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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

CASE NUMBER LON/00BK/OLR/2010/0204

IN THE MATTER OF FLAT 1, 3 UPPER BELGRAVE STREET LONDON SW1X 8BD

IN THE MATTER OF SECTION 48 OF THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

Parties:

Applicant	:	**Richard Moshe Sopher**
Respondent	:	**3 Upper Belgrave Street Limited**
Representations	:	
For the Applicant	:	**Mr Edwin Johnson QC** **Miss Ester Reggel (Solicitor)** **Mr C L Manton FRICS**
Solicitors for the Applicant		**Bircham Dyson Bell LLP**
For the Respondent:		**Miss Katharine Holland QC** **Mr Robert Sookias (Solicitor)** **Mr P Beckett FRICS** **Mr Robert Lamb (Counsel)**
Solicitors for the Respondent:		**Sookias and Sookias**
Date of Application	:	**26 February 2010**
Hearing Date	:	**19 & 20 October 2010**
Tribunal Members	:	**Mr A A Dutton (Chair)** **Mr P Tobin FRICS MCIArb**
Date of Decision	:	**8 December 2010**

DECISION

The Tribunal determines that the price payable for the Lease extension in respect of the subject premises is £2,202,007 and sets out in the addendum attached its decision in respect of the terms of the new lease.

REASONS

A. BACKGROUND

1. This application was made to the Tribunal by the Applicant Tenant, Mr Sopher on the 26 February 2010. The application indicated that the determination was for the purposes of settling the premium payable for the term of the extended lease under s48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The terms in dispute are shown as being the price payable for the new lease and the terms of the new lease and it records an offer made by the Applicant of £1,500,000. This is in contrast to the proposal made by the Landlord in its Counter-Notice dated 24 September 2009 where the proposal for the premium to be paid is £3,790,000.

2. The matter came before the Tribunal for hearing commencing on 19 October 2010 and extending into the following day. Just prior to the commencement of the hearing we had available to us a Report by Mr Courtney Manton FRICS of Best Gapp and Cassells, Chartered Surveyors, dated 15 October 2010. With this was a bundle of appendices. We were also provided with a Report by Mr Peter Beckett FRICS of Beckett and Kay, Chartered Surveyors, dated 18 October 2010. We also received from Mr Johnson an opening statement and in the course of the first day a bundle containing details of the various comparable properties referred to by the Valuers. Helpfully, a statement of agreed facts completed on 19 October, was handed to us and we record those matters that are agreed and those that remain in issue. The agreed matters are as follows:

- The existing lease expires on 21 June 2030 and that the date of the valuation is the 25 June 2009 being the date of the tenant's initial Notice. This means that the lease has approximately 21 years un-expired.

- The rent payable under the present lease reviewed on 24 June 2009 is £52,500 for the remainder of the term.

- The extent of the property and the floor area at 3,229 sq. ft. is agreed. It is also agreed that the total floor area of the freeholders property, that is to say the subject premises, the flats to be found on the first and second and third and fourth floor of the property and 18A Chester Street, totals 11,205 sq. ft.

- The deferment rate is agreed at 5%.

Relativity has been agreed at 46% of the freehold vacant possession value before adjustments for the onerous ground rent ("OGR"). The following matters are not agreed and require determination:

(i) the capitalisation rate, Mr Manton arguing for 6% and Mr Beckett for 5%. It should be noted however that during the course of the hearing Mr Beckett conceded that the appropriate capitalisation rate for the onerous element of the ground rent should be 6% (but only for the onerous element).
(ii) The value of the extended lease
(iii) The value of the existing short lease excluding rights under the Act
(iv) a claim for compensation under s61 of the Act.
(v) The terms of the lease were not agreed and we will deal with those separately from our findings in connection with the value of the lease extension.

B. HEARING

3. Both Mr Manton and Mr Beckett provided us with extensive reports which we do not propose to go into in great detail as they are common to both parties.

4. Dealing firstly with the evidence of Mr Manton we should record, from his report, that he sets out the situation and location of the property and describes the property itself. We will return to these elements in the "Inspection" heading of these Reasons. It should be noted that within the property is an area of storage and the Valuers have not been able to agree as to the value per square foot to be attached to that area. It is however noted that the subject premises have no outside amenity space. Although the Applicant appears to have been able to utilise the open area in the well to the front and side of the property that has now been stopped and we were told that the position is accepted and that no claim in respect of adverse possession or any other rights to utilise this area was being advanced by the Applicant in this case. It is accepted that the property is in its original layout and that there are no improvements to disregard. Before Mr Manton dealt with the assessment of freehold value of the subject premises he referred briefly to compensation under Schedule 13 of the Act that is pursued by the Respondents and which we shall refer to in more detail when considering Mr Beckett's evidence. Essentially Mr Manton's view was that because the extended lease will have the inclusion therein of the provisions of s61 of the Act enabling the Landlord to terminate the lease in certain circumstances, any compensation payable under Schedule 13 of Act was inappropriate. In addition to the assertion that s61 of the Act preserved the Landlord's position he also indicated that in his view the ability to convert the property into a freehold, for that is the argument of the Respondent and for which compensation is sought, would be inappropriate. He says this is the case because of the need to include the extended lease of the premises known as 18A Chester Street which lies to the rear of the main building. He was in any event, of the view that there was no economic sense in converting the property from its present layout into a single house at the expiration of the existing lease in 2030. Under the valuation element of his Report he confirmed that the relativity between the assumed freehold and the extended leasehold interest of the property was agreed at 98% and, as we have indicated above, the basis of relativity as to the value of the unexpired term had been agreed at 46% of the freehold value subject to the arguments concerning the adjustments to be in connection with the

OGR. It is appropriate to record at this stage that he thought 0.2% of the equivalent freehold value was appropriate as a non-onerous ground rent whereas Mr Beckett in his Report argued for 0.15%.

5. As to the capitalisation rate of the ground rent he though 6% was appropriate to reflect this high ground rent which he thought was probably 50% of the market rent value for the subject premises. His argument was that there was a higher potential risk of default on payment as the lease continued, particularly if dilapidations became an issue.

6. He then turned to the comparable evidence and we set out below the properties that he relied upon:

- Flat 1, 6 Upper Belgrave Street, London SW1 which was the preferred comparable of both valuers although by no means perfect.
- Flat 1, 4 Upper Belgrave Street;
- Basement flat 4, Upper Belgrave Street;
- Ground floor and basement maisonette, 96 Eaton Place;
- Ground floor and basement maisonette, 55 Eaton Place;
- Ground floor and basement maisonette 22 Halkin Street.

In respect of each of these comparable properties he had made adjustments for time, differences in external areas which resulted in adjusted square footage figures, an adjustment between extended lease and freehold, the condition of the property and a deduction to reflect the benefits that some properties had the use of vaults and outside space. He also made a 5% reduction to reflect his view that the subject premises was materially disadvantaged by the limited rights of light in favour of the tenant and lacked vaults. Taking these various adjustments in to account in respect of the comparables, to bring them in line with the subject premises, he concluded that the adjusted square footage rate to apply to the comparables was as follows:

- Flat 1, 6 Upper Belgrave Street, £1,103 per sq. ft.
- Flat 1, 4 Upper Belgrave Street £1,534 per sq. ft.
- The basement flat at 4 Upper Belgrave Street, £586 per sq. ft.
- Ground floor and basement maisonette at 96 Eaton Place £889 per sq. ft.
- Ground floor and basement maisonette at 55 Eaton Place £1,204 per sq. ft.
- Ground floor and basement maisonette at 2 Halkin Street, £798. per sq. ft.

As he stated in his Report at paragraph 14.39, in his opinion the most apposite comparable property was that at Flat 1, 6 Upper Belgrave Street which, after adjustments gave a square footage rate to be applied to the subject premises of £1,103 per sq. ft. Adjusting the square footage of the subject premises to allow 1/3rd of the rate for the storage area gave a useable floor area of 3,063 sq. ft. against which the £ per ft^2 figure is applied leading to an extended leasehold value for the subject premises in an unimproved condition at the relevant date of £3,378,489.

7. The Report contained further views on the claim for compensation and we noted all that was said. Certain comparable properties were included as evidence of the value of houses subject, Mr Manton thought, to a cost of some £400 per sq. ft. to convert. Taking these factors into account he came to the conclusion that there was no economically viable reason why a purchaser now, with a view to converting the property in 2030, would be prepared to pay anything extra for such a possibility. He challenged the values of a freehold house as put forward by Mr Beckett.

8. Finally, from the Report we turn to the OGR. The non-onerous element assessed at 0.2% of the freehold vacant possession value was on his calculation £6,894. The OGR therefore was £45,606 which he capitalised at 6%. He told us that the 0.2% figure had been commonly agreed between Practitioners in the open market.

9. Taking these matters into account he concluded that the premium payable for the extended lease would be £2,014,450.

10. Mr Manton was then the subject of some strong cross-examination by Miss Holland. The first area that was investigated was the lack of consideration given by Mr Manton to the fact that the property had a dual aspect. It was put to him that this was worth 10% of the property value but he disagreed. He did not think that the flank wall either added or detracted from the benefit of the property. His view was that the noise and dirt caused by the traffic in the area would have a detrimental affect as would the lack of privacy. He also commented that he did not think that the lack of the lift to the subject premises was of relevance so far as the valuation was concerned.

11. He was then challenged as to the selection of comparables. He was accused of being deliberately selective but took the view that the comparables that Mr Beckett had relied upon, particularly those recorded on an annexe to Mr Beckett's Report at appendix 2 and being properties in Upper Belgrave Street at numbers 4,6 & 7 were not helpful as they were on upper floors and in his view achieved a higher value as a result. He suggested that, if there had been no ground or basement properties upon which he could rely, then he would have had to turn to higher floor properties but although he gave them a passing interest he did not think they were helpful. He also commented on the fact that apart from the floor level there was a material difference in many cases with regard to the size of the properties and the lease lengths. Criticism was made of the late introduction of the property comparable at 2, Halkin Street but he felt that it was of assistance although did not rely upon it to any great degree.

12. He was also asked about the adjustment he made of 5% for the lack of light to the subject premises. He relied on legal advice insofar as that matter was concerned and confirmed that a 5% deduction would not be made if the right of light was not an issue.

13. He was then questioned about the comparable properties that had been put forward. He confirmed that he thought the property at Flat 1, 6 Upper Belgrave

Street was the most obvious comparable although the lease length was different; and, apparently, the property had undergone or was undergoing a difficult enfranchisement. He was questioned about the adjustments he made for condition and for the use of vaulted areas and outside area. He accepted however that the 5% figure in respect of that element was subjective and would have no particular disagreement if the Respondent says that it was too much. He was however satisfied that it was the most comparable of the comparables both in location and layout.

14. There then followed further cross-examination in respect of the various adjustments that had been made in relation to the other comparables. For example at 4, Upper Belgrave Street an adjustment of £400 per sq. ft. had been made for condition. This, Mr Manton said, was based on his knowledge of the property and the company that had carried out the conversion works. There was some slight adjustment to be made to the pounds per sq. ft. for this property which appeared to result in the adjusted extended lease value of £1,649 per sq. ft. and not the figure shown in the Report. In respect of the property at basement flat of 4 Upper Belgrave Street, discussions took place as to the value attributable for the garage. Mr Manton argued that it should be at the same rate as living accommodation. He had also made a deduction because it was understood that this property had been the subject of a forced sale. In respect of the properties at Eaton Place, again, Mr Manton was challenged on the lack of any adjustment for the dual aspect of the subject premises and for rights of light and in the case of 55 Eaton Place, also for condition.

15. His views in respect of the appropriate deferment rate to be applied to the OGR was also questioned as was his view on the compensation under Schedule 13.

16. In re-examination he told us that he thought that Mr Beckett's comparables were too widely drawn and did not find them of assistance. Insofar as the house values were concerned he was of the view that these had been taken from the principal Squares and locations in the area with higher value properties and that he would not agree with the rate of £2000 per sq. ft. He did not regard Upper Belgrave Street as a single house location. It was not in a Square and is on a relatively busy and fast road. His view was that at the date of valuation there was no demand for a single property in this location but that there was demand for flats. He told us that he was only aware of one property in Upper Belgrave Street that had been sold some four years, or more, ago. He also thought that if there was to be a conversion into a house then the property at 18A would be needed as most people wanting to convert would require some garaging (although the inclusion of 18A would not provide that) and staff accommodation. On the basis that 18A Chester Street was not going to form part of any conversion to a house he agreed that paragraph 15.8 of his Report could be disregarded. He confirmed he had no experience of the procedures under s61 of the Act.

17. We then heard from Mr Beckett. As with Mr Manton we received a full Report from Mr Beckett with a number of appendices attached. He had prepared four valuations based on his assessment of the loss, that is to say compensation

payable under the Schedule 13 of the Act or based upon determinations as to compensation arising from two cases heard before the Lands Tribunal to which we shall refer in due course. Matters were further complicated however, because these valuations were either calculated to include the patio space or exclude the space. In fact it is now accepted that the subject premises did not have the benefit of any external space and therefore at least two of the valuations prepared by Mr Beckett were otiose.

18. His Report was broken down into a number of sections. The first dealt with the freehold vacant possession value of the subject premises. He made general comments concerning comparability and time adjustment methods, adjustments for relativity, the value of space within the flat itself, the subject property and the comparable transactions that he relied on. In his Report was a Schedule contained at appendix "F" which was much referred to during the course of the hearing. This sets out the ten comparable properties that he relied upon for the purposes of assessing the freehold vacant possession of the property, five of which Mr Manton had also relied upon. The transactions that Mr Manton did not rely upon were in respect of properties at 4, 5 & 7 Upper Belgrave Street and 10 Eaton Place.

19. To each of the comparable properties Mr Beckett had made various adjustments for relativity, the benefit of the Act and time adjustments. His time adjustments were further broken down by reference to either the nearest index in time or on an interpolated basis. The end result is that there were some 29 columns resulting in average values adjusted for lease length and for time. His Report also indicated that in his view there should be a reduction in the square footage value for certain areas within or external to both the comparables and the subject premises. For example insofar as the subject flat was concerned there was an area of storage which he assessed at 50% of the value of the main space. As to vaults he had assessed those at 25% of the freehold vacant possession rate of the rest of the flat. He conceded that he had in fact simply excluded the storage/external spaces from the three main comparables. As to the subject premises itself, he thought there was additional value for the flank wall facing Chester Street, of 10%.

20. As to the comparable evidence he, in the main, agreed with Mr Manton that the three best "comparables" were those to be found at 4 & 6 Upper Belgrave Street which he termed the "focus transactions". He concluded that the freehold vacant possession rate which was set out in his appendix must lie somewhere between £852 per sq. ft and £2,161 per sq. ft. He took a mid-point of £1,506. In the "basket of transactions" he relied on other flats/maisonettes in the properties at 4,6 & 7 Upper Belgrave Street and using the same analysis that he had for the focus transactions we saw square footage rates vary from £2000 to £958. These he thought seemed to "hint" at an overall square footage rate for the subject premises of £1,500. The properties in Eaton Place, in his view, supported his analysis of a rate of £1,500. His conclusion was that the rate of £1,500 per sq. ft., still "held water", even if they failed to include ancillary space, because set against that was the value of the flank windows of the subject premises. Taking these values and on the basis that the freehold vacant possession excluded the basement areas and the vaults, he concluded that the value for the property was £4,657,500. His

Report then turned to capitalisation rates and the impact that the OGR had on this calculation. Taking arguments as to collectability, security and fixed nature he concluded that the capitalisation rate should be 5%. It is right to record however that he subsequently departed from that in examination in chief where he agreed that the capitalisation of the ground rent insofar as the OGR calculation was concerned could be agreed at 6%.

21. In support of the assertion that there was compensation to be found in this case he then began to asses the freehold vacant possession of the whole building. He concluded that this would not include, in the conversion process, the property at 18A Chester Street and that Wilton Mews had already been hived off. His Report dealt in some detail with a number of transaction comparables and in particular properties at Cadogan Place, Egerton Place, Eaton Place, Belgrave Square, Eaton Square, Chester Square, Pelham Crescent and Upper Belgrave Street with Wilton Mews. He accepted that every transaction was subject to some form of criticism but that he thought that a "tone" was drawn from these comparables which led him to the conclusion that the likely freehold vacant possession value of the building, ready for conversion to a single dwelling, was in the region of £2000 per sq. ft. He was of the view that there was no need to carry out time adjustments in respect of whole house conversions because he asserted that the very best properties in the last two/three years have maintained their values in a way that other classes of property have not. Taking these matters into account he concluded that the freehold vacant possession value of the whole house with planning permission to convert back to a single property was £22,088,000 which was a conservative approximation subsuming he said the patio and vault values.

22. His Report then dealt in some detail with the provisions of s61 which, with respect to Mr Beckett, we will return to when we consider submissions made. He did however have two approaches. One was to take a loss value where he concluded that the loss as a consequence of a lease extension was £1,078,329. However he also considered an alternative approach as put forward by the Lands Tribunal in two cases that were before us, namely, *31 & 37 Cadogan Square Freehold Limited and the Earl of Cadogan* under case reference LAR/60/2008 and LAR/129/2008 and the case, again before the Lands Tribunal of *the Earl of Cadogan and 2 Herbert Crescent Freehold Limited* under case number LAR/91/2007. Those cases had concluded that any compensation should reflect a "market value basis" and he concluded that if those cases were to be the basis upon which the compensation was assessed then the loss of development value would be £113,547.

23. Mr Beckett gave some evidence in chief to reaffirm certain matters and to correct certain elements of his Report. He accepted that the comparable at Flat 1, 6 Upper Belgrave Street was the best if not wonderful. He also confirmed that having heard Mr Manton he was less confident about the factors that should and should not have been allowed to reach his square footage figure of £1,500 but that he now thought that rather than that being conservative it was about right. He reiterated the importance in his view of the flank wall. He thought that the double aspect was particularly important for the living room which he called the "glory of the flat". The main bedroom also had the benefit of the window overlooking the

street. As to the basement his view was that these vary from being "not very nice, to horrible". However for the most part he thought this property was not gloomy and that there was good light coming into the basement which would affect the value. He agreed that the best comparables were to be found in Upper Belgrave Street and that if one could avoid short and medium term leases that should be done. He thought it also right not to go to adjoining streets if at all possible. However in this case he believed there was only one real comparable and it was therefore appropriate to look broadly at other properties. As to the property at 2 Halkin Street whilst he said he would not rule it out altogether he thought that as there were already 10 properties, on his case, to consider this was not necessary. He conceded that he should have made certain adjustments which he did not do. For example he had not made adjustments for the subject premises in respect of the lack of open space but he did conclude that the flat did have the benefit of rights of light and that therefore the reduction argued for by Mr Manton, of 5%, was inappropriate. As to the compensation he thought that his assessment of the square footage rate at £2000 was beyond doubt and was surprised that Mr Manton could not agree that. He thought that the figure of £1,078,329 was the minimum uplift that would apply assuming of course that all consents were available and contractors were in place to proceed with the conversions works in 2030. He confirmed that he was not aware anybody had operated under s61 of the Act and certainly not in hostile circumstances. He also confirmed his agreement to the amendment of the capitalisation of the OGR of 6%.

24. As with Mr Manton he was then the subject of cross-examination this time by Mr Johnson. The first matter he was asked to deal with was the question of adjustments that he should have made which had not been done. In respect of the compensation he told us that what really was being lost was the opportunity to negotiate which was being reduced by the grant of the new lease. To reach his figure of £1,078,329 he had assessed the loss or damage that the granting of the long lease would cause. In his Report at paragraph 5.23 the enhancement of the value of being able to convert to a house, was £7,143,142. Applying the Sportelli deferment rate of 4.75% for a house to achieve the current value gave one figure of £2,695,822 or 2,563,274 if the "flat" rate of 5% was applied. He confirmed that in his view the figure of £1,078,329 is the loss that arises as a result of the lease extension in respect of the opportunity/potential at the valuation date to convert to a house at the expiration of the existing lease. As a matter of comment he thought that houses with a value in the region of £10,000,000 were exempt from the valuation reductions that were for example shown on the Savills indices. It was put to him that a sale at 50 Chester Square, where according to documentation produced in the tribunal hearing, the house was sold in July 2008 at £22,500,000 and had re-sold in May 2009 at a substantially lesser sum of £16,500,000 showed that this immunity from the recession was incorrect. Mr Beckett had no explanation for that transaction. He could not understand why somebody would accept a £6,000,000 loss in ten months. There followed a detailed examination as to the prospects of converting to a house in 2030, the likelihood of that happening, and the values.

25. In respect of the evidence for the new lease value Mr Beckett confirmed that he had never seen the road busy and that although the windows may be obscured by blinds, nonetheless they provided a definite benefit. He thought the benefit of light outweighed the lack of privacy and that a 10% uplift was reasonable.

26. Returning to the appendix in his Report setting out the various headings by which adjustments should be made he conceded that he felt that his appendix should be merged with the adjustments made by Mr Manton. He told us that he would not adjust for the condition unless there was some gross difference between the flats. In his view there were only two standards. The first is grade A, also known as "turnkey" which would appeal to the purchaser who wants everything done and to walk straight in. The alternative standard is grade B, which is everything else and it is the adjustment between grade A and grade B that is appropriate and not any other. Insofar as the main comparable of Flat 1, 6 Upper Belgrave Street is concerned he agreed there would need to be adjustments made in respect of the patio area, accessed by the spiral staircase, but that the windows in the subject premises on the flank wall probably went someway towards equalising this. He accepted the subject property had not been recently refurbished to a high standard and that although the property at Flat 1, 6 Upper Belgrave Street was fine it was not a grade A property. Some discussion took place as to the basis upon which his Report was prepared and some wording contained on the Schedule which he sought to depart from. He conceded that Flat 1, 6 Upper Belgrave Street was the best comparable but he thought it was lazy to stop there. When dealing with specific comparables and in particular as follows:

- 4 Upper Belgrave Street; he thought that was a small flat although a grade A one and would make adjustments although he thought the £400 per sq. ft. too high, perhaps half that amount was correct. He conceded however that he had no direct market experience and that neither he, nor his Company, was involved in the buying or letting property. He accepted that Mr Manton's firm, although not necessarily Mr Manton, had a better grip of the market realities in that regard.

- With regard to the basement flat at 4 Upper Belgrave Street, he confirmed that adjustments, perhaps of £100 per sq. ft. should be made to account for the garages and storage and vaults and although such garages are valuable he did not treat them as part of the gross internal floor area and that they cannot have the same value as the rooms in the house. He did not think any adjustment should be made for the patio nor adjustments made for conditions of sale.

- Insofar as the Eaton Place properties were concerned, number 10 was a short lease of only 31 years; number 96 – he agreed there should be an adjustment for condition and seemed to accept that the figure of £300 per sq. ft. was not unreasonable and that for number 55 Eaton Place he agreed that a patio adjustment but that the property was a grade B flat.

- As to Halkin Street he thought it was an inferior street with inferior quality properties and that there was no point, in his view, going to that location for the purposes of comparables.

27. Insofar as any adjustment for the storage area in the subject property was concerned he was of the view that an allowance of 50% was more appropriate than Mr Manton's of one-third of the value of the living space. He was of the view that the interior space frees up better accommodation for other usage and is of course unaffected by the weather. In fact he said, in this case it appeared to be used for sleeping accommodation by reference to photographs that were produced at the hearing.

28. On re-examination he confirmed that the primary case on compensation was the loss to the freeholder expressed as the proportion of the potential uplift now available for reconversion.

29. The hearing then moved on to dealt with the amendments to the lease which we will deal with if we may under an addendum to these reasons and decision .

30. In submissions made to us, under a somewhat blunt guillotine arrangement, Miss Holland told us that we should prefer the approach set out in appendix 2, to Mr Beckett's Report which was full and was staged. She confirmed that both experts agreed that the flat at 1, 6 Upper Belgrave Street was the best comparable but the other two were helpful. However only three comparables was insufficient and that it was lazy to stop at that point. Mr Manton chose not to include all comparables that had been put forward by Mr Beckett but went for five. This she said was a selective approach and was made worse by the fact that he had not made allowances for example in respect of the flank wall issue.

31. Insofar as the right of light issue was concerned Miss Holland referred us to an article headed "The Sky's the Limit but mind the Roof" and the County Court case of *Dorrington Belgravia Limited v. McGlashan & Another*. The reference to this is varied but we will include the reference in the Estates Gazette of 2009 [08EG116]. The case is dated 28 February 2009. Her argument was that in effect that it was not possible for the Landlords to block the light and in those circumstances therefore there was no justification for the 5% reduction argued for by Mr Manton. Miss Holland then went through the various comparables highlighting the deficiencies of Mr Manton's arguments. These included, for example, the speculative deductions for condition, the deduction made which she said was unwarranted for the right of light issue and the failure to reflect the flank wall argument in respect of the subject premises. In addition, in some instances the wrong square footage had been used and for example in connection with the basement of 4 Upper Belgrave Street, she was concerned that insufficient provision had been made for the garage/storage areas. Insofar as the value for storage was concerned she asked us to accept Mr Beckett's assessment at 50% having regard to its significant use in the subject premises. With regard to the OGR allowance she said that Mr Beckett's percentage of 0.15 was based on the RICS working group and that he had taken the mid-point, unlike Mr Manton. She confirmed for clarification purposes that the capitalisation rate at 6% applied only to the OGR element. On compensation she handed up three cases, one was an LVT case under reference LON/LL/336 going back to 1998; a case which Mr Johnson

appeared in, in his early days and related to a property at 3 Halkin Street. The other case was the appeal to the Lands Tribunal in December 1998 *Grosvenor Estate Belgravia* under reference LRA30/1198 representing the appeal from the above mentioned LVT case on the basis of an error made. The other authority was again a Lands Tribunal case *Watton and The Trustees of the Ilchester Estates* under LRA/21/2001 in respect of a flat at 65 Addison Road W14. In her view the right approach was to take the loss value based on house values assessed at £2000 per sq. ft. assuming that the properties above £10,000,000 were not affected by the market changes. She sought to dismiss Chester Square as a comparable being bizarre and upon which no evidence could be based to form a conclusion.

32. We then heard from Mr Johnson on behalf of the Applicant. He reminded us that he had submitted the opening statement which we have borne in mind. We hope that Mr Johnson will not take offence if we do not seek to recount at this point in the Reasons that which was said in that document, it being common to all parties. His oral submissions were that the main issues were the new lease value and the claim for compensation, although there was of course the consideration of the capitalisation rate.

33 As for the new lease value he thought that the problem with Mr Beckett's evidence emerges from the appendix of his report. Mr Beckett, he said, had left the job half done. He had not made further adjustments which were considered by Mr Manton. Indeed, Mr Johnson says the only way that any adjustments arose was in cross examination. Mr Johnson said that when Mr Beckett was pressed on the question of adjustments he made only two, either for a "turnkey style", or a shell. He thought it was bizarre that Mr Manton was being criticised for making adjustments in respect of condition based on his own experience, yet Mr Beckett made none, or in some cases allowed some £500. Mr Johnson felt that the figures in the appendix two were "all over the place". Even if adjustments were carried out, they were still all over the place. It contained properties that were on upper floors and were more expensive, and although he conceded similar criticisms could be made of Mr Manton he was of no doubt that the best comparable was at Flat 1, 6 Upper Belgrave Street, because the adjustments made up to and including time were pretty much the same by both parties. He argued there needed to be an allowance made for the patio at 1/3 of the gross internal floor area, and that Mr Manton's condition adjustment was correct and it was wrong of Mr Beckett to reject it.

34. On the question of the law relating to the right of light, he did not quarrel with the submissions made by Miss Holland in that regard. However, he still felt that a 5% reduction was appropriate. The reason for that was, he said, that the best that could happen for the Applicant was that the right to light was specifically set out in the lease. The second was a written assurance from the landlord that there would be that right, and the lowest was, as it presently stands, that an inference would be drawn that there would be a breach of quiet enjoyment, and he hoped the law remained the same for the term of the lease. He concluded therefore that the 5% adjustment was reasonable. Further criticisms were made of Mr Beckett and the allowances he made for the flank window adjustment and he sought to point out

that in the photographs of the subject premises the ground floors were obscured for privacy issues and also security. He concluded that it was in his view reasonable to accept Mr Manton's figures in respect of the property.

35. As to compensation his view was that Mr Beckett had provided a confused picture and it was for the Respondent to prove loss and provide evidence to establish that such a loss would exist on the date of the new lease being granted. His view was that the value to be established in respect of the loss must be by way of market evidence showing an enhancement of some £7,000,000 plus for the freehold property. The question we need to consider, he thought, was on the valuation date would a notional purchaser pay extra to convert the property in 2030. He says no, but in any event Mr Johnson asked where the evidence to say yes was? The uplift of £7,000,000 came from the £2000 p.s.f figure, which in itself came from a raft of house transactions set out in Mr Beckett's report. Mr Johnson's view was that these told us nothing about Upper Belgrave Street, which was distinct from those house transactions relied upon by Mr Beckett. He posed the question why the conversion had not happened. Unlike Miss Holland, he did believe that the property at 50 Chester Square showed the market and that the values had dropped. This was, he said, consistent with the Savill Indices. His assertion was that we were in no position to draw any safe conclusion that anyone would pay more for the conversion prospect and no real evidence for the uplift to £7,000,000. He reminded us that in his view Section 61 of the Act in effect gave a break clause, a similar analogy to the 1954 Landlord & Tenant Act and there should be no compensation payable in this case.

C. INSPECTION

36. On the morning of the 22nd October we made an internal inspection of the subject premises in the company of the Applicant's father, Miss Jones from the solicitors for the Respondent and Mr Saxby as agent for the Applicant. We were also able to view the interior of the flat on the first and upper floor at 3 Belgrave Street thanks to the kindness of the tenant. Before we deal with those internal inspections, we should record that we also externally inspected the various properties set out on Mr Beckett's report at Appendix 2 being the 10 properties shown in Upper Belgrave Street and Eaton Place. We can say that from our inspection those properties in Eaton Place were not as helpful as those in Upper Belgrave Street. We noted the exterior of the preferred comparable at 6 Upper Belgrave Street which was externally similar to the subject premises, although of course lacking the side elevation. The property at 2 Halkin Street did not provide assistance to us. It was in a very different location.

37. We turn then to the inspection we made of the subject premises. The description is contained in the experts' reports and we do not need to go into any further details. The living room on the ground floor, described as the "glory" of the flat by Mr Beckett was noted and in particular the double aspect. The hallway leading from the main entrance was of good proportions, as was the main bedroom with ensuite and dressing room/wardrobe. The bathroom fittings were stylish although perhaps slightly dated. Descending to the basement, we were able to view the

kitchen which was slightly dated, and a dining area which had the benefit of natural light from the patio area to which of course the lessee no longer has access. Ceiling height was good although we noted that in the hallway it was perhaps a foot lower. The dining room at the front of the property was of a good size with a high ceiling, although the outlook was onto the vaults to the front. To the side was a somewhat inconveniently sited bedroom with windows to Chester Street. The storage space was of good size although there was some evidence of damp. We noted that in the photographs taken by Mr Manton, a bed was to be seen, although that had been dismantled at the time of our inspection whether temporarily or permanently we could not say. There were two further bedrooms, the rear one of which was used as a form of study and TV room with a shower room off. The middle bedroom had double wardrobes and there was an internal bathroom.

38. We were able to inspect the maisonette/flat on the first and second floor above the subject premises. This property had been the subject of extensive and, we suspect, expensive modernisation works and showed what could be done to the property if money was spent on the interior. The benefit of the dual aspect was enhanced at these levels

D. THE LAW

39. We have borne in mind the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 and in particular Sections 48 and Schedule 13, and Section 61 of the Act. As indicated above we will provide separate Reasons with regard to the lease provisions and clearly will need to consider the factors set out in Section 57 of the Act.

40. Section 61 of the Act states as follows:-

61. (1) *Where a lease of a flat ("the new lease") has been granted under Section 56 but the court is satisfied, on an application made by the landlord –*
(a) that for the purposes of redevelopment the landlord intends –
(i) to demolish or reconstruct or
(ii) to carry out substantial works of construction on, the whole or a substantial part of any premises in which the flat is contained, and
(b) that he could not reasonably do so without obtaining possession of the flat, the court shall by order declare that the landlord is entitled as against the tenant to obtain possession of the flat and the tenant is entitled to be paid compensation by the landlord for the loss of the flat

Subsection 2 continuing states:-
An application for an order under this section may be made –
(a) at any time during the period of 12 months ending with the term of the lease in relation to which the right to acquire a new lease was exercised; and
(b) at any time during the period of 5 years ending with the term date of the new lease

The section goes on to deal with the method by which compensation is calculated (subsection 4).

41. Schedule 13 of the Act deals with the premium and other amounts payable by a tenant on the grant of a new lease and at paragraph 5 under the heading "Compensation for loss arising out of a grant of new lease" states:-

5.(1) Where the landlord will suffer any loss or damage to which this paragraph applies there shall be payable to him such amount as is reasonable to compensate him for that loss or damage

(2) This paragraph applies to

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest

(3) Without prejudice to the generality at paragraph (b) of sub-paragraph (2) the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph

(4) In sub-paragraph (3) "development value" in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).

E. FINDINGS

42. We will deal firstly with some of the peripheral matters which were not agreed between the parties. The first issue we propose to address is the question of the value to be attributed to storage space within the subject premises and by reference to external patios, vaults and storage spaces in comparable properties. In the main the parties had agreed that external space such as patios could be dealt with on the basis of a reduction to one third of the value of the living accommodation. Mr Beckett thought however that insofar as the internal storage space of the subject premises was concerned that a 50% reduction was appropriate. It is a matter of opinion. Some external spaces, for example that to be found at the Flat 1, 6 Upper Belgrave Street would in our view potentially attract less of a reduction from the living accommodation square footage rate. It is difficult to tell with any accuracy, but the photograph showing the external area of that property with the spiral staircase would seem to us to be of not inconsiderable value and enhancement to the property. However, we do not propose to interfere greatly with the assessments made by the valuers, although our view is that the internal storage space, which is reasonably extensive and would be of considerable use in the subject premises, is sufficiently catered for by a reduction of 50% on the square footage rate applicable to the other living accommodation in the subject property.

43. We then turn to the question that appears to cause some concern relating to the flank wall to the subject premises. We do not agree with Mr Manton's view that this has no real value. Whilst we accept that there would be an issue relating to privacy and perhaps security insofar as the basement level is concerned, it was clear to us on inspection that having the benefit of the flank walls certainly enhanced the main living room and bedroom on the ground floor and the bedrooms at basement level. Indeed without the flank wall the layout of the subject premises would have to be considerably changed. We do not however feel comfortable with an uplift of some 10% for this element. Mr Manton sought to reduce the value of the subject premises by 5% for not having rights to light. For reasons which we will refer to shortly, it seems to us that such an argument is not sustainable. It does however give an indication as to what Mr Manton might have felt the value of the right of light was. We feel that a figure of 5% in respect of the flank wall windows is a reasonable one to incorporate into the calculation to achieve the appropriate square footage value of the subject premises by reference to the comparable properties that we have been asked to consider. We will turn to the comparable properties in due course.

44. Insofar as the deduction for light is concerned, we heard all that was said by Mr Manton. With no disrespect to Mr Johnson, it could not be said that he strongly argued that the right to light would disappear and appeared to accept the legal propositions put forward by Miss Holland in that regard. We make the finding that at the very least the lease containing a provision for quiet enjoyment would include the right of light to the subject premises. Support for this was to be found, Miss Holland said, in the County Court case of *Dorrington Belgravia Limited v. McGlanshan and another.* This related to the development of the property involving the roof and airspace above a maisonette and the blocking of skylights. It is not necessary for us to go into details, but we note from the decision at the commencement of the report that it was found in that case that the blocking of the skylights so that the internal part of the maisonette received no natural light would render the premises materially less fit for the purpose for which they were let and that such acts could amount to a derogation from grant. It seems to us that this would be the case with the subject premises and in that regard therefore we take the view and find that there is no allowance to be made for the possibility of the loss of light as suggested by Mr Manton.

45 Another issue that we need to consider is the impact that the onerous ground rent has on the value of the property. Mr Manton argues that 0.2% is the appropriate percentage to allow against the freehold value and Mr Beckett 0.15% Mr Manton appeared to put this forward on the basis of agreements he had reached. Mr Beckett simply said that he had taken the mid point of the allowance suggested, we understood by the RICS, of between 0.1% and 0.2%. We do not wish to become too bogged down in this particular element. We find that Mr Beckett's assessment at .15%, being the mid point is a reasonable percentage to apply in this case. There had been an issue as to the capitalisation rate to be applied to the onerous ground rent element but the valuers agreed this at 6%. We think it is appropriate to apply this rate to the ground rent generally as we anticipate would occur in the market. The relativity adjustment for the onerous ground rent was

either 34.25% as set out on page 26 of Mr Manton's report or 37.31% as set out in the 11th Appendix to Mr Beckett's report. Given that we prefer the mid point of .15% we conclude that Mr Beckett's 37.31% is correct.

46. We then turn to the question of the comparable evidence. As is so often the case, it is extremely difficult to find properties which give compelling comparable evidence upon which the parties can hang their hats. It is, we think, common ground that the best comparable is to be found at Flat 1, 6 Upper Belgrave Street. It is similar in size, although the lease term remaining is longer than the subject premises. Nonetheless, it seems to us of all the comparables that it is the only one that has the similar accommodation to the subject premises and of course is in such close proximity. Furthermore, the sales details are not so far removed from the valuation date which is June of 2009 compared to a sale of number 6 Upper Belgrave Street of the 10th November 2009.

47. Mr Manton had concluded that the "three focus transactions" at numbers 4 and 6 Upper Belgrave Street were appropriate, and he had also taken into account numbers 55 and 96 Eaton Place. He did not believe that the comparables at numbers 4, 6 and 7 Upper Belgrave Street were of help because they were on different floor levels, in the main of long leases and substantially different in size and condition from the subject premises. Although Miss Holland suggested that it was lazy just to deal with the one comparable at 6 Upper Belgrave Street, it is quite clear from the documentation before us, the arguments put to us by the valuers on both sides and our inspection, that flat 1 at 6 Upper Belgrave Street is the closest comparable available to us. There is some assistance to be obtained from the basement and ground floor properties at 4 Upper Belgrave Street, but of course they only tell half the story. Accordingly, despite what may have been said by Miss Holland, and having considered the comparable properties provided, we, like the valuers, find the greatest help to be found in the comparable of the flat contained at 6 Upper Belgrave Street. The properties in Eaton Place were not of assistance when compared to the three properties in Upper Belgrave Street and in our view merely muddied the waters.

48. We must then analyse that comparable as best we can given that Mr Beckett has provided some 29 columns on his appendix 2 showing adjustments for lease length, relativity, the benefits of the Act and time. However, as criticised by Mr Johnson, he makes no other adjustments to reflect the external and internal storage spaces to include, in the case of the basement of number 4 Upper Belgrave Street, the garage, nor has he made any adjustments for condition. We find this strange. The answers he gave to Mr Johnson as to why he had not done this were, with respect to Mr Beckett, somewhat unconvincing. We have been left therefore in a difficult position. One valuer has provided quite detailed adjustments to be made for part of the assessment process and the other (Mr Manton) has made various adjustments for condition, lack of light, etc., which are somewhat arbitrary, together also with a failure to give any credit at all for the double aspect element. We fear therefore that we are left to plough our own furrow so far as the establishment of the value of the subject premises is concerned.

49. On the whole we have found the evidence of Mr Beckett less helpful than that provided by Mr Manton. His appendix 2 which set out all the comparables was both a help and a hindrance. It gave assistance in respect of adjustments for lease length and time, which were not greatly challenged, but made no allowances whatsoever in respect of condition nor did it include any allowance for the additional external areas or internal storage spaces that the comparable properties had. This seemed to us to be unreasonable. Mr Beckett says that there are only two standards. Grade A, which is a "turnkey" condition where no works would be done and a purchaser would walk straight in accepting the condition. The other standard was Grade B which he considers to be a "shell" and would be subject to works of improvement. He considers that the best comparable falls into that latter category. We are not convinced. There are many differing levels of condition and whilst some properties may need no work, others could require substantial sums being spent on them and it is therefore necessary to establish the condition to be able to bring the comparable either up or down to the subject premises. Accordingly, when it comes to questions of valuation, we find the evidence of Mr Manton, although not by any means perfect, certainly of more assistance in that at least he has incorporated into his valuing exercise the different elements of the property.

50. Where we disagree with Mr Manton is his reduction of 5% for rights of light which includes, it appears, the loss of use of the vaults and the outside area of the subject premises, and no allowance whatsoever for the benefit of a dual aspect. We also believe that there is no "laziness" in considering the best comparable to achieve the appropriate pounds p.s.f rate. The other comparables can be utilised as a check, but should not in our view unnecessarily influence what is undoubtedly the best comparable to be found in the circumstances.

51. We therefore look at how Mr Manton has dealt with the best comparable. 6 Upper Belgrave Street has an open market value at the time of sale in November 2009 of £3,800,000. Mr Manton adjusted this for freehold equivalent values by reference to the Savills Index shown at appendix 7 of his report. It appears, however, to have used the percentage shown for a 50 year lease of 80.7%. This would give him the figure of £4,708,798. However the lease length is some 51 years. Accordingly, the figure should be 81.2%. That gives a figure uplifted for the freehold of £4,679,803. That then needs to be divided by the square footage of the property, which in our view should include the patio element at 422 square feet, which we believe given this property, is perhaps best assessed at one half of the value, adding 211 square feet to the property. We make only a 50% deduction because having seen the photographs it does seem to us that this enhances the property and would certainly equate to the allowance made for the storage areas in the subject property. This gives an effective square foot area of 3,336 which would give a square footage rate of £1,403. This then needs to be adjusted, as Mr Manton did, for time by -7.57%, leaving an adjusted square footage freehold value of £4,325,542. We then believe that this sum should be further adjusted to reflect the difference in condition between this comparable and the subject premises. Mr Manton suggested a figure of £175 p.s.f. Mr Beckett of course indicated that there should be no adjustment for condition. However, he did not think that the

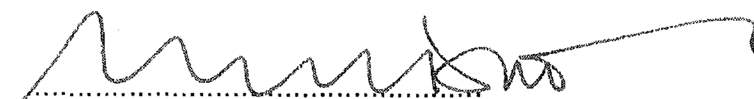
comparable was a Grade A property. Having inspected the subject premises and from our own knowledge and experience, we would have thought that £175 p.s.f. suggested by Mr Manton as being the condition adjustment is somewhat on the high side. The property has its limits. We think that the layout for flat 1, taken from the sales particulars, is better than the subject premises and it has the benefit of the very usable outside space and the vaults. In our opinion there is a limit as to what might be spent in bringing the subject property up to a modern standard which either an occupier or a developer might wish to expend. Taking the matter in the round, we would have thought that something in the region of £100 p.s.f. would be not unreasonable which would result in the deduction from the above value of £4,325,542 of £333,600 based on the square footage area. This then gives a freehold vacant possession figure of £3,991,942. Applying then the long lease value of 98% gives a long lease value for the comparable of £3,912,103.

52. We then need to find the appropriate square footage rate based on the freehold vacant possession value of £3,991,942, which is £1197 and apply this to the subject premises

53. The square footage area of the subject premises has been agreed by the parties at 3,229 square feet, which includes limited head room of 248 square feet. However, we need to apply a reduced value to that limited head room and lack of daylight of 50% which therefore gives a "chargeable" square footage of 3,105. If that is applied to the square footage rate derived from the comparable property of £1197 we get an adjusted freehold vacant possession value of £3,716,685 which should be uplifted by 5% to reflect the dual aspect. This then gives a freehold vacant possession value of £3,902,519 and a current lease value of £1,795,158 based on the agreed relativity of 46% before adjustment for the onerous ground rent. Taking the adjusted existing leasehold rate and utilising Mr Beckett's figure of 37.31% instead of a straight 46% applied would give a short lease value of £1,456,030. It follows that applying the 98% differential for freehold to long lease, gives the long lease value of £3,824,469

54. We must then turn to the question of compensation. We have borne in mind the cases referred to us by both Counsel. The case of *Cadogan Square Freehold Limited and the Earl of Cadogan* contains useful conclusions which we have noted. The evidence we have of the extent of any development value is not compelling. The properties being considered in this Lands Tribunal case related to valuation dates in August 2007 before the impact of the recession on house prices really hit. Although Mr Beckett sought to argue that houses of values of £10m or more were immune he adduced no evidence. Indeed the evidence was to the contrary when one considered the Savills index and the example of the property in Chester Square which we do not accept can be dismissed so lightly. The uncertainty of the market, for how long no one knows must be borne in mind by a potential purchaser. Further the comparables put forward were, we found, not helpful, differing as they did in location to the subject premises. We had no evidence before us as to what the market might be doing in 2030 nor of any planning issues and there are of course the potential difficulties in exercising rights under section 61 of the Act, which are set out fully in the Lands Tribunal case of the *Earl Cadogan and 2*

Herbert Crescent Freehold Limited. In addition we found it somewhat surprising that in his report he could be seeking to argue compensation at £1,078,329 for the reasons he states, and then put forward an alternative approach, which admittedly is not the primary argument, which would see compensation at £113,547. It seems to us the fact that the compensation that might be payable on the Respondent's case could vary to such a degree must in itself cause us concern as to whether or not there is in reality a claim that compensation can be sought in this particular application. No evidence was given to us that persuaded us that there is likely to be a demand for conversion to a single dwelling which would cause a purchaser now to pay additional monies for the possibility of creating a dwelling in 2030, even at the reduced amount of £113,547. From our inspection of property in the locality, that is to say the streets around and not the squares very few, if any, are still maintained or have been converted back to a single dwelling. Indeed, we understand that only one has been so converted in Upper Belgrave Street in a number of years. Certainly the other properties that we looked at were divided into flats. We do not accept that the comparable properties that Mr Beckett seeks to rely upon and which are in the main in squares in the locality, which in our view have a higher value, assist us in seeking to grapple with the value of this property as a freehold. It just does not seem to us to provide sufficient evidence for us to be able to say that a loss of the magnitude suggested should be incorporated into the premium to be paid for this lease extension. The more so of course because the ability to take the property back at the expiration of the existing lease is preserved by reference to Section 61 of the Act which we have referred to above, accepting that this is not without its difficulties. In those circumstances we are not persuaded that compensation should be payable in this case. Our view is that it is for the Respondent to satisfy us that such compensation is payable and we are not able to say that that responsibility has been discharged by the evidence that we have received in this case. Accordingly, we make no allowance for compensation and the calculation in respect of the premium to be paid for the subject premises is as set out on the attached schedule.



Andrew Dutton

8th December 2010

No. 3 UPPER BELGRAVE STREET SW1
LEASEHOLD VALUATION TRIBUNAL'S VALUATION

FREEHOLD VACANT POSSESSION VALUE £3,902,519

EXTENDED LEASEHOLD VALUE £3,824,469

VALUE OF CURRENT LEASEHOLD INTEREST
(ALLOWING FOR ONEROUS GROUND RENT) £1,456,030

1 Current freehold interest:			
Ground-rent	£52,500		
YP for 21 years @ 6%	11.764		
		£617,610	
Reversion to freehold VP	£3,902,519		
Present value in 21 years @ 5%	0.3589		
		£1,400,614	
			£2,018,224
2 Future freehold after lease-extension			
Reversionary value	£3,902,519		
PV of £1 in 111 years @ 5%	0.0044462		
Value of future freehold		£17,351	
3 Share of marriage value:			
Freehold after lease extension	£ 17,351		
+ Extended lease	£3,824,469		
		£3,841,820	
Deduct:			
Present freehold interest	£2,018,224		
+ Present leasehold interest	£1,456,030		
		£3,474,254	
Marriage gain		£367,566 @ 50% =	£183,783

Premium £2,202,007

ADDENDUM TO REASONS DATED 2010

IN RESPECT OF FLAT 1, 3, UPPER BELGRAVE STREET LONDON SW1X 8BD

REFERENCE LON/OOBK/OLR/2010/0204

TRIBUNALS DECISION/REASONS IN RESPECT OF THE TERMS OF THE NEW LEASE

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 SECTION 57 ("The Act")

REASONS

These Reasons relate to the submissions, received over a period of time from the parties solicitors, made in respect of the terms of the new lease arising from the application to extend the existing lease of the above premises which was heard before the Tribunal on the 19 & 20 October 2010. We have assumed for the purposes of this decision that the plans to be attached to the new lease have been agreed. If that is not the case the parties are required to send it further written submissions within 14 days of the receipt by them of this decision.

The terms of the lease which are under review are set out below. The lease in question is dated 25 May 1973 between Rex Horton Furneaux and Dorothy Hazel Hetreed of the first part, K & B Industries Limited of the second part and David Lund of the third part.

1. The building known as 3 Upper Belgrave Street is defined as comprising "*three self-contained maisonettes situate respectively on the basement and ground floors, the first and second floors and the third and fourth floors thereof*".

2. The lease is for a term of 60 years from 24 June 1970 and by a Deed of Variation dated 30 April 2010 the ground rent now passing is £52,500 and it will remain at that level until the expiration of the lease on the 20 June 2030.

3. The first term of the existing lease that we are required to consider relates to clause 2(2) which states; *"To pay to the Lessor without any deduction a*

proportion at part of the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and insurance of the said Building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such payment (hereinafter called "the service charge") being subject to the following terms and provisions."

Clauses 2(2) (a) – (d) inclusive are not in dispute but clause 2(2)(e) states as follows:

"The annual amount of the service charge payable by the Tenant as aforesaid shall be calculated by dividing the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which the certificate relates by the aggregate of the rateable values (in force at the end of such year) of all the flats (excluding caretaker's accommodation) in the said Building the repair maintenance renewal insurance or servicing whereof is charged in such calculations as aforesaid and then multiplying the resultant amount by the rateable value (in force at the same date) of the flat."

4. The next clause to be considered is 2(14)(a) of the existing lease which states as follows:

   "Not (except with the written consent of the Lessor and the Superior Lessor and under their supervision and to their satisfaction) to erect upon or affix to the flat or any part thereof any machinery or mechanical or scientific apparatus or any television or radio receiving aerials and to pay to the Lessor on demand and indemnify the Lessor against all reasonable Surveyors' fees and other charges and expenses which the Lessor and Superior Lessor may incur in connection with any matter or thing under this present sub-clause".

5. The next clause we are asked to review is to be found at paragraph 9 of the existing lease which states as follows:

   "NOTHING herein contained shall confer on the Tenant any right to the benefit of or to enforce any covenant or agreement contained in any Lease or other instrument relating to any other premises belonging to the Lessor or limit or affect the right of the Lessor in respect of any other premises belonging to the Lessor to

deal with the same now or at any time hereafter in any manner which may be thought fit nor shall anything herein contained confer on the Tenant any liberty privilege easement right or advantage whatsoever mentioned or referred to in Section 62 of the Law of Property Act 1925 save those expressly set out in the First Schedule hereto".

6. Finally we are asked to consider the wording set out at paragraph 1 of the Fifth Schedule of the existing lease where it states as follows:

   "The Tenant shall not (except with the written consent of the Lessor and under the supervision of the Lessor's Surveyor and to his satisfaction) erect upon or affix to the flat or any part thereof any machinery or mechanical or scientific or electrical apparatus excepting only radio and television receiving sets (and indoor aerials therefore) and small domestic electrical apparatus properly fitted with an approved suppressor against electrical interference to other apparatus".

7. In determining whether there should be changes to the clauses contained in the existing lease as set out in the proposed new lease we bear in mind section 57 of the Act. Section57(1) states as follows:

   "Subject to the provisions of this chapter (and in particular to the provisions as to rent and duration contained in s56(1)) the new lease to be granted to a Tenant under s56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modification as may be required or appropriate to take account –

   a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;

   b) of alterations made to the property demise since the grant of the existing lease; or

   (c) in a case where the existing lease derives (in accordance with s7(6) as it applies in accordance with s39(3)) for more than one separate leases, of their combined affect and on the differences (if any) in their terms.

   Sub-section 2 of this section states as follows:

Where during the continuance of the new lease the Landlord will be under any obligation for the provision of services or for repairs, maintenance or insurance –

(a) the new lease may require payments to be made by the Tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the Landlord; and

(b) (if the terms of the existing lease do not include any provision for the making of any such payments by the Tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the date of the existing lease, such provision as may be just –

(i) for the making by the Tenant of payments relating to the costs from time to time to the Landlord,

(ii) for the Tenants liability to make those payments to be enforceable by distress re-entry or otherwise in like manner as if it were a liability for payment of rent."

8. Sub-section (6) of s57 states as follow:

"*Sub-sections (1) – (5) shall have affect subject to any agreement between the Landlord and Tenant as to the terms of the new lease or an agreement collateral thereto; and either or them may require that for the purposes of the new lease any term of existing lease shall be excluded or modified insofar as –*

(a) it is necessary to do so in order to remedy a defect in the existing lease; or

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of the changes occurring since the date of commencement of the existing lease which affects the suitability on the relevant date of the provisions of that lease."

9. We also bear in mind the submissions made to us by Mr Lamb and Miss Holland and the submissions made by Mr Johnson both in his opening statement and in oral submissions to us at the conclusion of the hearing. In his written and oral submissions to us Mr Johnson referred to the case of Gordon v. The Church Commission a Lands Tribunal case under reference LRA/110/2006 and a copy of that Decision was appended to his opening statement.

B. FINDINGS:

10. We will deal with each clause in dispute separately setting out the submissions made to us, the proposals and our findings.

11. In respect of the amendment to clause 2.2.5. of the new lease which relates to the service charge provisions set out in clause 2(2)(e) of the existing lease, it is said by the Respondent Landlord that the proposed service charge percentage should be 34%, based on the floor area. The Applicant has proposed retention of the existing service charge percentage used by the parties of 29.4783% this being the figure derived from the use of the rateable values as set out in the existing lease term. The Landlord had proposed the following wording:

    "The annual amount of service charge payable by the Tenant as aforesaid shall be calculated by dividing the aggregate of the specific expenses and outgoings incurred by the Lessor in the year to which the certificate relates, by a fair proportion to be determined by the Managing Agents (acting reasonably) whose decision shall be final and binding being 34% at the date hereof".

12. The Tenants primary case was that the wording in the clause should be as follows:

    "The annual amount of the service charge payable by the Tenant as aforesaid shall be 29.4783% of the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which the certificate relates".

    A fall back position put forward by the Applicants contained the following wording;

    "The annual amount of the service charge payable by the Tenant as aforesaid shall be calculated at a fair proportion of the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which this certificate relates such proportion to be calculated by an independent surveyor acting as an expert whose decision shall be final and binding and such proportion shall and unless and until reapportioned by the said surveyor be 29.4783%".

13. It does not seem to us that any proposed amendment would fall within s57(1) of the Act. One therefore has to consider whether s57(6) applies. We find it does. The use of rateable values is now outdated since the abolition of same. It is essential that there is clarity in determining the relevant contributions that each lessee should make to the service charge liability under the lease. Including the percentage figure, which is not disputed as accurately reflecting the ratio of rateable value of the flat to the whole, we find will give such clarity. In those circumstances therefore we find that the amendment of the clause as put forward by the Applicant to read as follows:

"The annual amount of the service charge payable by the Tenant as aforesaid shall be 29.4783% of the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which this figure relates"

as being the appropriate wording to insert at clause 2.2.5 of the new lease.

14. We then turn to the existing lease term at clause 2(14) referred to as clause 2.14.1 of the new lease. It seems also appropriate at this point to deal with the terms of the clause to be found in the Fifth Schedule of the existing lease now at paragraph 1 of the Fourth Schedule of the new lease. The Respondent Landlords assertion is that that the new lease should contain the following wording at clause 2.14.1 –

"Subject to paragraph 1 of the Fourth Schedule not (except with the written consent of the Lessor and under its supervision and to its satisfaction) to erect upon or affix to the demised premises or any part thereof any machinery or mechanical or scientific apparatus or any television or radio receiving aerials (otherwise than indoor aerials) and to pay to the Lessor on demand and indemnify the Lessor against all reasonable surveyors fees and other charges or expenses which the Lessor may incur in connection with any matter or thing under this present clause".

15. Paragraph 1 of the Fourth Schedule of the new lease will, if the Respondent Landlords argument succeeds, contain the following wording.

"Then Tenants shall not (except with the written consent of the Lessor not to be unreasonably withheld and under the supervision of the Lessors surveyor and his

satisfaction) erect upon or affix to the demised premises or any part thereof any machinery or mechanical or scientific or electrical apparatus excepting only radio and television receiving sets (and indoor aerials therefore) and domestic electrical apparatus properly fitted with an approved suppressor against electrical interference to other apparatus".

As can be seen there are differences between those two clauses in particular the Schedule clause allows the installation of domestic electrical apparatus subject to certain conditions.

16. It is the Applicants case that these restrictions conflict and in the words of Mr Johnson *"impose a ridiculous level of control over the introduction of domestic appliances into the flat".* The assertion by the Applicant is that these provisions are out of date. The question therefore is whether or not this falls within the provisions of subsection(6)(b) as set above. There is no doubt that since 1973 the use of electrical appliances in a domestic dwelling has greatly increased and the inclusion of internet access and other methods of communication means that more and more electrical goods may find themselves in domestic property. However, the basis upon which a change can take place under section 57(6) has been narrowly construed. It does not seem to us that the existing clause could be said to be defective. Nor are we aware of changes, for example in conveyancing practice, occurring since the date of the lease, which would render the clause susceptible to change. That being said we have some sympathy with Mr Johnson's comments as referred to above. We adopt something of a halfway house. We do not believe that the alterations have to be an "all or nothing" situation. In those circumstances and on the basis that the proposed alterations to the existing clauses would remove some of the concerns expressed by Mr Johnson, especially the changes to the fourth schedule of the new lease, we allow the suggested wording of the Respondent Landlord as being a reasonable compromise.

18. The next clause that we are required to consider is that contained paragraph 9 of the existing lease having a similar numbering in the new lease. At the hearing it was made clear to us by Mr Johnson that the Applicant accepted that he no longer