



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

Case Reference : LON/00AW/0AF/2014/0015

Property : 106 Gloucester Road London SW7 4RH

Applicant : Murailles Properties Limited

Representative : Mr A Rosenthal of counsel

Respondent : Westwoods Limited

Representative : Mr M Jones of counsel

Type of Application : For the determination of the compensation payable under section 9 (1) Leasehold Reform Act 1967 for the acquisition of the Property (the "Act")

Tribunal Members : Judge J Pittaway
Mr R Shaw FRCIS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 11 November 2014

DECISION

Decisions of the Tribunal

1. Preliminary Issue

The tribunal determined as a preliminary issue at the beginning of the Hearing that the basis of valuation should be under s9(1A) of the Act and not s9(1).

2. The compensation

- 2.1 The tribunal determines that the Property should be valued on the basis of the use at the valuation date as an HMO and accordingly determines in accordance with section 9 (1A) of the Leasehold Reform Act 1967 that the compensation payable to the freeholder is **six million two hundred and thirty nine thousand pounds (£6,239,000.00)**
- 2.2 A copy of the tribunal's calculation of the premium is attached as Appendix 2.

3. Costs

As to the applicant's application for costs under Rule 13(1)(b) of the The tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**") this will be determined by the tribunal subject to the directions below, on the basis of a summary assessment by the tribunal.

Background

1. This is an application to the tribunal by the applicant for the determination of the compensation payable to it as freeholder of the Property. The Notice of Claim to Acquire the Freehold is dated 30 September 2013. Initially, by a notice dated 8 November 2013 the applicant denied the claim (on the grounds that the Property was not a "house" for the purposes of the Act, which denial was withdrawn on behalf of the applicant by e mail on 24 January 2014). The applicant applied to the tribunal on 11 April 2014 for the determination of the compensation payable for the acquisition of the freehold of the Property.
2. The tribunal issued Directions on 30 April 2014 which warned the parties of the consequences of failing to comply with the Directions, and that non-compliance might result in the tribunal making a determination on costs in accordance with its powers under Rule 13 of the Rules.
3. The applicant's bundle was received by the tribunal on 10 September 2014. The respondent provided the tribunal with a draft valuation on 22 September 2014.

4. The respondent has requested a postponement which request was heard and refused on 17 September. At that time the tribunal had further directed that the respondent disclose a reasonable summary of the rental income stream to Munday, solicitors to the applicant, by noon on 22 September. The respondent had not complied with this direction.
5. The Application was heard on 24 September 2014. The applicant was represented by Mr Rosenthal of counsel. The respondent was represented by Mr Jones of counsel. The tribunal heard evidence from Mr Jonathan Harris FRICS, the valuer for the applicant. Mr H Banger MRICS, the valuer for the respondent, did not attend the hearing. The tribunal were advised that the respondent was not relying on Mr Banger's report and that he would not be giving evidence.

Matters in Dispute

1. As a preliminary issue whether the application falls to be determined under s9(1) or s9(1A) of the Act.
2. The compensation payable by the respondent to the applicant under the Act.

Evidence

1. The Bundle before the tribunal contained
 - 1.1 A copy of the lease of the property
 - 1.2 the valuation of Mr Harris for the applicant.
2. The respondent was tenant of the Property under a lease dated 15 January 1959 for a term of 55 and one half years from 28 September 1958 at a rent of £50 per annum. The lease had expired by the date of the hearing but at the valuation date it had just under six months of its term unexpired.
3. While the lease provides for the Property to be used as a private residential hotel both parties treated the use under the lease at the valuation date as varied so that the present use was as a licensed House in Multiple Occupation.
4. The tribunal stated that they would determine the basis of valuation as a preliminary issue. Mr Rosenthal took the tribunal to TAB 4 of Mr Harris' report, the result of a rateable value search at the Royal Borough of Kensington and Chelsea which showed the rateable value of the Property at 1973 to be £2,972 with confirmation that this remained the rateable value at the relevant date (being 31st March 1990). Mr Jones stated that he had no instructions to concede this point but would be making no submissions on it.
5. In cross examination by Mr Jones, Mr Harris clarified that when he stated (paragraph 11.4 of his report) that the flats and common parts

are un-heated this statement was made in the context of an absence of central heating.

6. Again on cross-examination, in relation to the freehold value
- 6.1 Mr Harris proposed that an acceptable adjustment of price to allow for house price inflation between September 2013 and August 2014 would be between 0 and 5%, dependent upon when during that period the property market had reached a plateau. He disagreed with Mr Jones that the Land Registry statistics are the most accurate record for central London, because they make no distinction between freeholds and leases with shorter terms; their data is more volatile.
- 6.2 As to the most appropriate basis upon which to value the Property Mr Harris disagreed with Mr Jones that this was as an HMO, arguing that valuation on the basis of its potential to be converted into flats should also be considered.
- 6.3 Mr Harris agreed with Mr Jones that insofar as the Royal Borough of Kensington and Chelsea is concerned their approach to a change of use was to preserve accommodation for single persons.
- 6.4 On his HMO comparables
 - (a) Mr Harris did not agree with Mr Jones that two of his comparables (in NW6 and N7) should be discounted, arguing that evidenced a return to an investor and were relevant for yield;
 - (b) While accepting that 147-149 Kensington High Street might be in a higher value area, 22 Marloes Road and 60 Kensington Court in a better location than Gloucester Road and that not all the flats in 73 Philbeach Gardens were self-contained Mr Harris preferred not to cherry-pick, but agreed that 2 Queensberry Place was a good comparable.
7. Mr Jones accepted that the respondent had made no disclosure as to the rental income achieved from the Property. Mr Harris agreed that the rental levels referred to in paragraph 17.17 of his report were based on hearsay and on cross-examination conceded that the information given by Zoopla and stated to relate to 106 Gloucester Road might not in fact relate to the Property by reason of details in each of the flats particularised not corresponding to the actual flats/ facilities in the property. Mr Harris explained that he had had to estimate the rents based on comparables in the absence of any evidence of rental payments from the respondent.
8. In relation to the valuation of the Property as a residential development project Mr Harris did not agree with Mr Jones that a valuation based on residual valuation would be a better basis of valuation than a valuation based on building comparison, in this case 15 Queens Gate Terrace.
9. Mr Jones accepted a deferment rate of 4.75%, as adopted by Mr Harris in his report.
10. In response to questions from the tribunal Mr Harris

- 10.1 confirmed that he considered that the freehold value should be the open market value and that the RICS guidelines only excluded special purchasers when they were not “visible to the market”;
 - 10.2 That reference should be had to all potential purchaser groups; and
 - 10.3 That he did not consider an allowance of 40% of the anticipated rent of say £175,000 for letting fees and expenses to be too high.
11. The tribunal commented on the absence of evidence of rental income from the respondents, drawing counsel’s attention to the direction of 17 September which expressly required its production, and the warning printed in bold on the original directions of 30 April 2014 as to the effect of failing to comply with directions.

Submissions

1. Mr Jones
 - 1.1 submitted that the valuation should be based on the Property as an HMO in its present condition; any other basis of valuation was speculative.
 - 1.2 He invited the tribunal to form its own view on the usefulness of the comparables. He submitted that the best comparable (while not determinative) was the price paid for 2 Queensberry Place, which price should be adjusted to allow for inflation between September 2013 and August 2014 when it was sold;
 - 1.3 Doubted the value of the Zoopla comparables and submitted that Mr Harris’ assessment of the rents was virtually no more than educated guesswork.
 - 1.4 Submitted that the only issue was the price payable and that £7,445,000 overstates the value of the Property as an HMO.
2. Mr Rosenthal
 - 2.1 Submitted that rental income is relevant as it goes to present value at the valuation date and serves as a cross check to value. The amount suggested by the respondent of £41,000 was an absurd amount. it would have been easy for the respondent to provide the necessary evidence of rental income but they had not done so.
 - 2.2 therefore invited the tribunal to find the level of rent recoverable was that put forward by Mr Harris. Any prospective purchaser, in the absence of actual evidence as to the rental income would have formed a view in a manner similar to that adopted by Mr Harris.
 - 2.3 Invited the tribunal to have regard to the figure of “£350,000 gross”, scribbled on the top of the floor plan provided by Mr Banger to Mr Harris.
 - 2.4 Submitted that the tribunal should look to the field of potential purchasers, and the purchaser who will offer the highest price. He submitted that there was nothing in the Act which either prevents this, or requires the tribunal to have regard to the current use and configuration.
 - 2.5 He noted that Mr Jones had not challenged the residualised price of £6,122,500 set out at paragraph 19.4 of Mr Harris’ report.

- 2.6 He did not consider that 15 Queens Gate Terrace should be ignored, but that if the tribunal chose to so he submitted that they should revert to the valuation of an upgraded HMO of £7,050,000.
- 2.7 He submitted that reliance solely on one comparable, 2 Queensberry Place to be inappropriate. Mr Harris had produced further evidence.
- 2.8 He invited the tribunal to make their determination in accordance with Mr Harris' conclusion and accept the valuation of £7,445,000.

Costs

1. At the end of the hearing Mr Rosenthal made an application for costs under Rule 13(1)(b) of the Rules on the basis that the respondent had acted unreasonably in defending the proceedings, namely
 - 1.1 Failure to comply with directions;
 - 1.2 Blatant failure to disclose relevant documents;
 - 1.3 Unnecessary attempts to draw out the proceedings;
 - 1.4 Failure to explain insistence on relying on s9(1) rather than s9(1A);
 - 1.5 Late presentation of evidence putting the applicant to extra expense; and
 - 1.6 Seeking to require more than one day for the hearing.
2. Mr Rosenthal invited the tribunal to make an order that the costs should be determined by a detailed assessment of the costs in accordance with Rule 13(7)(c) of the Rules.
3. Mr Rosenthal invited the tribunal to direct that the applicant file a full statement of the costs within a finite period, giving the respondent a finite period within which to file a response; and that the matter should be disposed of by way of a paper determination without a hearing.
4. Mr Jones said he was unable to dispute the factual background set out by Mr Rosenthal but asked that the tribunal give consideration to what costs had been incurred and seek to distinguish between those costs that would have been incurred in any event and those that may have been incurred by reason of the respondent's unreasonable behaviour. He submitted that Mr Harris' costs would have been incurred in any event. He submitted that only the adjournment costs might be considered to have been unnecessary. He agreed to the matter of costs being determined on paper as the most cost effective approach.

Inspection

The parties did not suggest an inspection and the tribunal did not consider an inspection to be necessary.

Reasons for the Tribunal's determination

Preliminary issue

The tribunal agreed with Mr Rosenthal that on the basis of the evidence before it the basis of valuation should be determined in accordance with section 9(1A) of the Act.

Compensation

1. At the valuation date the Property was used as an HMO. The tribunal consider that the correct basis upon which to value the Property at the valuation date is on the basis on its then actual use.
2. The tribunal did not consider it necessary to consider the potential for an upgraded HMO. Mr Harris' appraisal summary did not allow for any profit and the tribunal did not consider this to be realistic.
3. Even if the tribunal is wrong and the valuation could take into account the potential for conversion to flats the tribunal did not accept Mr Harris valuation of £7,445,000, based on building comparison, as it relied on one comparative example only, and contemplated a value per square foot of £1,100. The tribunal agree with the principle of Mr Rosenthal's submission (made in support of Mr Harris' existing HMO valuation) that reliance on one comparable is inappropriate.
4. Insofar as Mr Harris' valuation of £6,122,500 (residual valuation) was concerned the tribunal felt it unnecessary to consider this as it produces a valuation that is less than that for the existing use and no one would accept a price based on criteria which reduced the valuation to below that for the current use.
5. In the absence of any evidence from the respondent as to the rental income for the Property the tribunal accept Mr Rosenthal's submission that any prospective purchaser, in the absence of actual evidence as to the rental income would have formed a view in a manner similar to that adopted by Mr Harris. It is noted that the figure of "£350,000 gross", is scribbled on the top of the floor plan provided by Mr Banger to Mr Harris, but the tribunal are unable to place any evidential weight on this.
6. The tribunal accept as Mr Harris' evidence of existing use value. Mr Jones suggested that the sale price of 2 Queensberry Place (£7,100,000.00) in August 2014 should be adjusted back to the valuation date. Under examination Mr Harris suggested that this adjustment should be between 0% and 5%. However, even if adjusted by 10% the gross yield is 3.975% (compared to Mr Harris' proposed 3.58%) and the adjusted sale price equates to £942.34 per square foot (compared to Mr Harris' proposed £1,047). Accordingly the tribunal are prepared to accept Mr Harris suggested 5.5% yield and his adopted value of £940.00 per square foot and are therefore prepared to accept Mr Harris' valuation of the tenant's proposed interest as an HMO of £6,364,000.00.

Costs

1. The tribunal consider that in the circumstances of this case a summary assessment of the costs pursuant to Rule 13 (7)(a) is more appropriate than a detailed assessment under Rule 13 (7) (c), which is a relatively expensive and elaborate procedure.

2. Rule 13(6) provides that the tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations.
3. Accordingly, this application will be determined by the tribunal subject to the directions set out below.

Directions as to costs

1. The application is to be determined **without a hearing unless either party makes a written request (copied to the other party) to be heard before the paper determination.**

The applicant's case

2. By **two weeks after the date of this determination** the applicant shall send to the respondent a statement of case setting out:
 - (a) Any further legal submissions as to why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule in addition to the submissions already made;
 - (b) Full details of the costs being sought, including:
 - A schedule of the work undertaken;
 - The time spent;
 - The grade of fee earner and his/her hourly rate;
 - A copy of the terms of engagement with applicant;
 - Supporting invoices for solicitor's fees and disbursements;
 - Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate;
 - Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.

The respondent's case

3. By **four weeks after the date of this determination** the respondent shall send to the applicant a statement in response setting out:
 - (a) the reasons for opposing the application with any legal submissions in addition to the submissions already made;
 - (b) any challenge to the quantum of the costs being claimed with full reasons for such challenge and any alternative costs;
 - (c) details of any relevant documentation relied on with copies attached.

The applicant's reply

4. By **six weeks after the date of this determination** the applicant shall send to the respondent a short statement in reply.

Documents for the hearing/determination

5. The applicant shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall by **the date seven weeks after the date** send one copy to the other party and send two copies to the tribunal.
6. The bundle shall contain copies of:
 - This determination
 - Any subsequent directions;
 - The applicant's statements with all supporting documents;
 - The respondent's statement with all supporting documents.

Hearing arrangements

7. The tribunal will determine the matter on the basis of written representations received in accordance with these directions on **a date to be notified to you by the tribunal.**
8. If an oral hearing is requested, the hearing shall take place on **a date to be notified to you by the tribunal** at 10 Alfred Place London WC1E 7LR starting at 10.30 with a time estimate of 1-2 hours.
9. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

The Law

The relevant statutory provisions are set out in Appendix 1 to this decision.

Name: Judge Pittaway

Date: 11 November 2014

APPENDIX 1

LEASEHOLD REFORM ACT 1967

S8 Obligation to enfranchise.

- (1) Where a tenant of a house has under this Part of this Act a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then except as provided by this Part of this Act the landlord shall be bound to make to the tenant, and the tenant to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, subject to the tenancy and to tenant's incumbrances, but otherwise free of incumbrances.
- (2) For purposes of this Part of this Act "incumbrances" includes rentcharges and, subject to subsection (3) below, personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on that land or interest; and "tenant's incumbrances" includes any interest directly or indirectly derived out of the tenancy, and any incumbrance on the tenancy or any such interest (whether or not the same matter is an incumbrance also on any interest reversionary on the tenancy).
- (3) Burdens originating in tenure, and burdens in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or watercourse shall not be treated as incumbrances for purposes of this Part of this Act, but any conveyance executed to give effect to this section shall be made subject thereto except as otherwise provided by section 11 below.
- (4) A conveyance executed to give effect to this section—
 - (a) shall have effect under section 2(1) of the Law of Property Act 1925 to overreach any incumbrance capable of being overreached under that section as if, where the interest conveyed is settled land, the conveyance were made under the powers of the Settled Land Act 1925 and as if the requirements of section 2(1) as to payment of the capital money allowed any part of the purchase price paid or applied in accordance with sections 11 to 13 below to be so paid or applied;
 - (b) shall not be made subject to any incumbrance capable of being overreached by the conveyance, but shall be made subject (where they are not capable of being overreached) to rentcharges [redeemable under sections 8 to 10 of the Rentcharges Act 1977 and those falling within paragraphs (c) and (d) of section 2(3) of that Act (estate rentcharges and rentcharges imposed under certain enactments)] [FN1], except as otherwise provided by section 11 below.
- (5) Notwithstanding that on a grant to a tenant of a house and premises under this section no payment or a nominal payment only is required from the tenant for the price of the house and premises, the tenant shall nevertheless be deemed for all purposes to be a purchaser for a valuable consideration in money or money's worth.

S9 Purchase price and costs of enfranchisement, and tenant's right to withdraw.

- (1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not buying or seeking to buy) might be expected to realise on the following assumptions:--
 - (a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;
 - (b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

- (c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

(1A) Notwithstanding the foregoing subsection, the price payable for a house and premises,--

- (i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,
(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)

shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:-

- (a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold or an extended lease.;
- (b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises;
- (i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and
- (ii) in any other case,
under the provisions of Part I of the Landlord and Tenant Act 1954;
- (c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;
- (d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;
- (e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and
- (f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.
- (1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—
- (a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and
- (b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph

(b) of that subsection applies as if the words "at the end of the tenancy" were omitted.

- (1B) For the purpose of determining whether the rateable value of the house and premises is above £1,000 in Greater London, or £500 elsewhere, the rateable value shall be adjusted to take into account any tenant's improvements in accordance with Schedule 8 to the Housing Act 1974.
- (1C) Notwithstanding subsection (1) above, the price payable for a house and premises where the right to acquire the freehold arises by virtue of any one or more of the provisions of sections 1A, 1AA and 1B above, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy, shall be determined in accordance with subsection (1A) above; but in any such case—
- (b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section; and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A(1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection.
- (1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it.
- (1E) But where at the relevant time the unexpired term of the tenant's tenancy exceeds eighty years, the marriage value shall be taken to be nil.
- (2) The price payable for the house and premises shall be subject to such deduction (if any) in respect of any defect in the title to be conveyed to the tenant as on a sale in the open market might be expected to be allowed between a willing seller and a willing buyer.
- (3) On ascertaining the amount payable, or likely to be payable, as the price for a house and premises in accordance with this section (but not more than one month after the amount payable has been determined by agreement or otherwise), the tenant may give written notice to the landlord that he is unable or unwilling to acquire the house and premises at the price he must pay; and thereupon—
- (a) the notice under section 8 above of his desire to have the freehold shall cease to have effect, and he shall be liable to make such compensation as may be just to the landlord in respect of the interference (if any) by the notice with the exercise by the landlord of his power to dispose of or deal with the house and premises or any neighbouring property; and
- (b) any further notice given under that section with respect to the house or any part of it (with or without other property) shall be void if given within the following twelve months.
- (4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:--
- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises; but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.
- [(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.] [FN1]

- (5) The landlord's lien (as vendor) on the house and premises for the price payable shall extend—
- (a) to any sums payable by way of rent or recoverable as rent in respect of the house and premises up to the date of the conveyance; and
 - (b) to any sums for which the tenant is liable under subsection (4) above; and
 - (c) to any other sums due and payable by him to the landlord under or in respect of the tenancy or any agreement collateral thereto.[...] [FN2]

S9A Compensation payable in cases where right to enfranchisement arises by virtue of section 1A or 1B

- (1) If, in a case where the right to acquire the freehold of a house and premises arises by virtue of any one or more of the provisions of sections 1A, or 1AA and 1B above[or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy] [FN1], the landlord will suffer any loss or damage to which this section applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.
- (2) This section applies to—
- (a) any diminution in value of any interest of the landlord in other property resulting from the acquisition of his interest in the house and premises; and
 - (b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.
- (3) Without prejudice to the generality of paragraph (b) of subsection (2) above, the kinds of loss falling within that paragraph include loss of development value in relation to the house and premises to the extent that it is referable as mentioned in that paragraph.
- (4) In subsection (3) above "development value", in relation to the house and premises, means any increase in the value of the landlord's interest in the house and premises which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction on, the whole or a substantial part of the house and premises.
- (5) In relation to any case falling within subsection (1) above—
- (a) any reference (however expressed)—
 - (i) in section 8 or 9(3) or (5) above, or
 - (ii) in any of the following provisions of this Act, to the price payable under section 9 above shall be construed as including a reference to any amount payable to the landlord under this section; and
 - (b) for the purpose of determining any such separate price as is mentioned in paragraph 7(1)(b) of Schedule 1 to this Act, this section shall accordingly apply (with any necessary modifications) to each of the superior interests in question.[...]

Orders for costs, reimbursement of fees and interest on costs

13.

—(1) The Tribunal may make an order in respect of costs only—

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2)

APPENDIX 2

**FIRST TIER TRIBUNAL'S VALUATION
IN ACCORDANCE WITH THE LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993 AS AMENDED**

106 Gloucester Road, London SW7 4RH
Section 9(1A) Valuation

Term

Ground Rent	£50		
YP 0.5 yrs @ 5%	0.482	24	

Reversion

Freehold	£6,364,000		
Deferred 0.5 yrs @ 4.75%	0.9772		
		6,218,901	

Landlord's existing interest **6,218,925**

Marriage value

Landlord's proposed interest	0		
Tenant's proposed interest	6,364,000		
		6,364,000	
Landlord's existing interest	6,218,925		
Tenant's existing interest	105,000		
		6,323,925	

Marriage value		40,075	
Tenant's share	50%		20,038

6,238,963

Enfranchisement Price **6,239,000**

Say