 (prior to Covid), late August 2023 and September 2024.
63. Mr Bennett, unlike Mr Nesbitt, went through each of these properties and gave analysis as to his views. The yield rates varied from 9% on his analysis for the restaurant only for 7 Paul Street, Shoreditch, ignoring the residential development potential, down to 5.4% in respect of the property at 75 High Street and 1/3 Garrett Lane, Wandsworth. If Paul Street were ignored, this gave an average gross initial yield of 5.84% but after adjusting for the sale of 7 Paul Street this came up to 6.22%. He then went through the various properties and came to the conclusion that standing back the gross investment yield from the evidence that he had must be in the region of 6%.

64. Mr Nesbitt had investigated a number of properties, three were in Kensington Church Street Nos 10, 13 and 35 two of which were some years after the valuation date and one pre-covid. There were then the properties considered in common with Mr Bennet at 75 High Street, London SW18, 7 Newmarket, Croydon and 85 The Strand on The Green. These showed percentage rates from 4.38% up to 5.65%. He concluded that a fair yield rate would be 5.5%. He did not carry out any detailed analysis of these comparable properties. What he did do was include the sales particulars of the comparable properties that he relied upon and this appeared to form the basis of his assessment of the investment potential.
65. As outlined, both experts responded to questions put at the hearing. Neither departed from their initial positions.
66. There is not much difference between the basic rate that Mr Nesbitt has argued for of 5.5% and that adopted by Mr Bennett of 6%. However, the greater difference arises from Mr Bennett's assessment of the additional risk at the particular property. In this regard, under his heading Application of the evidence to the subject property, he relied on the fact that the hypothetical purchaser would consider the reality of the leases that there had been a high turnover in respect of the restaurant and uncertainty that the new lease would not be completed and the purchaser would be left with the need to market a vacant property in the pandemic. This he thought gave rise to a yield rate of 7% for both units.
67. We listened carefully to all that was said in cross-examination about the various comparables. Our findings on this are that although we prefer the evidence of Mr Bennett as he has gone into far more detail in assessing the comparables than Mr Nesbitt did, nonetheless we find that at the valuation date certainly those people attending the Allsop Commercial Auctions would have been well aware of the impact of Covid and would have incorporated that into any assessment they made of the yield that would be applicable to the rental income that was passing. We found the comparables for Kensington Church Street unhelpful as two were post covid by some time. However, we are not persuaded by Mr Bennett's arguments for the uplift of 1% to 7%. We see no reason to afford that uplift in connection with this particular Property. There was no evidence that there was any more risk associated with renting a restaurant or office at this time here or in other parts of the capital. The risk was known at the time the Auctions were undertaken and must therefore have been factored into the relevant price paid at that time. On that basis we find that the base yield to be applied is 6%.
68. However, we are prepared to accept Mr Bennett's suggestion that there should be a 1% uplift in the yield rate for the remainder of the term of 9.98 years in respect of Unit 6, which we find is consistent with the risk for the use of the accommodation until the lease ends. This uplift is to reflect the apparent overrenting (see below) and the breach of lease of which we consider a prudent hypothetical purchaser would be aware. We determine a yield of 7% for this period.

### **Market valuation**

69. After assessing the yield rates we will deal firstly with the valuation for Unit 1D, the restaurant. The market rent which was achieved for this property shortly after the valuation date was shown in the lease that had been entered into by Petit Sud beginning on 10<sup>th</sup> November 2020 and ending on 9<sup>th</sup> November 2030. There is no doubt that at the time of the valuation in September 2020 Covid was still a rampant issue and as Mr Bennett had provided in his report, there was a real impact on the market. There appears to be little difference between Mr Bennett and Mr Nesbitt as to the best evidence of rental value, which was the new lease at £55,000 per annum.
70. However, Mr Bennett has gone one step further in that he has also valued separately the use of the vault as a bottle room and store meter room. These he thinks gave a rental of £1,550 and concluded that in November 2030 taking these elements into account, a rent of £56,550 would be appropriate. He had then allowed for a notional void of six months at the renewal date. He had also allowed for a vacant period of 0.17 years for the period from the valuation date until the commencement of the new lease. We consider that the start date for receipt of rent should be 0.17 years from the valuation date. However, the further void period is dealt with as follows.
71. The lease of the subject to Petit Sud refers to there being some uncertainty as to the use of parts of the Property, in particular the basement vault. Mr Bennett has allowed a value for this but the lease says at 5.3 that *“if the basement vault comprising part of the Property and shown in the plans is the subject of a successful claim of the right of use or access to it by another tenant in the building or by the landlord, the tenant shall be entitled on giving notice in writing to a landlord to relinquish occupation of and responsibility for it and to surrender it to the landlord without payment for it either way.”* It seems to us therefore it is unnecessary to make any adjustment to the rental income to reflect this uncertain position nor to consider a void period associated with future negotiations.
72. Our view, therefore, is that the passing rent of £55,000 is a correct one to adopt and the yield to be applied to this is 6% and not the 7% that Mr Bennett argues for. **We conclude that the value of this unit is £907,593.**
73. We then turn to the valuation of Unit 6. This is a more problematic issue. Unit 6 was let under an unregistered lease in August of 2014, which demised the ground floor and basement for a term of 20 years from 1<sup>st</sup> September 2010 to 31<sup>st</sup> August 2030 at a rent of £25,000, as is set out in the agreed statement. In fact, it would seem to be a property occupying an upper mezzanine level, ground and lower ground floor. The user clause restricted the use to offices and there were rent review provisions. At the valuation date there was 9.98 years left but the lease was in fact surrendered on 1<sup>st</sup> October 2021.
74. In respect of the value of the property, both valuers first capitalised the market value of the space used as offices. Mr Bennett analysed particulars of 6 offices of which he had two preferred comparables. These he said were closest in style to the subject which he said were dark and dingy and in a long thin arrangement making it less useful as office space. He concluded a market rent of £45 per

square foot. This resulted in an annual rental of £19,755 compared to the passing rent of £25,000.

75. Mr Nesbitt said that the passing rent equated to £56.65 per square foot which he then cross checked against a list of 8 nearby office lettings which he analysed to give rates of between £40.82 and £67.80 pfs. On the basis that the subject unit was relatively small he was satisfied that the passing rent could safely be taken as the office rental value at the date of valuation.
76. Mr Nesbitt had used eight comparable properties set out at paragraph 24 of his report. Marketing particulars were attached but there was no reference to details in his report. These included at the first floor, 18 De Vere Mews, London and 2<sup>nd</sup> Floor, 81 to 83 Cromwell Road, London. He had been attacked on these two by Mr Cohen suggesting that they were not comparable at all. The units appear to open onto a courtyard with fountain feature. The space is described as 'excellent'. The property at 81 Cromwell Road, as viewed by the estate agents particulars provided by Mr Bennett, indicates a refurbished first floor office with air conditioning, period features and magnificent "ceiling heights." This is far removed from the office accommodation in the Subject Property. It was put to Mr Nesbitt that if one excluded these two from the assessment of the value, it brought back down the average pound per square foot to around £46, very close to the rental figure adopted by Mr Bennett.
77. Mr Nesbitt had been pressed by Mr Cohen to explain how he had dealt with matters by not fully analysing the comparable properties but merely it seemed checking the passing rent and applying that. His response was that he had no idea of knowing what each property contained and therefore what adjustments would have to be. He accepted that he had not incorporated any void periods but was of the view that the hypothetical purchaser would not have wanted to take that into account.
78. It seems to us it is important to look at the comparable market rents that have been provided to us and not just accept the passing rent. There are a number of comparable properties, which give around about £45 per square foot as being the level one would expect and is consistent with the comparable properties. We prefer the comparables and analysis provided by Mr Bennett and accept the rate of £45 pfs, making a market rent of £19,755 to be adopted at the end of the existing lease.
79. Although the use is restricted to offices, it is accepted that at one point, that without planning permission, it was used for residential purposes apparently for short term holiday lets, but only for a short period.
80. Mr Bennett gave this full consideration, incorporating comparables of 6 small flats sold in the neighbourhood. From these he arrived at an average adjusted rate per square foot. This he applied to the property, making adjustments to allow for the amenity and layout of the subject concluding a value of £547,902. He then determined the potential increase in value but for the reasons outlined earlier concluded that there was only a 10% chance of the potential increase in value as residential ie. £24, 150. Deferred by 9.97 years at 7% this

resulted in £12,298. However, he considered that only a notional amount would be considered for the prospect of a successful planning application and so allowed £10,000 as a ‘gambling chip’.

81. Mr Nesbitt in his evidence to us had considered what a notional purchaser would make of the illegal use of this accommodation for residential purposes. His view was that a notional purchaser was the same as a hypothetical purchaser and would buy a property for investment purposes which may not have had lawful use but would want certainly to obtain planning permission. He had told us that the flat was configured for residential purposes and not for office use and that this would therefore encourage a purchaser to view the possibility of change although he accepted that a nominal purchaser would want to know the prospect of regularising the use.
82. Mr Nesbitt’s allowance of an additional value of £241,636 was based on his assessment, unsupported, of a daily letting rate of £200 which allowing for costs would give a net income of £38,290 per annum. This gave an additional income over the office rent of £241,636, and he applied a discount of 50% for planning risk resulting in an additional value of £120,818. As we have indicated above, Mr Nesbitt had departed from this in his supplemental report allowing for a perpetuity of 9.97 years which reduced the additional value to £70,844. The result was a value for unit 6 of £525,390.
83. We do not find Mr Nesbitt’s assessment of the potential for this piece of accommodation to be sustainable. We find that the evidence before us was that the accommodation being used for residential purposes was unrealistic. There were several fire issues, it had little, or no natural light and the photographs showed a ‘mean’ piece of accommodation and we have little doubt that if the local authority were involved that they would prohibit its use for residential purposes and thus planning is an unlikely occurrence. We much prefer Mr Bennett’s notional 10% chance and the £10,000 chip.
84. We therefore assess this Property as an office with little potential for change of use, although we allow the £10,000 that Mr Bennett has added. **This gives the value for Unit 6 of £377,781.**
85. **The overall premium payable, therefore, for 1 Palace Gate is £1,285,465, as shown on the attached valuation, which includes the agreed value for the ground rents.**
86. In so far as the transfer is concerned, we received submissions from Mr Cohen in his skeleton and at the conclusion of the hearing. His concern was that the indemnity was required not just for the occupational leases but also for the units in respect of the lease that has been forfeited and the Petit Sud lease, which Mr Loveday in his somewhat limited submissions indicated was to be deregistered by the HM Land Registry, although at the time of the hearing had not been.
87. Our experience of such transfers is that they usually contain a limited title guarantee, although we accept there is some history involved in this Property and uncertainty with regard to the forfeited lease.

88. During the course of the hearing Mr Loveday submitted that the only issue with regards to the transfer was the wording of clause 11.3 and he suggested new wording: *"11.3 The Transferee hereby covenants with the Transferor by way of indemnity only that the Transferee and its successors in title will from the date of this Transfer and insofar as such leases have not been forfeited or otherwise terminated before the date hereof observe and perform all covenants on the Occupational Leases and will indemnify the Transferor from and against all claims and demands in respect of any future breach non-observance and non-performance thereof."* We do not recall Mr Cohen commenting on these words. In addition, we do not know what has happened with the forfeited lease to Petit Sud.
89. We propose that the parties let us have further submissions on this point within 14 days of the receipt of this decision and we will consider the terms of the transfer, it would seem only in so far as clause 11.3 is concerned. We assume there is no disagreement with regard to the addition to clause 11.1 to include reference to the Petit Sud lease. It would be helpful if the parties would confirm that this is the only issue and let us have clean copy of the proposed transfer, save for any outstanding issues. If the parties can agree the terms of the transfer so much the better.

## Collective Enfranchisement

Section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993

1 Palace Gate, LONDON W8 5LS

NAT/LON/OOAW/OCE/2024/0603

Calculation of parts of the premium payable in respect of commercial units

Date of Valuation 8 September 2020

Details are as set out in the experts' Joint Statement of Agreed facts

Matters determined:

Gross yield for commercial units 6%

Gross yield for current lease of Unit 1D 7%

Market rent for offices £45 pfs.

Hope value for change of use to residential of unit 1D £10,000

### Valuation of the Freehold interest Unit 1D

Market Rental of Restaurant	£55,000
YP in perpetuity @ 6%	16.6667
PV £1 in 0.17 years @ 6%	0.9901

**TOTAL UNIT 1D VALUE**

**£907,593**

### Valuation of the Freehold interest Unit 6



Passing rent	£25,000.00	
YP 9.98 years @ 7%	7.3492	
		<u>£183,730</u>
Market Rental offices 439 sq ft @ £45 pfs	£19,755.00	
YP in perpetuity @ 6%	16.6667	
deferred 9.98 years @ 6%	0.559	
		<u>£184,051</u>
Total value as offices		<b>£367,781</b>
Hope value for change of use to residential		<b>£10,000</b>
<b>TOTAL UNIT 6 VALUE</b>		<b>£377,781</b>
<b>Agreed Value of Ground Rents for flats</b>		<u><b>£90</b></u>
<b>Total premium payable</b>		<u><u><b>£1,285,465</b></u></u>

**Andrew Dutton**

Judge: A A Dutton

Date: 2 July 2025

## **ANNEX – RIGHTS OF APPEAL**

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