

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2019] UKUT 190 (LC)
UTLC Case Number: LRA/80/2018

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LEASEHOLD ENFRANCHISEMENT – flat – premium – value of extended lease –
indexation of transactions – value of existing lease – relativity – use of graphs – whether
deduction to be made to FHVP value to reflect risk of tenant remaining as assured tenant
at expiry of lease – appeal allowed in part – cross-appeal allowed – premium determined at
£9,945*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER
TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

MRS OHUNENE OLIYIDE

Appellant

and

ELMBIRCH PROPERTIES PLC

Respondent

Re: Flat 6,
The Lindens,
7 Rotton Park Road,
Birmingham,
West Midlands,
B16 9JH

Before: A J Trott FRICS

Sitting at: The Royal Courts of Justice

on

11 June 2019

Mr Kola Oliyide MRICS for the appellant
Mr Kieron McKeown MRICS for the respondent

The following cases are referred to in this decision:

Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39

Re Elmbirch Properties Ltd's Appeal [2017] UKUT 314 (LC)

Re Midlands Freeholds Ltd's and Speedwell Estates Ltd's Appeals [2017] UKUT 463 (LC)

Re Midlands Freeholds Ltd's Appeal [2014] UKUT 304 (LC)

The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC)

DECISION

Introduction

1. This is an appeal by Mrs Ohunene Oliyide, the leaseholder of Flat 6, The Lindens, 7 Rotton Park Road, Birmingham, B16 9JH, against a decision of the First-tier Tribunal (Property Chamber) (“FTT”) dated 19 April 2018. The respondent freeholder is Elmbirch Properties plc.

2. The appellant’s leasehold interest is for a term of 99 years from 25 March 1984 at a ground rent of £90 pa raising to £180 pa in 2050. Mrs Oliyide served a notice of claim to exercise the right to acquire a new lease under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) on 5 June 2017 at a proposed premium of £6,200. At that time the lease had an unexpired term of 65.83 years.

3. The respondent served a counter notice admitting the appellant’s right to acquire a new lease but disputing the amount of the premium which it said should be £17,030. Mrs Oliyide applied to the FTT for the determination of the premium. The FTT determined the premium at £11,993 which it corrected to £11,959 when refusing permission to appeal on 23 July 2018.

4. Permission to appeal by way of a rehearing was subsequently granted by the Tribunal on 28 October 2018. Permission was restricted to:

(i) the extended lease value; and

(ii) the existing lease value.

The Tribunal also granted the respondent permission to cross-appeal against the FTT’s decision to make a deduction of 3.5% from the freehold vacant possession (“FHVP”) value to reflect the possibility of the tenant remaining in occupation as an assured tenant at the end of the lease under section 186 and Schedule 10 of the Local Government and Housing Act 1989.

5. Before the Tribunal the appellant argued for a premium of £8,008 and the respondent for £12,080.

6. The appellant was represented by her husband, Mr Kola Oliyide MRICS who, with the permission of the Tribunal, also gave expert evidence. The respondent was represented by Mr Kieron McKeown MRICS of McKeown & Co LLP, who, with the permission of the Tribunal, also gave expert evidence.

Facts

7. The appeal property is located in a residential area at the corner of Rotton Park Road and York Road in Edgbaston, some two miles from Birmingham City Centre. The A456 Hagley Road, a main road into Birmingham, is a short distance away and retail and restaurant amenities are close by.

8. The property is a one-bedroom first floor flat located in a purpose-built mid-1980s development of 24 flats in three joined three-storey units. It has brick elevations under a shallow pitched roof.

9. The accommodation comprises an entrance hall and corridor, an open plan living room and fitted kitchen, a double bedroom and a bathroom with WC, wash hand basin and a bath with an electric shower above. The parties do not agree the area of the subject flat. The appellant says it is 345 sq ft (32.1m²) and the respondent 360 sq ft (33.5m²). The property is single glazed and has electric heaters. There is mains electricity, water and drainage. The demise includes an allocated car parking space.

10. The following valuation parameters have been agreed or were determined by the FTT and permission to appeal refused in respect of them:

- (i) The valuation date is 5 June 2017;
- (ii) Unexpired lease term: 65.83 years;
- (iii) Ground rent of £90 pa payable for 32.83 years and £180 pa for 33 years thereafter;
- (iv) The deferment and capitalisation rates are 5.5%;
- (v) No adjustment is to be made for tenant's improvements; and
- (vi) The FHVP value is 1/0.99 times the extended lease value.

Issue 1: extended lease value

Evidence

11. Mr Oliyide said that the market evidence of long leasehold sales was of much larger flats than the subject property. His three comparables were between 34% and 78% larger while those of Mr McKeown were between 28% and 53% larger. To allow for this

discrepancy Mr Oliyide said that the comparables should be analysed on a per square foot (“psf”) basis. This gave a range of value between £134 psf to £230 psf. The figure of £230 psf was derived from the sale of Flat 55, Spire Court, a third-floor one bedroom flat with central heating and double glazing located in a modern (2003) purpose-built block. Mr Oliyide took this as the “top value benchmark” and adopted a value of £232 psf for the subject property which gave a long leasehold value of £80,000.

12. Mr Oliyide criticised Mr McKeown’s reliance on the indexation of transaction prices to the valuation date. In particular, he said that Mr McKeown’s valuation at £99,100 was based on the indexation of the previous sale price of the subject flat (£99,000) in 2007. Mr Oliyide considered the use of indexation over such a long period (10 years) to be unreliable. He illustrated this by indexing the historic sale price of two of Mr McKeown’s comparables and comparing the results with the recent sale prices upon which Mr McKeown relied. This showed that indexation over-valued the flats by 27% (Flat 11, Griffin House) and 71% (Flat 1, Spire Court). For Flat 1, Spire Court the sale price in February 2016 was 33% below the sale price in December 2004, whereas indexation suggested it should be 16% higher. Mr Oliyide said this contradicted Mr McKeown’s evidence that “it seems inconceivable that the value of the subject flat [£80,000 in 2017] can be lower than the purchase price [£92,000 in 2007].”

13. The FTT rejected the appellant’s estimate of £80,000 as the extended lease value of the subject property because it “appears significantly below market values”. They compared it with Flat 5, 33 Francis Road, which had sold for £82,000 in June 2017 and which the FTT said “was in a distinctly less attractive area of the city”. But Mr Oliyide said that Flat 5 was much larger (78%) than the subject flat and had two bedrooms.

14. Mr McKeown identified four long leasehold comparables within a quarter of a mile of the subject flat. One of these, Flat 1, 9 York Road, was also relied on by Mr Oliyide. The other three comparables were all sold in early 2016 and Mr McKeown adjusted the transactions for time using the Land Registry House Prices Index for flats in Birmingham. The adjusted prices ranged from £99,319 (Flat B, 10 York Road) to £107,595 (11 Griffin House), while Flat 1, 9 York Road was sold very close to the valuation date in June 2017 for £100,000. Mr McKeown also time adjusted the previous sale of the subject flat in 2007 for £90,000 to give a figure of £99,103 at the valuation date. He concluded that the range of value for one-bedroom flats was between £99,000 - £107,000 at the valuation date.

15. Mr McKeown acknowledged that the comparables were substantially larger than the subject flat but said that their price, especially for buy to let investors, was geared to the rent that was obtainable for one-bedroom flats and which was not sensitive to size. So, if an investor could only get, say, 5% more rent for a larger one bedroom flat the price would only be 5% more, even though the flat might be 20% larger than the appeal property. In the light of this Mr McKeown thought “the indexed value of £99,100 to be reasonable.”

Discussion

16. I agree with Mr Oliyide (and the FTT) that indexation over long periods is unreliable and should not be used. Mr McKeown's adopted figure of £99,100 is the result of indexing the original sale price of the subject flat in 2007, a period of 10 years. It is an unreliable figure and I reject it.

17. Of the remaining comparables, Flat 1 at 9 York Road and Flat 5 at 33 Francis Road were both sold in the same month as the valuation date and do not require any adjustment for time. Flat 5 was on the second (top) floor of a purpose-built block of flats. The experts agree that it is in an inferior location to the subject property. The condition of the property at the time of sale is not known, nor whether the building had a lift, double-glazing, central heating or an allocated (or any) car parking space. Analysed on a per square foot basis the price is comparatively low at £134. It is also the largest of the comparables at 614 sq ft and, unlike any of the other comparables, has two bedrooms. Mr McKeown pointed out that Flat 5 was sold again in April 2018 for £113,500, an increase of 38% in 10 months. The equivalent change in the UK House Price Index for flats in Birmingham over the same period was 2%. In my opinion there are too many uncertainties about, and differences in, this comparable for it to be a useful comparator to value the subject property.

18. Flat 1 at 9 York Road is not in a purpose-built building but is part of a converted house. Mr McKeown said local agents had told him that purpose-built flats usually commanded a premium over conversions, especially those with a high service charge. The particulars of sale state that the service charge of Flat 1 at 9 York Road was £54 per month (£648 pa). This compares with £75 pm (£900 pa) for Flat B at 10 York Road. But no details were given in evidence about the service charge of the subject property or of any of the purpose-built flats, so a comparison between them is not possible. Mr McKeown was told that in some (unspecified) conversions the layout was not efficient and parts of the space was unusable apart from storage. The particulars of sale for Flat 1 at 9 York Road refer to a maximum dimension for the lounge/dining room and measures the bedroom into an alcove, but there are no detailed plans of the comparables. A comparison between the values of Mr McKeown's four time-adjusted long leasehold comparables does not support his evidence that purpose-built flats command a premium over conversions. Two of his comparables are conversions and two are purpose-built. The former analysed to an average of £220 psf and the latter to £206 psf. The respective average areas were 452 sq ft and 511 sq ft and the difference in value per square foot between the two types of flat (about 6.5%) may be attributable to a quantum effect. In my opinion flat 1 at 9 York Road, which is identified by both experts, is a useful comparable.

19. Mr McKeown also relied upon the sale of Flat B, 10 York Road in March 2016 which he indexed to £99,319 at the valuation date. This flat is broadly similar to Flat 1, 9 York Road and the indexed price is close to the latter's sale price of £100,000 at the valuation date.

This suggests the use of indexation is reasonably reliable over a period of some 15 months. Mr McKeown's two purpose-built comparables were sold in February 2016 (1 Spire Court) and March 2016 (11 Griffin House) and their indexed values were £107,595 and £102,884 respectively.

20. The average value of the first three of Mr McKeown's comparables is £219 psf. The exception is 1 Spire Court which is significantly lower at £195 psf. Little detail was given about this ground floor flat and its value varies from that of 55 Spire Court, a similar sized third floor flat relied on by Mr Oliyide, which he says sold in March 2018 at a price of £119,000 having been agreed in April 2017. This represents £230 psf.

21. Mr Oliyide's final comparable was Flat 27, Moorland Court, a fourth floor flat in a 1930's mansion-style purpose-built block. This sold in December 2016 for £110,000. Indexing this price to the valuation date gives a figure of £113,500 or £203 psf.

22. Analysing the comparables on the basis of a price per square foot and indexing prices over relatively short periods to the valuation date gives a range of £195 psf to £230 psf with an average (excluding Flat 33, Francis Road) of £214 psf.

23. It is regrettable that the parties were unable to agree the area of the subject property, a small one-bedroom flat. The Tribunal expects such matters to be agreed as a matter of course. I have reluctantly had to take the average of the experts' figures to give an adopted area of 352 sq ft. The average size of the six comparables is 500 sq ft which is 42% larger than the subject property.

24. Mr Oliyide's valuation of the subject property at £232 psf is at the top of the range of comparable values, while Mr McKeown's is considerably higher at £281 psf. Mr McKeown said that it is not appropriate to value this type of property on a rate per square foot basis because the market will largely be comprised of buy to let investors whose main concern is the rental return. He said rental value was not a linear function of the size of a flat but was limited by there being only one bedroom. But Mr McKeown's thesis was not supported by an analysis of letting values achieved for different sized one-bedroom flats. It also assumes the market for such flats will be dominated by investors, whereas one-bedroom flats are also of interest to owner occupiers, especially first-time purchasers. Mr Oliyide said that the appellants acquired the subject flat in 2007 as an owner occupier.

25. I am not persuaded by Mr McKeown's assertion that the price of one-bedroom flats is inelastic with respect to size. There is no evidence to support it and although it may have some merit where flats are of broadly similar area, I do not accept that the subject flat, which is 30% smaller than the average of the six comparables, would be worth the same as the larger flats. I therefore adopt a valuation based upon a rate per square foot.

26. In answer to questions from the Tribunal, Mr Oliyide accepted that the rate per square foot would be higher for smaller flats than for larger ones, due to a quantum effect: see for instance *The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 0223 (LC)* at paragraph 77.

27. The experts did not analyse the six comparables by reference to value affecting factors such as double-glazing, central heating, floor level and the availability of a lift, car parking spaces, age or condition. Their analyses were therefore at a very basic level which do not allow a nuanced evaluation of the differences between the comparables.

28. In my opinion Mr Oliyide acted fairly in adopting a rate of £232 psf which is above the highest rate per square foot of the comparables. But, for the reasons stated above, I consider this should be increased due to the small size of the subject flat and I add £25 psf, or just over 10% to give £255 psf. The value of the extended leasehold interest in the subject property is therefore £89,760¹ which I round to £90,000. The FHVP value is £90,909².

Issue 2: the existing lease value

Evidence

29. Mr Oliyide relied upon the sale of a short leasehold interest in Flat 16, Moorland Court for £71,000 in March 2017. The lease was dated 28 November 1960 but the term of 99 years commenced on 25 March 1938. At the date of sale the unexpired term was 20 years. Mr Oliyide compared this transaction with the sale of the long leasehold interest (990 years) in 27 Moorland Court in December 2016 for £110,000. This showed a relativity of 64.5%. He adjusted this for the benefit of the Act by deducting 19%, a figure derived from the Savills 2015 Graph. This gave an adjusted relativity of 52.3%.

30. Mr Oliyide compared the relativity of 52.3% with that given for a 20-year unexpired term in Savills 2015 Unenfranchisable Graph (39.2%) and in the Gerald Eve 1996 Graph (without Act rights) (43%). He noted that the relativity of Flat 16, Moorland Court was 13.1% higher than the Savills Graph and 9.3% higher than the Gerald Eve Graph and concluded that although Flat 16 had a much shorter unexpired term than the subject lease “it is useful evidence that local transactions achieve relativities in the upper quartile of relativity graphs.”

¹ 352 sq ft x £255 psf = £89,760

² £90,000/0.99 = £90,909

31. Mr Oliyide said that the relativity of a lease with an unexpired term of 65.83 years (the subject property) was 85.1% according to the Gerald Eve 1996 Graph and 82.6% according to the Savills 2015 Unenfranchisable Graph. He said that the evidence of the sale of the short lease at Flat 16, Moorland Court supported the adoption of the higher of these two relativities. This was said to be consistent with the Tribunal's decision in *Mundy* where "the Upper Tribunal expressed its preference for the Gerald Eve Graph as the 'industry standard'".

32. Mr McKeown said in *Re Elmbirch Properties Ltd's Appeal* [2017] UKUT 0314 (LC) the Tribunal had determined the relativity of a lease of a flat in Harborne, Birmingham with an unexpired term of 68.67 years at 80.7%. This was 5.5% below the equivalent figure given in the Gerald Eve Graph (86.2%). Since the unexpired term of the subject lease was 65.8 years and as the relativity for such an unexpired term was shown as 84.48% on the Gerald Eve Graph, the appropriate relativity should be $84.48\% - 5.5\% = 79.83\%$.

33. Mr McKeown checked this result by analysing the relativity of Flat 12, William Court. That was sold in December 2017 with 47 years unexpired. The price, indexed to the valuation date, was £69,967. He compared this price against the average (indexed) price of two long leasehold sales at Flats 11 and 16 Griffin House (£105,570) to give a relativity of 66.3%. Mr McKeown said that the equivalent relativity on the Gerald Eve Graph was 71.6% or 5.3% more than his calculated figure. He said this corresponded with the result in the *Elmbirch* appeal.

Discussion

34. Contrary to Mr Oliyide's assertion, the Tribunal did not express an unqualified preference in *Mundy* for the Gerald Eve Graph, but noted that it was the graph parties were most likely to take into account at the valuation dates. The Tribunal said at paragraph 153:

"We are not able to give an unqualified endorsement to the use of either [the Gerald Eve Graph or the Savills 2002 Graph] for the reasons set out in Appendix C."

The Tribunal adopted the figure produced by the Gerald Eve Graph but said at paragraph 154:

"However, we wish to stress that although we are prepared to adopt that figure, it should not be regarded as an unqualified endorsement of that method but only because it is probably the least unreliable figure of those available to us on the evidence in this case."

Appendix C to the *Mundy* decision contained a detailed analysis of relativity graphs and stated at paragraph 62:

"We are satisfied that the GE graph was the graph which was in most common use at the valuation dates for the leases without rights under the 1993 Act. It was certainly used by valuers for the purpose of negotiating the relativities for leases without rights

under the 1993 Act. Further, as already explained, it did influence the market for leases with rights under the 1993 Act to the extent that parties to transactions for such leases wanted to calculate the likely amount of the premium payable for an extended lease.

63. To all intents and purposes the GE graph was the industry standard. Parties may have referred to other graphs but they were unlikely to have ignored the GE graph. ...

...

65. ... Its predominant use in the market does not seem to us to depend upon the robustness of the methodology or its pre-eminence as a graph; rather it is due to its being the first of its kind and the most familiar to practitioners.”

35. Mr Oliyide’s analysis of the sale of Flat 16, Moorland Court, a leasehold interest with an unexpired term of 20 years, is not helpful in determining the open market value of the subject lease which has an unexpired term over three times as long. It also produces what appears to be an anomalous result. Mr Oliyide’s relativity (net of Act rights) of 52.3% for a 20-year unexpired term is considerably higher than the equivalent figures derived from the Gerald Eve Graph (43%) or the Savills 2015 Unenfranchisable Graph (39.2%). I do not give this comparable any weight.

36. Mr Oliyide adopted a relativity of 85.1% which he said he took from the Gerald Eve Graph. But the net of Act rights relativity shown in the Gerald Eve Table of Relativities (1996) exhibited to both experts’ reports gives the relativity of an unexpired term of 66 years, i.e. longer than that of the subject flat, at 84.6%. The relativity of a shorter lease must be less, not more, than that figure. The correct relativity for an unexpired term of 65.83 years taken from the version of the Gerald Eve Graph upon which both experts rely, is 84.5%.

37. Mr Oliyide applies his relativity of 85.1% to his extended lease value of £80,000. That too is wrong. The relativity should be applied to the FHVP value which Mr Oliyide says is £80,808.

38. Mr McKeown calculated the relativity by reference to the decision in *Elmbirch* in which the Tribunal determined the relativity of an unexpired term of 68.67 years at 80.7%. He said this was 5.5% below the equivalent figure in the Gerald Eve Graph (86.2%). In fact it is 6.4% below that figure since the *percentage* difference between them is not found by subtraction³.

³ The percentage difference is $(1 - (80.7/86.2)) \times 100 = 6.38\%$. Mr Oliyide made the same mistake when comparing the relativity of Flat 16, Moorland Court with the equivalent relativities shown in the Savills and Gerald Eve Graphs, see paragraph 30 above. His calculated relativity was actually 33.4% and 21.6% higher than those relativities respectively.

39. Mr McKeown then deducted 5.5% from the relativity of 84.48% found from the Gerald Eve Graph for an unexpired term of 65.83 years. This time he undertook the correct calculation, albeit using the wrong percentage, i.e. 5.5% instead of 6.4%. His resultant relativity of 79.83% (which should be 79.07%) was then verified by reference to market evidence, i.e. the sale of a 47-year unexpired term in Flat 12, William Court was compared with the sale of two long leaseholds at Griffin House. Since the market relativity so derived (66.3%) was said to be 5.3% below the equivalent figure found from the Gerald Eve Graph (71.6%) Mr McKeown submitted that his relativity of 79.83% was correct. He derived further support from the Beckett and Kay Graph which showed a relativity of 80% for the relevant unexpired term.

40. In reaching this conclusion Mr McKeown again makes the mistake of subtracting the calculated relativity from that found in the Gerald Eve Graph (71.6% - 66.3% = 5.3%). The correct figure is 7.4%. More importantly, Mr McKeown does not adjust the sale price of Flat 12, William Court for the benefit of the Act. Since the Gerald Eve Graph shows the relativities net of Act rights Mr McKeown's comparison between the two relativities is not valid.

41. I do not find Mr McKeown's analysis to be accurate, consistent or helpful. Apart from the calculation errors that I have identified, his analysis assumes it is possible to adopt the relativity determined by the Tribunal in another appeal as his starting point. *Elmbirch* was an uncontested appeal and while there are broad similarities in the length of unexpired term, the type of flats and their location in the West Midlands, I do not accept that the relativity determined by the Tribunal should act as a foundation upon which to build a complex analysis of the appropriate relativity in this appeal. As the Tribunal said in *Elmbirch* at paragraph 63:

“Our conclusions in this unopposed appeal and on this limited evidence should not be relied upon as a precedent for relativity levels, or other adjustments, in other cases which should continue to be determined on the evidence adduced in those cases.”

42. The parties refer to the 1996 Gerald Eve Graph and Mr Oliyide also refers to the Savills 2015 Graph. In the absence in this appeal of market evidence of relativities obtained from the sale of leases (albeit with Act rights) of a similar unexpired term to that of the appeal property, I rely instead on those graphs. The problems of using such graphs outside prime central London were discussed in *Midlands Freeholds Ltd's and Speedwell Estates Ltd's Appeals* [2017] UKUT 0463 (LC) at paragraphs 37 to 43 and for the reasons given there I consider their use to be appropriate in this appeal.

43. Both graphs show the relativity net of Act rights. The Gerald Eve 1996 Graph gives a relativity of 84.5% for an unexpired term of 65.83 years. The equivalent figure in the Savills Unenfranchisable Graph 2015 is 82.0%. Gerald Eve published an updated version of their graph in December 2016. This was available to the parties at the FTT hearing in February 2018 but neither party appears to have referred to it. The 2016 Gerald Eve Graph shows a

relativity, without Act rights, of 82.3% for an unexpired term of 65.83 years, i.e. in line with the Savills graph. In my opinion the appropriate relativity in this appeal is 82.0%. The existing lease value is therefore £74,545⁴.

Issue 3: deduction for Schedule 10 rights (cross-appeal)

Evidence

44. Mr McKeown said that whilst an investor buying a freehold subject to a short lease of 40 years or less might consider the possibility of a tenant holding over at the end of the lease he did not think that would be the case where the unexpired term had over 68 years unexpired. He had dealt with over 1,500 lease extensions and in only one was the tenant holding over and even then the tenant had not sought an assured tenancy. Mr McKeown thought that after 68 years the landlord would in any event be looking to redevelop the building and would probably seek possession of the flat under section 61 of the 1993 Act. Consequently, he did not think any deduction should be made to the FHVP value to reflect the risk of a tenant remaining in possession at the end of the term. He supported this view by reference to *Midlands Freeholds Ltd's and Speedwell Estates Ltd's Appeal* where the Tribunal held that there should be no deduction for Schedule 10 rights where the lease had 46 years unexpired.

45. Mr Oliyide said that the FTT's decision to allow a 3.5% deduction for Schedule 10 rights was consistent with the Tribunal's decision in *Re Midlands Freeholds Ltd's Appeal* [2014] UKUT 0304 (LC) where a 4% deduction was made in respect of a lease with an unexpired term of 60 years. A lessee, having paid a premium to acquire the leasehold, would vigorously pursue their rights under Schedule 10 to avoid becoming homeless. Mr Oliyide thought the prospect of redevelopment under section 61 of the 1993 Act was very remote and should be ignored.

Discussion

46. The Tribunal reviewed the question of whether any allowance should be made for the prospect of a lessee holding over on an assured tenancy in *Midlands Freeholds Ltd's and Speedwell Estates Ltd's Appeals*. This review considered the history and scope of the Tribunal's approach to this issue at paragraphs 59 to 65, including the decision in *Re Midlands Freeholds Ltd's Appeal*. The Tribunal concluded, in the light of some, albeit limited, evidence that a hypothetical purchaser would not make any discount to the FHVP value where the lease had 46 years to run. The factors discussed in that case apply with

⁴ Existing lease value = £90,909 x 0.82 = £74,545

greater force to a leasehold with over 65 years unexpired and, for the same reasons, I make no adjustment for Schedule 10 rights in this appeal.

Determination

47. The three issues have been determined as follows:

- (i) the extended lease value is £90,000;
- (ii) the existing lease value is £74,545; and
- (iii) there should be no deduction to the FHVP value for Schedule 10 rights.

48. The appeal is therefore allowed in part and the cross-appeal is allowed.

49. I determine the premium payable at £9,945 as shown in the attached appendix.

Dated 12 August 2019

A J Trott FRICS
Member Upper Tribunal (Lands Chamber)

UPPER TRIBUNAL (LANDS CHAMBER) VALUATION: FLAT 6, THE LINDENS B16 9JH

1. Diminution in value of freehold interest**(i) Capitalisation of ground rent**

Ground rent:	£90.00		
x YP 32.83 years @ 5.5%:	<u>15.047</u>	£1,354	
Reversion to:	£180		
x YP 33 years @ 5.5%:	15.075		
x PV of £1 in 32.83 years @ 5.5%:	<u>0.172</u>	£467	
			£1,821

(ii) Freehold reversion

Unencumbered FHVP value:	£90,909		
x PV of £1 in 65.83 years @ 5.5%	<u>0.029</u>		
			<u>£2,636</u>
			£4,457

(iii) Less proposed FHVP value

Unencumbered FHVP value:	£90,909		
x PV of £1 in 155.83 years @ 5.5%	<u>0.00024</u>		
			<u>(£22)</u>
Diminution in value of freehold interest:			£4,435

2. Marriage value**(i) Value of proposed interests**

(i) Leasehold:	£90,000		
(ii) Freehold:	<u>£ 22</u>		
		£90,022	

(ii) Less value of present interests

(i) Leasehold:	£74,545		
(ii) Freehold:	<u>£4,457</u>		
		£79,002	

Marriage value: £11,020

50% of marriage value to freeholder: £5,510

Premium payable: £9,945