



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

Case Reference : **BIR/00CN/OLR/2017/0059**
BIR/00CN/OLR/2017/0048

Properties : **257 Penns Lane, Sutton Coldfield, B76 1LS**
21 Eldon drive, Sutton Coldfield, B76 1LT

Applicants : **No 257: Mr S C Nelson (Leaseholder)**
No 21: Ms C Jones(Leaseholder)

Representative : **Mr R Bakewell FRICS**

Respondent : **Stanley N Evans (Properties) Ltd (Freeholder)**

Representative : **Mr K F Davis FRICS of Cottons Chartered Surveyors**

Type of Application : **Determination of Premium and terms of acquisition; Sections 48 and 60 Leasehold Reform and Urban Development Act 1993 ("the 1993 Act")**

Tribunal Members : **Robert Brown FRICS (Chairman)**
Judge D R Salter
Niall Walsh FRICS

Date and venue of Hearing : **9th August and 18th October 2017**
Tribunal Hearing Rooms, City Centre Tower, 5-7 Hill Street, Birmingham B5 4UU

Date of Decision : **28 November 2017**

DECISION

1. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as 257 Penns Lane, Walmley, Sutton Coldfield B76 1LS (No 257) under the terms of the Leasehold Reform and Urban Development Act 1993 is **£32,122.00.**
2. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as 21 Eldon Drive, Walmley, Sutton Coldfield B76 1LT (No 21) under the terms of the Leasehold Reform and Urban Development Act 1993 is **£32,122.00.**

REASONS FOR DECISION

The Application and Introduction

3. This determination follows applications made in respect of 257 Penns Lane dated 10th April 2017 and 21 Eldon Drive on 12th June 2017, for the determination of the premium to be paid for 90 year lease extensions, on the subject properties, under the terms of the 1993 Act.
4. The Applicants in respect of the Premium are the respective leaseholders.
5. The Tribunal is not asked to consider the terms of the new lease under the provisions of sections 56 and 57 nor the legal costs and surveyors fees under section 60 of the Act.
6. At the commencement of the Hearing on 8th August 2017 the Tribunal introduced the parties to the case of *Elmbirch Properties plc* [2017] UKUT 0314 (LC) (*Elmbirch*) delivered on 27th July 2017 and invited the parties to comment after a short adjournment. Both parties were agreed that the Hearing should be adjourned to a later date to allow time for proper consideration of this decision and its effect on the cases in hand. The Tribunal agreed and Directions were issued requiring the parties to exchange further submissions limited to the issue raised in *Elmbirch* (above).

Matters agreed between the parties before and during the Hearing

7. The parties' representatives had helpfully agreed certain matters and these are listed below:

1) Valuation Date: 257 Penns Lane: 15th November 2016
21 Eldon Drive: 24th October 2016

2) Capitalisation rate: 7.00%

3) Length of term unexpired (for both leases): 44.4 years unexpired

4) The capitalised value of the ground rent: £270.00

5) Deferment Rate: 5.50%.

6) There is no requirement for an adjustment to reflect tenant's improvements in this case.

7) Adjustment to reflect potential rights under Schedule 10 of the Local Government Act 1989: 6.00%

8) In valuation terms there is no difference in value between a ground floor flat and a duplex apartment the floor areas and accommodation being similar. It is therefore considered by both valuers to be purely matter of personal preference as to the convenience of a ground floor flat as against the security of a first floor duplex, and not to be value significant.

9) There is no differential in value terms to reflect differing locations on the estate, despite properties at the northern end of the estate overlooking the local cricket ground whilst some of those at the southern end fronting the busy Penns Lane. Nevertheless Mr Bakewell expressed the view that the comparison must be even-handed and he believed this had been achieved and reflected in the comparables chosen and within the average values applied.

Matters in dispute between the parties

8. The Tribunal was told that the following matters were still in issue:

1) Existing lease value (for both properties):

Applicants £109,000.00; Respondent £92,000.00

2) No Act World adjustment (reducing the market value of the existing lease):

Applicants £500.00; Respondent 8.00%

3) Freehold - after lease extension:

Applicants £1.00; Respondent 1.00% in line with the decision in *Earl Cadogan v Erkman* [2011] UKUT 90 (LC) and other UT cases.

4) Extended leasehold Value:

Applicants: £144,200.00 (revised in Mr Bakewell's Supplemental report)

Respondent: £147,500.00

Valuations submitted by the parties

9. The Applicants: £24,331.00 (Amended from £25,890.00 in Initial Report).

10. The Respondent: £38,063.00

The Law

11. The relevant law is Chapter II sections 39 to 62 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").
12. Chapter II of the 1993 Act relates to the individual right of a tenant of a flat to acquire a new Lease of that flat. The law is contained in Sections 39 to 61B of the 1993 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
13. Section 42 sets out what must be contained in the tenant's notice. Section 45 sets out what must be contained in any counter-notice given in response by the landlord.
14. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.
15. Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.
16. Section 60 deals with the costs of the transaction payable by the Lessee.

Inspection

17. The Tribunal inspected **21 Eldon Drive** on 9th August. A friend of Ms Jones (Ms Lotte) was present.
18. The property comprises a duplex two bedroom flat. The accommodation comprises: Hall, Kitchen (fitted), 2 Double Bedrooms, Living Room and Bathroom (fitted electric shower over bath). The property is heated by electric oil filled and convector radiators.
19. There is a garage in a separate block.
20. The Tribunal inspected **257 Penns Lane** on 18th October. Mr Bakewell was present.
21. The property comprises a ground floor two bedroom flat. The accommodation comprises: Hall, Kitchen (fitted), 2 Double Bedrooms, Living Room and Bathroom (fitted electric shower over bath). The property is heated by electric convection radiators.
22. There is a garage in a separate block.
23. The Tribunal also identified that Eldon Drive and a number of properties facing Penns Lane were on the same estate and constructed around the same time. Both properties could be regarded as broadly comparable for valuation purposes. Further the Tribunal was able to identify that the duplex apartments (which are on 2 floors) appeared to be on half the footprint of the ground floor flats. In other words, they are very similar in size.

The Hearing

24. Mr R Bakewell FRICS appeared on behalf of the Applicants.

25. Mr K Davis FRICS appeared on behalf of the Respondent.

Discussion on the Issues and the Tribunal's findings

Open Market Value - Existing Lease

For the Applicants: Mr Bakewell said that:

26. Properties with extended leases had sold:

36 Eldon Drive: Sold December 2016 for £149,000.00. Overlooks the cricket ground, has an excellent kitchen and bathroom and is generally in very good order.

49 Eldon Drive: Sold November 2016 for £135,000.00. New kitchen and bathroom, and, generally, in very good order.

19 Eldon Drive: Sold March 2017 for £134,000.00 with an extended lease subject to an initial ground rent of £300.00 per annum rising. Generally in good condition throughout.

27. Properties subject to existing leases had sold:

48 Eldon Drive: Sold July 2016 for £88,700.00. From the rightmove record appears to have a dated kitchen, bathroom and tired decoration.

3 Eldon Drive: Sold April 2016 for £93,000.00. Dated kitchen, bathroom and decoration.

32 Eldon Drive: Sold March 2016 for £94,000.00. Dated kitchen, bathroom and decoration but overlooks the cricket ground.

28. In these comparables two of the properties overlook the cricket ground one with an extended lease and one without. Mr Bakewell contended that therefore these cancelled each other out.

29. In the 2012 Tribunal case (BIR/00CN/OLR/2012/0085) in which Mr Bakewell was involved no adjustment for condition was made despite one of the properties being a repossession forced sale.

30. Mr Bakewell attended subsequent Hearings relating to properties on this development, when to his knowledge no adjustment was made to reflect the condition of the properties.

31. However in the appeal on *Contactreal v Smith* [2017] UKUT 0178 (LC) (*Contactreal*) 'the FTT agreed that an adjustment should be made for the superior condition of Flat 11'.

32. In BIR/00CN/OLR/2015/0116 (18 Spreadbury Close) Mr Bakewell points out that the FTT noted it was not bound by its own previous decisions.
33. Mr Bakewell suggested that the comparables should be considered on an even-handed basis. In the case of the long leasehold properties these are in superb condition whereas the short leasehold properties are more dated in their fittings and finishing. He estimated that it would cost approximately £15,000.00 to bring the poor properties into a condition equivalent to the extended and modernised long leasehold properties.
34. To arrive at the value of these flats on existing leases, on a basis comparable with the condition of the extended lease sales Mr Bakewell says £15,000.00 should be added to the £94,000.00 valuation derived from the comparables to reflect the need for updating and this is how he arrives at his figure of £109,000.00 for the existing lease value.
35. As to the value of the freehold after extension, Mr Bakewell says a nominal £1.00 should be adopted on the basis that the freehold of a flat would be difficult to convey and high street lenders would not accept it as security for a mortgage.

Questioned by Mr Davis Mr Bakewell said:

36. As an opening remark Mr Davis said the purpose of the adjournment and the Tribunal's further Directions were to consider the impact of the Upper Tribunal's decision in *Elmbirch*. The evidence of 19 Eldon Drive was not included in the original submission as it was not in the public domain at the time of the August Hearing and should not therefore be admitted. Further, the sale terms included a letting to the vendor on an assured shorthold tenancy making the evidence relating to 19 Eldon Drive tainted.
37. Mr Bakewell accepted under cross examination that leaseholders had an obligation under the covenant to repair in the Leases. He maintained though that this was separate and distinct from the fact that these properties needed to be upgraded from 'tired' to be put on an equal footing in valuation terms.
38. He agreed with Mr Davis that the Tribunal had adopted a consistent pattern since the 2012 cases.
39. Mr Bakewell agreed with Mr Davis that the full cost of double glazing should not be considered in calculating the improvement only the upgrade from single to double glazing.
40. Mr Bakewell had observed the cases where Mr Anderson MRICS had given evidence but contended that that evidence should not be regarded as part of this Hearing.

Questioned by the Tribunal Mr Bakewell said:

41. He did not consider the change in values over the 12 months to be a very significant factor, although he had made some adjustments to reflect the Land Registry Index.

Mr Bakewell confirmed he had made an error in his calculations in respect of 48 Eldon Drive, which had increased when in fact the index had declined.

42. With the benefit of the (rather poor) photographs from 'rightmove' the Tribunal questioned Mr Bakewell in detail as to the nature of the comparables (following the guidance given in *Contactreal* (above)). In response he confirmed that he was of the opinion that a figure of £147,500.00 or as he now contended £144,200.00 reflected a property with an extended lease in good condition. The existing lease sales were in inferior condition and that £15,000.00 should be deducted to reflect 'like for like' condition between the subject properties and the improved comparables.

For the Respondent: Mr Davis said that:

43. He considered that the correct figure for the existing lease value is £91,900.00, but he rounded this to £92,000.00.
44. He justified this by research on 'rightmove' and previous case files making minor adjustments to reflect market movement between sale date and valuation date.
45. He referred to the same 3 comparables in Eldon Drive as Mr Bakewell (see above, paragraph 26). There were no original sales in 2015.
46. 273 Penns Lane (a duplex flat) sold in December 2014 for £70,000.00. In view of the fact that this considerably predates the valuation date he ignored this comparable.
47. In the case of 287 Penns Lane BIR/00CN/OLR/2016/0078 the parties were at £92,000.00 and £94,000.00 for the existing lease value and the Tribunal adopted £93,000.00.
48. In relation to comparable evidence he said that the lessees had a covenant to keep their properties in good repair.
49. The comparable evidence from 'rightmove' is of limited assistance unless the property has actually been inspected.
50. The issue of 'condition adjustment' has not been raised since the 2012 cases until this case and, in this respect, he was following the Tribunal's previous decisions.

Questioned by Mr Bakewell Mr Davis said:

51. He agreed the issue of condition had been raised in 2012 but not since. He did not think it should be raised now as previous Tribunal's had not considered it to be an issue.
52. In using 1.00% adjustment for the freehold- extended leasehold values he had followed Upper Tribunal decisions.
53. Asked if the comparables had been treated in an even-handed manner he said that in view of the evidence chosen the approach had been even-handed.

Questioned by the Tribunal Mr Davis said:

54. He did not consider short leasehold properties to be un-mortgageable.
55. Following the 2012 decision (BIR/00CN/OLR/2012/0085) he did not consider there should be any adjustment for condition.
56. Asked about the effect of *Contactreal* he said that the property had to be maintained in a good condition which was compliant with the lease.
57. The Tribunal put to Mr Davis that the increase in the extended modernised flat values from the recent case of 287 Penns Lane with a valuation date of January 2016 to the extended lease values now argued for, shows values to have grown by approximately 7.5% in 8 to 9 months (£137,500.00 in January to £147,500.00 in October/November). The Tribunal queried why his existing lease value had decreased by £1,000.00 over the same period from £93,000.00 to £92,000.00. Mr Davis explained that in his opinion properties on existing lease would not experience the same level of price inflation and that the growth in their values had been negligible.

Consideration by the Tribunal:

58. The Tribunal determines that the sale of 19 Eldon Drive should be excluded from the evidence for consideration for three reasons:
 - 1) The Tribunal's further Directions did not allow for the submission of supplementary comparable evidence.
 - 2) The date on which the information came into the public domain post-dated the first Hearing.
 - 3) Neither party made any attempt to analyse and quantify the valuation adjustments that reflected the rather complex terms of the sale in that case.
59. The Tribunal found that Mr Davis's approach to the issue of condition relied on the determinations of previous Tribunals by which this Tribunal is not bound. In particular, in 2012, the issue of improvements to extended lease properties as opposed to the unimproved state of the existing lease properties was not explored in any depth. In the 2016 case (BIR/00CN/OLR/2016) the issue of an adjustment for condition was not raised at all with the parties being only £2,000.00 apart on their existing lease values (£92,000.00 and £94,000.00).
60. The Chairman, who also chaired the 2016 case, confirmed that the issue of condition was not raised.
61. The Tribunal noted Mr Davis's contention about compliance with the terms of the repairing covenants in the leases being sufficient, but did not consider this extended to fitting modern high quality kitchens and bathrooms.
62. Generally, the Tribunal preferred Mr Bakewell's approach which is to make the comparisons on a 'like for like' basis.

63. The Tribunal considered the best approach to analysing the comparables was to follow the methodology set out in *Contactreal* (see above, paragraph 31) and compared the properties under the following headings:

a) Lease Length:

Similar, so no adjustment required.

b) Change in capital value between date of sale of comparable and valuation date:

Prior to the submission of supplemental reports, the experts had agreed the extended lease value at £147,500.00 and had made adjustments (not clearly set out in their initial reports) in respect of existing lease value. The Tribunal having rejected Mr Bakewell's late evidence in respect of 19 Eldon Drive in his Supplemental Report also rejects his related revised valuation of the extended lease value at £144,200.00.

c) Size:

Not in dispute between the parties that the properties are generally similar.

d) Restricted headroom:

Not applicable in the present cases.

e) Floor Level:

In the 2016 cases the FTT found that, generally, this was a matter of choice some preferred easy access of ground floor whilst others preferred security of first floor. The experts in the present cases agreed.

f) Location:

In the present cases, the properties were on the same estate and whilst the parties appear to acknowledge that the properties overlooking the cricket ground might be preferred both experts agreed and submitted that a valuation adjustment was not appropriate.

g) Type of glazing:

All the properties under consideration appeared to be double glazed.

h) Condition:

The Tribunal considered that the extended lease properties were undoubtedly in better condition than the existing lease properties. The fact that on the evidence before previous Tribunals no adjustment had been made did not mean it should not be considered in the present cases.

64. The Tribunal is not bound by its own previous decisions and considered that the Upper Tribunal's decision in *Contactreal* provided clear and unambiguous guidance which should be followed when comparing properties i.e. attempting to compare 'like with like'.

65. The Tribunal was however concerned that whilst the extended lease sale properties were in 'good marketable condition' (i.e. a condition reflecting the lessees' improvements), it was more difficult to assess the condition of the existing lease sales due the limited nature of the information available and the poor quality of the photographs sourced from 'rightmove'.

66. The Tribunal considered that being in a condition sufficient to comply with the repairing covenants in the lease was not the same as being in a good marketable condition so as to secure the maximum achievable price.
67. Having explored, extensively with the experts, the condition of both categories of property (extended and existing leases), and the possibility that it might be a more appropriate valuation approach in the present cases to make a deduction for condition from the extended lease value rather than to add it to the existing lease value, because both parties appeared to be clearer about the condition of those comparables, the Tribunal then considered:
1. The value attributed to good marketable condition.
 2. The value of the existing lease.
 3. The value of the extended lease.
68. **The value attributed to good marketable condition:** The Tribunal noted that Mr Bakewell put forward a figure of £15,000.00 (see above, paragraph 33), this being the cost of the work in upgrading the kitchen bathroom etc. and referring to two examples within his own personal experience. Whilst Mr Davis did not dispute this figure, the Tribunal raised the question of whether cost equates to value.
69. While the Tribunal was not privy to the quality of work undertaken in either 36 or 49 Eldon Drive, nor in the examples quoted by Mr Bakewell, it considered that:
- a) Cost does not necessarily equal value; and
 - b) There is a level of quality and expenditure where the cost may not be reflected in enhanced value. This level will vary from property to property and is very dependent on the value of the flat and the market for the flat in question.
70. Using its knowledge and experience tempered by the evidence before it (in particular the fact the parties had initially agreed the value of a property with an extended lease in good marketable condition at £147,500.00, the Tribunal considered that the value to be added (or deducted) should be the level above which the condition exceeds the condition required to comply with the repairing obligations in the leases. Reflecting this, the Tribunal concluded that the appropriate figure in the present cases was £7,500.00.
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71. **The value of the existing lease:** The Tribunal omitted the 2016 (BIR/00CN/OLR/2016/0078) decision from its consideration because:
- a) The experts were so close in their projections in those cases that the Tribunal's determination split their opinions to reach its decision (see above, paragraph 59); and
 - b) The question of condition was not explored.

72. The Tribunal noted that extended lease values appear to have increased by 7.5% in the year preceding the valuation date and whilst existing lease values are unlikely to rise as fast, some adjustment is necessary. With this and the approach taken by Mr Bakewell (effectively adopting 1.0% growth) in mind, the Tribunal **determines that the existing lease value for both properties is £94,000.00.**
73. **The value of the extended lease:** The parties initially agreed that the sales evidence produced a value of £147,500.00 for a property in good marketable condition, although Mr Bakewell later revised his valuation to £144,200.00.
74. Given the Tribunal's conclusion (above) with regard to 'good marketable condition', the Tribunal deducted £7,500.00 to reflect the difference in condition between good marketable condition and the actual condition of the subject properties and **determines that for 93 Act purposes the extended lease value for both properties is £140,000.00.**
75. Finally, the Tribunal follows the guidance given in the Upper Tribunal on **the correct adjustment to reflect the difference in value between freehold and extended leasehold and determines 1%.**

'No Act World' adjustment

For the Applicants: Mr Bakewell said:

76. In this particular instance there is evidence of both existing and extended lease values (the preferred measure of value) and in these circumstances Mr Bakewell does not believe a 'No Act World' adjustment is applicable.
77. In his original expert report, Mr Bakewell suggested that if the Tribunal is minded to make an adjustment then 4.00% is the correct amount.
78. In his supplemental report dated 2nd September 2017, Mr Bakewell revises his position on this point and puts forward the opinion that an adjustment should be made, but only at a nominal £500.00.
79. A 'No Act World' adjustment is a relatively new concept in the West Midlands and Mr Bakewell is concerned that the adjustment will spiral out of control. Further, awards to date have been erratic and excessive.
80. Mr Bakewell concludes that, if any deduction is to be made, £500.00 is sufficient in the present cases.

Questioned by Mr Davis Mr Bakewell said:

81. He had moved from 4.00% in his original report because he genuinely believed 4.00% was too high. He was not ignoring the guidance of previous decisions merely tempering them with his own opinion.

Questioned by the Tribunal Mr Bakewell said:

82. In arriving at his suggested £500.00 he had considered it appropriate to reflect a sliding scale but, in his opinion, the projections by the UT go beyond what is reasonable

For the Respondent: Mr Davis said:

83. He has adopted 8.00% to reflect the 'No Act World'.

84. In his submission Mr Davis refers to *Contactreal* and *Danesdale Ltd v Lagoe* BIR/00CN/2016/0088 (*Danesdale*).

85. *Contactreal* was a fully argued case before the Upper Tribunal. It was a poor flat in Leamington Spa with 67.49 years unexpired at a ground rent of £30.00 per annum subject to fixed increases. The Upper Tribunal adopted a cautious approach at 3.5%.

86. In *Danesdale* another poor flat with 67.25 years unexpired at a ground rent of £50.00 per annum subject to fixed increases. In that decision there was little comment or debate on adjustments for a 'No Act World', but the Midlands FTT and the Upper Tribunal agreed on a deduction of 4.85%.

87. In both cases the freeholder was represented by Mr K McKeown MRICS. In his submission in *Contactreal* he said at paragraph 33: "*We are aware of an Upper Tribunal decision where a 2.5% deduction was applied with 78 years remaining and another where 10.00% was deducted with 44 years remaining, the view of the Upper Tribunal being that the benefit of the Act on value increases as the lease gets shorter. On a straight line basis we can calculate the deduction at 4.6% on 67.49 years remaining.*" The Upper Tribunal did not agree and adopted 3.5%".

88. Mr Davis says that adopting a straight line is not entirely correct and this view is supported by looking at Relativity Graphs compared to actual decisions. His approach is more cautious with a deduction of 8.00%.

89. In his Supplemental Submission dated 22nd August 2017, Mr Davis says that paragraphs 29 to 38 of *Elmbirch* set out the Upper Tribunal's approach in that case and states the significant benefits of the 1993 Act to qualifying lessees.

90. At paragraph 34 of *Elmbirch* the Upper Tribunal reversed the decision of the FTT. It followed *Contactreal* in making an allowance of 3.5% for 67.59 years unexpired.

91. At paragraph 37 of *Elmbirch* the Upper Tribunal was critical of the 'straight line' approach which based on the evidence of other Tribunal cases would indicate in this case a deduction of 10.00% for an unexpired term of 44 years. Reference is also made in *Elmbirch* to *Cadogan Estates Ltd v Cadogan Square Ltd* [2011] UKUT 154 in which a deduction of 25.00% for an unexpired term of 17.75 years was made.

92. Mr Davis concluded in relation to a 'No Act World' deduction in the present cases that '*there is at this stage a lack of evidence so a judgement has to be made and a deduction of 8.00% is correct*'.

Questioned by Mr Bakewell Mr Davis said:

93. If 8.00% was achieved in the present cases Mr Davis accepted that the consequence of a notice served today (i.e. some 12 months later) would be a higher percentage (as the lease would be shorter).
94. In response to Mr Bakewell's suggestion that the 'knock-on' effect of the 'No Act World' deductions will be greater each time a new lease is granted and that it will spiral out of control, Mr Davis said he could not value into the future and he must consider, in the light of Upper Tribunal decisions, the position at the date of valuation.

Questioned by the Tribunal Mr Davis said:

95. He would not be averse to following the decision in *Nailrile* and applying a 7.5% deduction in view of the similarity in the years unexpired in that case and the present cases.

Consideration by the Tribunal:

96. The Tribunal considered all of the evidence submitted by the parties both oral and written and which is summarised above.
97. The Upper Tribunal in *Elmbirch* at paragraph 29 set out the position very clearly: *'The valuation exercise must be carried out on the basis of an artificial assumption. Chapter II of the Act provides that qualifying tenants may claim the right to a new lease, but paragraph 3(2)(b) of Schedule 13 requires that in determining the diminution in value of the landlord's interest as a result of the exercise of that right it must be assumed that no such right exists'*.
98. Valuation under the 1993 Act is made up in part of factors which can be deduced from expert evidence (for example years purchase and the value of extended leases) and factors which are based purely on an analysis of expert opinion - (for example, relativity), resulting in the entire valuation being formulated on a hypothetical basis.
99. After due consideration, the Tribunal followed the guidance provided in paragraphs 29 to 38 of *Elmbirch* which, in summary, is as follows:
 - a) The valuation exercise must be carried out on the basis of an artificial assumption.
 - b) The benefits of the Act to a qualifying tenant are significant.
 - c) Where comparable transactions concerning properties with the benefit of the Act are used this would seem in principle to require adjustment to reflect the benefit of the Act.
 - d) The length of the term unexpired is not in principle relevant to the need to make an adjustment (it might however affect the amount of the adjustment).
 - e) The 'straight line' approach (using previous decisions as points on a graph) creates two difficulties: 1: Any straight line between two points is only as good as the two

points selected and 2: The Tribunal has made a range of allowances for leases of different lengths.

100. The Tribunal considers that *Nailrile* can be distinguished from the later cases of *Elmbirch* and *Contactreal* for the following reasons:

a) It was decided in 2009 when the market was somewhat depressed following the financial 'crash' in 2007.

b) Neither *Elmbirch* nor *Contactreal* rely on *Nailrile* to reach the conclusion that 3.00% was correct in those cases.

c) The Upper Tribunal indicated in *Contactreal* (paragraph 35) that adopting a straight line between points on a graph is not appropriate to this type of valuation. This allows for the determination of each case on its own facts and in a manner that is consistent with Upper Tribunal decisions.

101. The Tribunal, acknowledging that the curve will be exponential, concludes that the difference between *Elmbirch/Contactreal* (67/68 years - 3.5%) and *Nailrile* (44 years - 7.5%), namely 4%, is too great because:

a) At 43/44 years the market will be more likely to be limited to investors but not beyond the reach of owner occupiers who are able to put down a large deposit or are looking to downsize.

b) Each case must be decided on the evidence presented to the Tribunal. In the present cases, the Tribunal heard expert opinion (the assumptions under the 93 Act being hypothetical) from two valuers who, notwithstanding the fact they have each practised locally for over 40 years, held very differing opinions as to the adjustment to be made, if any, for a 'No Act World'.

102. The Tribunal is very aware that there are only a limited number of Upper Tribunal decisions in respect of the 'No Act World' adjustment and that those decisions are based on expert opinion and not based on any factual evidence. It is further conscious of the fact that valuations carried out using the preferred comparable method are often at variance with similar cases where the Relativity Graphs are used.

103. In conclusion, the Tribunal, relying on the expert knowledge of its members in interpretation the expert opinions presented, and for the purposes of securing some degree of consistency in decision making determines the appropriate allowance in the present cases is 6.00%.

104. **Accordingly, the Tribunal determines** that the adjustment from the market value of the existing lease to reflect the 'No Act World' is 6.00%.

105. The Tribunal therefore determines that, for the purposes of valuation under the terms of the 93 Act, the value of the existing lease is £88,360.00 [£94,000.00 less £564000 (6.00%).

Tribunal's Valuation

106. Applying the Tribunal's findings, the Tribunal determines the value of the premium as follows:

Term		agreed	270.00	
 Reversion to Freehold				
Freehold Market Value				
140,000.00 +1.00%		141,400.00		
Less Schedule 10 Rights 6.00%		<u>8,484.00</u>		
		132,916.00		
PV £1.00 5.50% deferred 44.4 years		0.0928	<u>12,334.60</u>	
			12,604.60	
 Less Freehold Reversion after extension				
Freehold Market Value		141,400.00		
PV £1.00 5.5% deferred 134.4 years		<u>0.00074970</u>	<u>106.01</u>	
Diminution in Freehold Interest			12,498.60	12,498.60
 Marriage Value				
Proposed Interests				
Freehold			106.01	
Leasehold		<u>140,000.00</u>	140,106.01	
 Less value of Present Interests				
Freehold			12,498.60	
Leasehold	94,000.00			
Less 'No Act World' adjustment 6.00%	5,640.00	88,360.00	<u>100,858.60</u>	
Marriage Value			39,247.41	
At 50.00%			19,623.71	<u>19,623.71</u>
Premium to be paid by Leaseholders				<u>32,122.30</u>
				 <u>Say £32,122.00</u>

Appeal provisions

107. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
108. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
109. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Robert T Brown
Chairman