

4023



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

Case Reference : LON/00AE/OCE/2015/0109

Property : 12 Coverdale Road, London NW2
4BU

Applicants : Reza Razavi and Angela Razavi
Healthstream Properties Limited

Representative : Mr Piers Harrison Counsel

Respondent : London Borough of Brent

Representative : Mr James Sandham Counsel

Type of Application : Section 24(1) Leasehold Reform,
Housing and Urban Development
Act 1993 – to determine terms of
acquisition which remain in
dispute

Tribunal Members : Judge John Hewitt
Mr Richard Shaw FRICS

**Date and venue of
Hearing** : 28 & 29 July 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 August 2015

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The respondent is not entitled to a leaseback of that part of the specified premises comprising the garage on the ground floor;
 - 1.2 The premium payable by the applicants to the respondent for the freehold interest in the specified premises is £66,500.00; and
 - 1.3 Should it subsequently be held that the respondent is entitled to a leaseback of the said garage, the premium payable by the applicants to the respondent for the freehold interest in the specified premises, subject to and with the benefit of the leaseback, is £23,900.00.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. By a notice dated and given on 24 October 2014 [11] the applicants, as qualifying participating tenants, gave notice to the respondent reversioner of their claim to the right to collective enfranchisement. The specified premises, the freehold of which was proposed to be purchased, are 12 Coverdale Road, London Nw2 4BU registered at Land Registry with title number MX362595, including the front driveway and accessway, pathways and the garden thereof. That notice named the applicants as being the nominee purchaser.
4. By a counter-notice dated 23 December 2014 [17] the respondent admitted that the applicants were, at the date of giving the notice, entitled to exercise the right to collective enfranchisement in relation to the specified premises.
5. The parties were not able to agree all of the terms of acquisition. On or about 10 April 2015 the applicants made an application [1] to the tribunal pursuant to section 24(1) Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for the terms of acquisition in dispute to be determined.
6. Directions were dated 27 April 2015 [9]. As to valuation it is to be noted that those directions were:
 - “5. *The parties’ valuers must by 11th May 2015 exchange valuation calculations to clarify the issues in dispute.*
 6. *The parties must by 15th June 2015 exchange statements of agreed facts and disputed issues and send copies to the tribunal.*

7. *The parties must exchange expert reports **at least two weeks before** the hearing date notified to them in accordance with the following directions.*

8. – 11.”

7. By letters dated 24 June 2015 the parties were notified that the application would be heard on 29 and/or 30 July 2015.

The hearing

8. The application came on for hearing before us on 29 July and was concluded on 30 July 2015.

9. The applicants were represented by Mr Piers Harrison of counsel. He called Mr Stephen R Jones BA (Hons) MRICS to give evidence as an expert valuer. Mr Jones’ report dated 20 July 2015 is at [118]. At the hearing permission was sought to permit Mr Jones to file a supplemental report. That application was not opposed and the supplemental report dated 24 July 2015 is at [222].

10. The respondent was represented by Mr James Sandham of counsel. He called Mr Maurice Walsh MRICS, BSc (Surv), RICS Registered Valuer to give evidence as an expert valuer. Mr Walsh’s report dated 2 July 2015 is at [144].

11. Both valuers gave oral evidence and were cross-examined on their respective reports.

12. Both counsel provided us with written skeleton arguments and made closing oral submissions which were of assistance to us and for which we are grateful.

Background matters not in dispute

13. The specified premises were originally constructed in the early 20th century as a detached double fronted house of traditional brick construction beneath a pitched roof covered with peg tiles. Photographs of the property are at [134 & 158].

14. Subsequently, at some point, the property was adapted to comprise two self-contained flats, one on the ground floor (12a) and one on the first floor (12b). What was originally a ground floor reception room to the right of the property when facing it from the street, has been adapted to create a small integral garage of about 2.4m x 4.7m.

15. On 11 July 1958 the freehold title to the property was registered at Land Registry with title number MX362595 [21]. On 14 April 1959 the respondent was registered at the proprietor [21].

16. On 5 September 2011 the respondent granted a lease of flat 12a for a term of 125 years from 26 June 1989 [28]. The lease is registered at Land Registry. On 20 May 2014 Reza Razavi and Angela Razavi were

registered as proprietors [24]. The demise includes part of the rear garden and the lease grants certain rights of access over a pathway and the front garden and a right to park one car in that garden.

17. On 26 June 1989 the respondent granted a lease of flat 12b for a term of 125 years from that date [63]. The lease is registered at Land Registry. On 16 June 2015 Reza Razavi and Angela Razavi were registered as proprietors [59]. The demise includes part of the rear garden and the lease grants certain rights of access over a pathway and the front garden and a right to park one car in that garden.
18. The loft space above 12b is not demised under the lease of that flat, but the loft space is boarded out and there is a stairway to it within the demise of flat 12b.
19. Commencing on 15 June 1981 the respondent granted to Mr Ronald Norrington (DoB 12.12.1945) and Mrs Janet Norrington (DoB 23.05.1947) a tenancy of a flat at 8b Coverdale Road [169]. The terms of that tenancy include the right to use the garage at 12 Coverdale Road. At that time the weekly rental of £23.00 included £1.75 attributable to the garage. The terms of that tenancy were varied with effect from 6 May 1985 and a new tenancy of 8b Coverdale was granted to Mr Ronald Norrington, Mrs Janet Norrington and Mrs Eileen Bodkin, and the garage at 12 Coverdale Road remained within the terms of the new tenancy [168]. At that time the weekly rent of £42.51 included £2.90 attributable to the garage.
20. The tenancy of 8b Coverdale Road (including the tenancy of the garage at 12 Coverdale Road) is a secure tenancy within the meaning of Part IV of the Housing Act 1985 and the tenant thereof is entitled to the benefit of the Right to Buy provisions set out in Part V of that Act. Evidently the secure tenancy is now vested in Mrs Janet Norrington by survivorship.
21. In particular the following matters were agreed:
 1. The two long leases were both granted for terms of 125 years from 26 June 1989;
 2. The valuation date is 24 October 2014 and as at that date there was 99.67 years unexpired;
 3. Each lease provides for a ground rent of £10 per annum, without increase or review;
 4. The deferment rate to apply to the reversioner's freehold interest is 5%;
 5. The capitalisation rate to apply to reversioner's remaining ground rent interest is 8%;
 6. The freehold value of the ground floor flat (12a) at the valuation date was £400,000; and
 7. The freehold value of the attic at the valuation date was £15,000.

22. Until quite close to the hearing date the two valuers were in agreement that the freehold value of the garage at the valuation date was £35,000. However, it may be that one of both of them was under a misapprehension as to the implications of the Right to Buy right attached to the garage and/or the length of the leaseback of the garage sought by the respondent. At the hearing Mr Jones wished to contend for a value of £32,500 and Mr Walsh wished to contend for a value of £34,000.
23. Ordinarily where two or more expert witnesses have formally signed off a schedule of agreed matters courts and tribunals will be reluctant to permit one or more of them to resile from that agreed position.
24. In the present case we were not provided with a formal document signed off by both experts. It seemed to us that whatever understanding the two experts may have arrived at it was based on a genuine misunderstanding. The revised valuations sought to be advanced were both close to the one another and with the original figure and both were within the range of valuation tolerance. We were satisfied that both experts were present to argue their respective (revised) positions and that no prejudice would accrue if we permitted them to do so. In these circumstances we decided to permit the two experts to argue their respective (revised) positions as to the freehold value of the garage.

The issues for the tribunal to determine

25. The terms of acquisition in dispute and which the parties wished the tribunal to determine were:
 1. Whether or not the respondent was entitled to a mandatory leaseback of the garage;
 2. The freehold value of the first floor flat (12b), as at the valuation date;
 3. The freehold value of internal and external common parts, as at the valuation date;
 4. The premium payable by the applicants to the respondent for the freehold interest, as at the valuation date.

It is convenient to take each of these in turn.

Mandatory leaseback

26. First it is helpful to set out material provisions of the Act.

36.— Nominee purchaser required to grant leases back to former freeholder in certain circumstances.

(1) In connection with the acquisition by him of a freehold interest in the specified premises, the nominee purchaser shall grant to the person from whom the interest is acquired such leases of flats or other units contained in those premises as are required to be so granted by virtue of Part II or III of Schedule 9.

(2) Any such lease shall be granted so as to take effect immediately after the acquisition by the nominee purchaser of the freehold interest concerned.

(3) Where any flat or other unit demised under any such lease ("the relevant lease") is at the time of that acquisition subject to any existing lease, the relevant lease shall take effect as a lease of the freehold reversion in respect of the flat or other unit.

(4) Part IV of Schedule 9 has effect with respect to the terms of a lease granted in pursuance of Part II or III of that Schedule.

38.— Interpretation of Chapter I.

(1) In this Chapter (unless the context otherwise requires)—

"unit" means —

(a) a flat;

(b) any other separate set of premises which is constructed or adapted for use for the purposes of a dwelling; or

(c) a separate set of premises let, or intended for letting, on a business lease

101.— General interpretation of Part I.

(1) In this Part—

"flat" means a separate set of premises (whether or not on the same floor)—

(a) which forms part of a building, and

(b) which is constructed or adapted for use for the purposes of a dwelling, and

(c) either the whole or a material part of which lies above or below some other part of the building;

Schedule 9 GRANT OF LEASES BACK TO FORMER FREEHOLDER Part I GENERAL

1.—

(1) In this Schedule—

"the appropriate time", in relation to a flat or other unit contained in the specified premises, means the time when the freehold of the flat or other unit is acquired by the nominee purchaser;

"the demised premises", in relation to a lease granted or to be granted in pursuance of Part II or III of this Schedule, means —

(a) the flat or other unit demised or to be demised under the lease,
or

- (b) *in the case of such a lease under which two or more units are demised, both or all of those units or (if the context so permits) any of them;*

“the freeholder”, in relation to a flat or other unit contained in the specified premises, means the person who owns the freehold of the flat or other unit immediately before the appropriate time;

“housing association” has the meaning given by section 1(1) of the Housing Associations Act 1985;

“intermediate landlord”, in relation to a flat or other unit let to a tenant, means a person who holds a leasehold interest in the flat or other unit which is superior to that held by the tenant's immediate landlord;

“other property” means property other than the demised premises.

(2) In this Schedule any reference to a flat or other unit, in the context of the grant of a lease of it, includes any yard, garden, garage, outhouses and appurtenances belonging to or usually enjoyed with it and let with it immediately before the appropriate time.

2.—

(1) This paragraph applies where immediately before the appropriate time any flat falling within sub-paragraph (1A) is let under a secure tenancy or an introductory tenancy and either—

- (a) *the freeholder is the tenant's immediate landlord, or*
- (b) *the freeholder is a public sector landlord and every intermediate landlord of the flat (as well as the immediate landlord under the secure tenancy or the introductory tenancy) is also a public sector landlord.*

(1A) A flat falls within this sub-paragraph if—

- (a) *the freehold of the whole of it is owned by the same person, and*
- (b) *it is contained in the specified premises.*

(2) Sub-paragraph (1)(b) has effect whether any such intermediate landlord, or the immediate landlord under the secure tenancy or the introductory tenancy, is or is not a qualifying tenant of the flat.

(3) Where this paragraph applies, the nominee purchaser shall grant to the freeholder a lease of the flat in accordance with section 36 and paragraph 4 below.

(4) In this paragraph any reference to a flat includes a reference to a unit (other than a flat) which is used as a dwelling.

4.—

(1) Any lease granted to the freeholder in pursuance of paragraph 2 or 3, and any agreement collateral to it, shall conform with the provisions of Part IV of this Schedule except to the extent that any departure from those provisions is agreed to by the nominee purchaser and the freeholder with the approval of the appropriate tribunal.

(2) The appropriate tribunal shall not approve any such departure from those provisions unless it appears to the tribunal that it is reasonable in the circumstances.

(3) In determining whether any such departure is reasonable in the circumstances, the tribunal shall have particular regard to the interests of the tenant under the secure tenancy or introductory tenancy referred to in paragraph 2(1) or (as the case may be) under the housing association tenancy referred to in paragraph 3(1).

(4) Subject to the preceding provisions of this paragraph, any such lease or agreement as is mentioned in sub-paragraph (1) may include such terms as are reasonable in the circumstances.

5.—

(1) Subject to sub-paragraph (3), this paragraph applies to any unit falling within sub-paragraph (1A) which is not immediately before the appropriate time a flat let to a person who is a qualifying tenant of it.

(1A) A unit falls within this sub-paragraph if—

- (a) the freehold of the whole of it is owned by the same person, and*
- (b) it is contained in the specified premises.*

(2) Where this paragraph applies, the nominee purchaser shall, if the freeholder by notice requires him to do so, grant to the freeholder a lease of the unit in accordance with section 36 and paragraph 7 below.

(3) This paragraph does not apply to a flat or other unit to which paragraph 2 or 3 applies.

27. Mr Harrison argued first that paragraph 2(3) of Schedule 9 created the right to a leaseback of 'the flat'. Paragraph 2 applies where '*any flat falling within sub-paragraph (1A) is let under a secure tenancy*'. Sub-paragraph (1A) applies to a flat if:

- (a) the freehold of it is owned by the same person; and
- (b) it is contained in the specified premises.

Mr Harrison submitted that the entitlement to a leaseback only arises where first the freehold of the whole of the flat is owned by the same person and secondly that flat is contained within the specified premises, here, 12 Coverdale Road. But the whole of the flat subject to the secure tenancy is not contained within the specified premises, only a part of it, namely the garage, is contained within the specified

premises. Mr Harrison contended that the second condition in subparagraph 5(1A) was not fulfilled.

28. Mr Harrison reasoned that this make sense because where Schedule 9, paragraph 2(2) applies, paragraph 2(3) obliges the nominee purchaser to grant to the freeholder a leaseback of 'the flat'. In the present case the applicants, as the nominee purchaser, cannot do that as on completion of the purchase of the specified premises the nominee purchaser will not be the freeholder of 8b Coverdale Road, the flat let to the secure tenant with the garage. Thus he said the nominee purchaser cannot grant a lease of 'the flat'.

29. Mr Harrison contrasted the definitions of:

'the demised premises' in paragraph 1 of Schedule 9 which is: *'the flat or other unit ... to be demised ...'*

'unit' in section 38(1) which is:

- (a) *a flat;*
- (b) *any other set of premises which is constructed or adapted for use for the purposes of a dwelling; or*
- (c) *a separate set of premises let, or intended for letting, on a business lease'*

'flat' in section 101 which is: *'a separate set of premises (whether or not on the same floor)—*

- (a) *which forms part of a building, and*
- (b) *which is constructed or adapted for use for the purposes of a dwelling, and*
- (c) *either the whole or a material part of which lies above or below some other part of the building;'*

Schedule 9 paragraph 1(2) provides that that for the purposes of Schedule 9 (but not otherwise Mr Harrison said) ***"any reference to a flat or other unit, in the context of the grant of a lease of it, includes any yard, garden or garage outhouses and appurtenances belonging to or usually enjoyed with it and let with it immediately before the appropriate time."*** [Mr Harrison's emphasis].

30. Mr Harrison submitted that by the same reasoning the respondent was not entitled to a leaseback of the garage only on the footing that it was a unit. The definition of *'a unit'* clearly required that it be either a 'flat' or 'any other set of premises constructed or adapted for the purposes of a dwelling'. He argued that the garage was plainly not a flat, as defined, and plainly was not a separate set of premises constructed or adapted for the purposes of a dwelling. There was no suggestion here that the garage was let or intended for letting on a business lease.

31. In support of his submissions Mr Harrison cited *Admirals Walk 2000 Limited v Flagship Estates Limited*, a decision of the Leasehold Valuation Tribunal, Southern Rent Assessment Panel Ref: LVT/B/00/17 dated 24 December 2001.
32. Finally Mr Harrison argued that the flat at 8b Coverdale Road and the garage could not together fall within the definition of 'a unit' because the freehold of the whole of the unit is not contained within the specified premises.
33. Mr Sandham made rival submissions. His principal submission was that significantly paragraph 2(1A)(b) omits the words 'whole of it', so that the Act does not require the entire flat to be within the specified premises.
34. Mr Sandham argued that his analysis is supported by the obvious policy of the Act to ensure that local authorities can continue to accommodate their secure tenants. He said that to conclude otherwise would be perverse for two reasons:
 - 34.1 First, if the position was reversed, and the secure tenancy was of a flat within 12 Coverdale Road (in place of the garage) and the garage was elsewhere, it would mean that the local authority could not have a leaseback of the residential flat simply because the garage was not part of the specified premises; and
 - 34.2 Secondly, it would conflict with the Right to Buy provisions of the Housing Act 1985. A secure tenant has the right to acquire a long lease of a property which is not a house. Land let with a dwelling-house is to be treated as part of the dwelling-house. Given the two competing rights to acquire interests in land, the qualifying participating tenants right to enfranchise the freehold interest in the specified premises and Mrs Norrington's right to buy the premises the subject of the secure tenancy vested in her – were she to seek to exercise such right, the only way of reconciling them was to grant a leaseback to the respondent.
35. Mr Sandham also submitted that *Admirals Walk* can be distinguished on the basis that the garages concerned in that case were not the subject of secure tenancies.

Discussion and conclusion

36. We have given careful consideration to the rival submissions made to us. We prefer those of Mr Harrison. We consider that his analysis follows the correct construction of the leaseback provisions set out in the Act. Plainly, in our judgment, the subject garage is not a 'flat' and it is not an 'other unit' as those terms are defined in the Act.
37. Although attractively argued by Mr Sandham we reject his submission that paragraph 2(1A) is to be read as '(1A) A flat falls within this subparagraph if ... (b) (*a part of*) it is contained in the specified premises.

We do not attach significance of the omission of the words 'the whole of it' in the introduction of paragraph 2(1A) as submitted by Mr Sandham.

38. We acknowledge that there is a potential tension between the rights granted by the Act to qualifying tenants of long leases and the Right to Buy provisions of the Housing Act 1985. Both counsel submitted that if there was no leaseback of the garage to the respondent, then upon the completion of the acquisition of the freehold interest by the nominee purchaser (or by whom the nominee purchaser may direct), the garage ceases to be the subject of a secure tenancy and converts to a periodic tenancy which the (new) landlord is entitled to terminate by giving proper notice.
39. Thus it seems that there is a risk that if Mrs Norrington does not exercise the right to buy prior to the completion she will lose the right to buy so far as the garage was concerned.
40. Although not material to our decision on the proper construction of the Act as regards the subject leaseback, we record that at the hearing there was some speculation about the prospects of Mrs Norrington exercising the right to buy her flat (and the garage) and the view expressed by Mr Walsh for the respondent was that it was most unlikely she would do so; in his report he said that Mrs Norrington was 69 years old and that there was no right of survivorship and that they were factors he felt able to take into account in his valuation of the freehold of the garage.
41. We do not consider that the potential for tension between competing rights effected by two quite separate pieces of legislation has a material effect on the proper construction of either Act. In our judgment the draftsman of the 1993 Act was plainly aware of the Right to Buy rights vested in secure tenants and sought to preserve those rights by way of a leaseback as provided by way of paragraph 2 of Schedule 9. What the draftsman may not have considered was the really quite unusual circumstances which arise here where part of the premises the subject of a secure tenancy is a flat in one house and a garage in a house two doors away.
42. Whilst we recognise that there is a risk Mrs Norrington might lose the right to buy the garage which forms part of her secure tenancy we do not consider that risk should deflect us from the clear and proper interpretation of the leaseback provisions of the Act.
43. At this point it may be helpful if we record that in his skeleton argument at paragraph 7 Mr Sandham raised the question of a preliminary issue whether Mrs Norrington was an 'interested person' to whom notice of these proceedings should have been given. He drew attention to rule 29(3). We considered this and concluded that Mrs Norrington was not an interested person as defined in rule 1(3).

44. We also record that we were told the respondent had written to Mrs Norrington informing her of the fact of these proceedings and that there was a risk she may lose rights concerning the garage forming part of her secure tenancy.
45. Finally, on this subject, we record that if it be held that we were wrong to conclude that the respondent was not entitled to a leaseback of the garage and that the respondent is entitled to a leaseback the parties are agreed that such lease shall be in the form of the draft at [80].

The freehold value of the first floor flat (12b)

46. In his report at paragraph 14.8 [127b] Mr Jones for the applicants was at '*around £550,000 as at the valuation date.*'
47. In his report at paragraph 13.4 [154] Mr Walsh for the respondent was at '*Allowing a value ... perhaps £500,000 for the first floor flat...*'.
48. In large measure the difference between them concerned the assistance, if any, to be derived from the sale of the next-door property, 10 Coverdale Road, for £1.6m in January 2015. Both valuers considered this to be a comparable transaction but that adjustments were required.
49. It appears that as originally constructed both properties were similar (but not identical) in size, style and quality of build. Both properties had a (narrow) stairway leading to the loft. 10 Coverdale had works carried out, probably in the 1960's, to create two additional bedrooms. 12 Coverdale has not had such works carried out although evidently the loft space has been boarded out. No 10 Coverdale also has a rear ground floor sun room some 3.23m x 1.75m.
50. In his report Mr Walsh described 10 Coverdale as being '*Poor condition undergoing thorough refurbishment*' [152] and '*The property was in poor condition and is being extensively refurbished.*' [154]. Although he had them to hand when writing his report Mr Walsh did not append the selling agents sales particulars to his report.
51. In his report Mr Jones described 10 Coverdale as '*From the street, this house and the subject property appear similar, being of the same age and having a similar architectural design. However, according to the sales particulars, No 10 has a gross internal area of approximately 271.8 square metres (2,926 square feet), therefore it is larger than the subject property. This is because the attic has been converted to provide two large bedrooms (each having a dormer window) and there is a small ground floor sun room extension to the rear.*' [127a]. Mr Jones did attach the selling agents sales particulars to his report [136]. They record an asking price of £1,850,00 and describe the property as: '*A detached double fronted Edwardian property that requires complete refurbishment ideal for a discerning purchaser who wishes to modernise the property to their own style and tastes.*'

52. In short Mr Jones calculated a £ per square foot for 10 Coverdale which, adjusted for time, equated to £537. Applying that to his measurement of 12 Coverdale he arrived at a value of £1,157,772 for that property. Mr Jones recognised that 10 Coverdale was a detached residential house readily available to be modernised and updated. 12 Coverdale is a property comprising two self-contained flats let on long leases and a garage also let, without the certainty of planning permission for conversion to a detached family house and thus not a straightforward development opportunity. Mr Jones adjusted his value by 10% to reflect the extra cost of development and the uncertainty associated with it. This led him to a value of £1,040,000.
53. Mr Jones said that the agreed value of the ground floor flat (12a) was £400,000. This flat measured 822 sq ft and this equated to £497 psf. Mr Jones considered that a first floor flat enjoys a premium of 5% taking into account both benefits and dis-benefits associated with such a flat. Mr Jones then applied that rate to the first floor flat which is 1,092 sq ft which produces a value of £558,394.
54. In contrast Mr Walsh disapproved of the approach to value a residential house by reference to a price £psf. Mr Walsh also disagreed with Mr Jones' measurements and in his report he cites rival measurements.
55. However, if a price £psf was an appropriate approach he said that the whole of the attic floor in 10 Coverdale should be disregarded. His opinion was that that accommodation had no value at all. Mr Walsh attempted to justify this by reference to hearsay evidence of what the developer told him about the condition of 10 Coverdale Road generally and the attic in particular. Mr Harrison objected to Mr Walsh being able to do that on the basis that none of that evidence had been set out in his report and that in consequence the applicants had not had to opportunity to investigate it and test it. The tribunal was sympathetic to the objection and concluded that it should not take that evidence into account but should proceed on the basis of the condition of 10 Coverdale as described by Mr Walsh in his report which is substantially replicated in the selling agents sales particulars.
56. In support of his valuation Mr Walsh sought to rely on two further transactions mentioned in paragraph 11 of his report [153] which he described as comparables. But no details were provided. By way of illustration the first one mentioned simply says: "*6 Coverdale – Semi-detached 5 bed – Sold in May '14 £1,920,000 Comparable*". We find that such sparse information is of little, if any, assistance to us.
57. Given the rival evidence and our assessment of the valuers when giving their oral evidence we have a slight preference for the approach taken by Mr Jones. However, his evidence was by no means perfect and adjustments are required. We find that the value of the first floor flat is somewhere between £500,000 and £550,000 and we find that an appropriate value to adopt for the purposes of the exercise before us is

£525,000. This leads to a value of the respondent's interest being £4,168 as shown on the calculation attached to this decision marked 'Appendix A'.

The freehold value of internal and external common parts

58. These common parts comprise a short internal hallway from the front door to the bottom of the stairway leading to the first floor flat, the front garden and the side passageway leading to the rear garden.
59. Mr Jones said that he did not really think they had any value at all but was minded to adopt the convention of a nominal value of £1,000.
60. In his report Mr Walsh adopted a figure of £27,000 [164] which was broken down as to:

Front garden	£20,000
Ground floor common hall	£ 2,000
Shared footpath to rear	£ 5,000

61. At the commencement of his oral evidence Mr Walsh wished to adjust the figure of £27,000 down to £5,000. No breakdown of the revised figure was proffered. Despite a focussed but fair cross-examination Mr Walsh was not able to give any convincing explanation of his change of mind save that he said it was his duty to assist the tribunal and to narrow the issues between himself and Mr Jones and that was what he had done.
62. It was not in dispute that the front garden was subject to the parking rights of the two long lessees and Mrs Norrington's right of access to/from her garage.
63. Mr Walsh speculated that the shared side footpath to the rear might be of interest to the owner of the adjoining property, 14 Coverdale who might wish to extend his property to build up to the boundary and have the benefit of an access to his rear garden. We did not consider that convincing because the Land Registry filed plan at [26] appears to show 14 Coverdale is built up to or very close to the boundary and that the property has the benefit of a side access to the southern side of it.
64. Doing the best we can with the rival evidence before us and drawing on our accumulated experience and expertise we conclude that the value to attribute to the un-demised parts is £1,500.

The premium payable by the applicants to the respondent

65. The final component to include into the calculation of the price is hope value. That is to say, the amount that a hypothetical purchaser might add to his bid to reflect the benefit that might be derived from acquiring both leases and a planning permission to convert the building into a detached house.

66. Both valuers agreed that there was a hope value. As it happens conversion into a detached house appears to be quite likely (subject to planning) because both leases are now vested in Reza Rizavi and Angela Rizavi. There is also a compelling financial case to do so.
67. The valuers had different approaches. We have to say we found that the oral evidence of Mr Walsh to be confused, confusing and unconventional.
68. We preferred the approach of Mr Jones which was:

Value of 12 Coverdale £537 psf x 2,156 sq ft	=	£1,157,772
Less 10%		<u>115,777</u>
Rounded to		£1,040,000
Less value of component parts*		<u>974,000</u>
Development value		<u>£ 66,000</u>

We find that a hypothetical purchaser would consider adjusting his bid by between 12.50% and 15.00% of the development value. Given the fairly compelling case advanced by Mr Walsh that there was a real prospect of realising the development value in this case we have a adopted about 15% to arrive at a hope value of £10,000.

*Component parts made up as to:

Ground floor flat	£400,000
First floor flat	£525,000
Attic	£ 15,000
Common parts	£ 1,500
Garage	<u>£ 32,500</u>
Total	£974,000

69. Accordingly we arrive at the price of £66,500 payable by the applicants to the respondent as shown on the calculation attached to this decision marked 'Appendix B'. This, of course, on the footing that there is no leaseback of the garage.
70. However, if it should be held that the respondent is entitled to a leaseback of the garage, then the price payable by the applicants will be £23,900 as shown on the calculation attached to this decision marked 'Appendix C'.

Final observation

71. In opening his closing submissions Mr Sandham observed that some of the issues between the parties in this case came about because 'the experts did not have much opportunity to get their heads together'. We agree with the first part of that observation but not the latter. The reason why the experts did not 'get their heads together' was simply because the parties had not complied with the directions given to them. Had they done so the experts would have had 'plenty of time to get their heads together'.

72. In years gone by when jurisdiction over enfranchisement applications vested in the Leasehold Valuation Tribunal (LVT) disregard of such directions may have been tolerated because the LVT was not able to impose much, if anything by way for sanction for failure to comply with directions.
73. Now that jurisdiction on enfranchisement applications is vested in this tribunal the position is very different. The rules of this tribunal do empower the tribunal to apply sanctions where directions have not been followed for good reason. Parties must understand that this tribunal will not hesitate to apply such sanctions in appropriate cases.
74. Where time limits are imposed, if a party (for good reason) is unable to comply it must make an application to the tribunal for an extension of time. If a party does not do so it runs the real risk of a significant sanction being imposed.

Judge John Hewitt
12 August 2015.

OCE/2015/0109

Appendix A

12 Coverdale Road, London NW2 4BU

First Floor Flat - Calculation of share of Freehold price

Date of valuation 24 October 2014

Unexpired term of lease 99.67 years

Unimproved freehold value £525,000

YP = 8%

PV = 5%

Value of Freeholder's interest

Term

Rent

£10

YP 99.67 years @ 8%

12.4942

£ 125.00

Reversion

F/H value

525,000

Defer 99.67 years @ 5%

0.0077

£ 4,042.50

£ 4,167.50

Freeholder's interest

£ 4,168.00

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Appendix B

12 Coverdale Road, London NW2 4BU

Calculation of the Collective Enfranchisement Price
With No Leaseback of the Garage

Ground Floor Flat	Agreed at	3,216
First Floor Flat	Tribunal valuation	4,168
Garage		32,500
Attic		15,000
Common Parts		1,500
Hope value		10,000
		66,384
	Enfranchisement Price say	£66,500

OCE/2015/0109

Appendix C

12 Coverdale Road, London NW2 4BU

Calculation of the Collective Enfranchisement Price
With 999 year leaseback of Garage

Ground Floor Flat	Agreed at	3,216
First Floor Flat	Tribunal valuation	4,168
Garage		0
Attic		15,000
Common Parts		1,500
		23,884
	Enfranchisement Price Say	£23,900