



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

Case Reference : CAM/38UB/OLR/2015/0097

Property : 12, Winchester House, Bishops Walk, Aylesbury, HP21 7LD

Applicant : Barry Castelete

Representative : Parrott & Coales LLP

Respondent : Kingley Properties Limited

Representative : Rodgers & Burton

Type of Application : For the determination of the price payable for a lease extension of a flat– section 48 of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal Members : Mrs H C Bowers MRICS
Judge J Oxlade
Miss M Krisko BSc (Est Man)
FRICS

Date and venue of Consideration : 17th July 2015
Best Western Garden Court,
Buckingham Road, Watermead,
Aylesbury, HP19 0FY

Date of Decision : 21st August 2015

DECISION

The Tribunal determined that the Premium payable is £18,214.00.

REASONS

The Application:

1. This matter arises from an application dated 23rd April 2015 for a determination of a price payable under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), relating to 12, Winchester House, Bishops Walk, Aylesbury, HP21 7LD (the subject property). Directions were issued on 24th April 2015, which set out the timetable for the parties' submissions and how this matter was to be dealt with.

Documents received:

2. A hearing bundle was provided and the following documents were received:
 - a) Notice of Claim to Exercise the Right to extend the lease dated 7th November 2014;
 - b) Counter Notice dated 21st January 2015;
 - c) Official Copy of Register Entry Title Number BM221219 relating to the Freehold Title of various properties in Bishops Walk, Aylesbury;
 - d) Official Copy of Register Entry Title Number BM117402 in respect of 12, Winchester House relating to the Leasehold title;
 - e) Copy of Lease dated 5th April 1979;
 - f) Valuation Reports with supporting documents from both parties.

The Subject Property:

3. The Tribunal inspected on the 17th July 2015, in the company of Mr and Mrs Castelete and Mr Jones, the expert for the Respondent. The subject property is a two-storey maisonette situated on the second and third floors of Winchester House.
4. Winchester House is a purpose built block that would appear to date from the 1970's and is part of an estate of three separate residential blocks, Winchester House, Ripon House and Lichfield House. It is located next to Wendover Road, the A413. Access to the upper flats is from an open stairwell and balcony corridor.
5. The accommodation in the property comprises a large living room and a separate kitchen on the second floor and two double bedrooms and a bathroom on the third floor. The property has UPVc double glazed window units and an electrical heating system. The kitchen and bathroom have modern fittings. The experts have agreed that the GIA of the property is 775 sq ft.

The Lease:

6. The lease dated 5th April 1979 was originally between Daejan Properties Limited and Julian Graham Tilling. The lease is for a term of 99 years from 25th December 1974 and due to expire on 24th December 2073. The initial rent was £30 per annum for the first 33 years, rising to £45 for the next 33 years and £60 for the final 33 years. The rent is payable by equal quarterly instalments on the usual quarter dates.
7. In respect of the service charge arrangements under the lease, the definition of the "buildings" includes Ripon House, Winchester House and Litchfield House. There are common service charge arrangements in these three blocks that includes the maintenance, repair, redecoration and renewing of the service road, entrance drive, pathways and other elements of the common parts.

The Law:

8. The relevant provisions of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002 are set out in Appendix 1 to this decision.

The Hearing and the Evidence:

9. A hearing was held on Friday 17th July 2015 in the Best Western Garden Court Hotel in Aylesbury. The hearing was attended by Mr Castelete, the Applicant, his wife, Mrs Castelete and by Mr A C Thompson MRICS, who provided expert evidence and had conduct of the case at the hearing. The Respondent was represented by Ms H Sargent (counsel) and expert evidence was given by Mr T J Jones Dip VEM MRICS MEWI of Messrs Braiser Freeth LLP. Mr Lyon of the Respondent company was also in attendance.
10. In a statement of agreed matters the basic lease facts were agreed as was the valuation date of 7th November 2014. The following issues remained in dispute and the parties' positions were as follows:

	Applicant	Respondent
Capitalisation Rate	8%	6%
Deferment Rate	5.25%	5%
Long Lease (Unimproved)	£107,500	£125,000
Short Lease (Unimproved)	£93,500	£78,000
Relativity	85%	62.4%
Premium	£9,900	£27,350

11. At the start of the hearing the experts confirmed that they made no distinction between the value of the Long Lease and Freehold interest

in the property. Mr Thompson also confirmed that his value of £93,500 for the Short Lease value reflected the improved condition of the flat.

12. Both parties introduced further documentation at the start of the hearing. Whilst no objection was made regarding the late provision of these documents, this is not an ideal situation and the experts should be reminded that in the future all documents should be disclosed to the other side at the earliest possible opportunity and in accordance with Directions.
13. This decision now sets out the individual items in dispute and the parties' relative position on those issues together with the Tribunal's determinations.

Capitalisation Rate:

14. Mr Thompson spoke to a capitalisation rate of 8%. He produced no evidence but submitted that in his expert opinion 8% was reasonable given the size of the ground rent and the onerous lease provisions in its collection.
15. Mr Jones sought a capitalisation rate of 6%. He suggested this rate was appropriate as that at the time of writing the Bank of England base rate remained at 0.5% and that there was good demand for this type of property.

Tribunal's findings: Capitalisation Rate

16. There was no specific evidence on this point and the position of each side reflected the experts' general opinion. The Tribunal finds that the lease provisions for the ground rent under the existing term are unattractive: the sums involved are small, the quarterly payment regime is cumbersome, there is minimal growth in the rent and this is already fixed under the terms of the lease. In these circumstances, the Tribunal finds that an 8% capitalisation rate would be appropriate.

Deferment Rate:

17. It was confirmed that Mr Thompson was seeking a rate of 5.25%. The additional 0.25% departure from the normal Sportelli rate was only due to the suggested differences in growth rates. In support of this he used the Land Registry index to compare Buckinghamshire to Kensington and Chelsea. This data set had a starting point of January 1995 and Mr Thompson took the end date of March 2015 to demonstrate that during that period prices had increased by 3.4 times in Buckinghamshire in comparison to 6.9 times in Kensington and Chelsea. In examining the detail of the data sets, Mr Thompson agreed that there was little

difference in the data in June 2005, January 2006 and June 2006. He also conceded that there was little difference in the growth rates until 2006 but he suggested that there was an escalation of a differential from 2012 onwards. In his opinion the data provided was sufficient for the Tribunal to depart from the standard 5% rate.

18. Mr Jones relied on the 5% as established in Sportelli. Ms Sargent drew the Tribunal to the Lands Tribunal decision in Earl Cadogan v Sportelli [2007]1 E.G.L.R. 153, which stated that before departing from the figure of 5% for flats a tribunal should be satisfied that there are particular features that fall outside of the factors considered in the decision. In City & Country Properties Limited v Yeats [2012] UKUT 227 it was held that general data over a 15 year period was not sufficient evidence of a differential in the growth rates identified in Sportelli. From these conclusions it was suggested that Mr Thompson had not exhausted all the databases available and that the 20-year period adopted was insufficient to prove his case. This point was emphasised when an examination of the data illustrated that the growth rates only diverged from 2006 onwards and the escalation in any differential only occurred in 2012. Accordingly, the Applicant had not made out a case for the adoption of a deferment rate of 5.25%.

Tribunal's findings: Deferment Rate

19. The Applicant bears the burden of showing that the Tribunal should depart from the deferment rate set out in Sportelli. However, for the following reasons the Applicant has not provided sufficient evidence to justify the departure; the data set used by the Applicant was only from one source and reflected the whole of Buckinghamshire, rather than the specific growth patterns in the subject property; the period covered was only 20 years and in the light of the case law, the Tribunal finds that this is an insufficient time period to evidence long term growth patterns. In these circumstances the Applicant has not provided sufficient evidence to depart from the growth rate in Sportelli. Accordingly, the Tribunal determines that the deferment rate in this case should be 5%, in accordance with Sportelli.

Long Lease Value

20. Factors that were common to both the Short and Long lease values for the subject property were the lease terms of flats within the development and the condition of the development. It was considered that as the development had an unusual lease structure the comparables within the development would be preferable to those in different locations where the lease arrangements were unknown. It was explained that although the development was in a poor state of repair,

there had been some changes to the management of the building, a sinking fund provision was in place and that in the long run there would be improvements to the building. Mr Thompson suggested that Winchester House had a poor reputation and although the comparables detailed below were council blocks, they were well maintained. Mr Jones suggested that the comparables selected reflected the subject development.

22. Mr Thompson considered two comparables situated in Winchester House. The first, number 16, sold with the benefit of an extended lease on 16th October 2014 for £124,999. The property was not fully marketed and was purchased by a cash purchaser who was familiar with the development. The property had the benefit of a garage and the only flat within the development with a gas supply. 14, Winchester House is available with an asking price of £125,000 for an extended lease. Little weight is attached to this comparable due to the lack of a completed transaction. Three other comparables away from the development were considered. 44, Chaucer Drive, in an adjacent block to Winchester House, sold in January 2014 for £115,000 for a 101 year lease and a share of the freehold. The sales particulars describe this as a two-bedroom flat with the benefit of a garage. 41, Mitcham Way sold on 18th September 2014 for £125,000 for an unexpired term of 120 years. The third 'off site' comparable is 11, Lavric Road. This sold in December 2014 for £127,000 for an unexpired term of 97 years.
23. In his analysis of these comparables, Mr Thompson made a deduction of £15,000 for Mitcham Walk and Lavric Road; £5,000 for Chaucer Drive; a deduction of £5,000 for the garage at 16, Winchester House. He made no distinction for the differing lease lengths and concluded that the Long Lease value of the subject property in an unimproved condition would be £110,000.
24. Mr Thompson stated that he was unable to express a view about the strength of his comparables and had considered his comparables "in the round". He stated that his £15,000 reduction to the sale price of 41 Mitcham Walk related solely to the location of that comparable. The deductions for Lavric Road were for the location and condition. In response to questions on his analysis of 16, Winchester House, he was unable to help about the size of the garage that accounted for a £5,000 differential. Of the remaining difference of £10,000 for this comparable he suggested that the purchaser was a special purchaser who had overpaid for the property and was someone who would normally not be able to obtain a mortgage. Number 16 has gas fired central heating rather than the electrical systems present in the rest of the block.

25. Mr Jones had also considered the sales at 16, Winchester House, 41, Mitcham Way and 11, Lavric Road. Additionally, he considered the sale of 24, Radnor End. This sold on 25th September 2014 at £115,000 for a two bedroom, two storey flat. In respect of 41, Mitcham Walk he recorded that the GIA was 969 sq ft and that 11, Lavric Road had a GIA of 789 sq ft. He selected these comparables due to their physical similarities to the subject property, namely two storey, two bedroom flats and the transactions were within a few months of the valuation date. However, it was his opinion that the other locations were in less desirable parts of Aylesbury. From these comparables he considered that 16, Winchester House was the most useful being in the same development and within a few days of the valuation date and hence he adopted £125,000 as the Long Lease value. He did not think that a gas fired central heating system in comparison to an electrical heating source, had any impact on value and to investors there may be advantages to having an electrical system so as to circumvent the need for any gas safety certificates. Neither did he consider that the garage had any impact on the price paid. Responding to whether a purchaser who knew the block would pay a higher sum for a flat, he suggested the alternative. In that if there was knowledge of the block and the issues a purchaser could clearly assess the issues and make a bid accordingly. Flats in the subject development must be preferable to comparables in other locations, given the onerous service charge regime and the lack of any evidence of the lease terms of the others.
26. In Mr Jones' opinion Chaucer Drive had the same amenity in respect of location as the subject development. He stated that Chaucer Drive was a smaller flat than the subject flat. Whereas Mitcham Walk, Lavric Road and Radnor Road were in less desirable locations.

Tribunal's findings: Long Lease Value

27. The Tribunal were not satisfied that the adjustments made by Mr Thompson's of £15,000 for the location of Mitcham Walk and £17,000 for location and condition for Lavric Road were sufficiently considered: Mr Thompson was initially not able to assist the Tribunal as to the location of these comparables and this undermines his opinion as to just how their location could impact on value. We find that 16, Winchester House has to be the strongest comparable. However, we reject the approach of Mr Jones to make no adjustment for the garage that was included with this flat. We consider that some adjustment was required and find that the sum of £5,000 suggested by Mr Thompson is a deduction. It would also be appropriate to make an adjustment to reflect the improved condition of 16 Winchester House. Again Mr

Thompson did not specify any particular amount to reflect this aspect. However, in using our general expert skill and knowledge we find an adjustment of £2,000 for the improved condition of this comparable. Accordingly, the Long Lease value is initially calculated at £118,000. Whilst Mr Thompson made a further £10,000 adjustment for the 'special purchaser' nature of the purchaser, he produced no evidence to support his deduction and Mr Jones' position was that a purchaser familiar with the block would have paid the the market value or less was convincing. However, the Tribunal has taken a step back to consider the Long Lease value in light of the other comparables. In particular the sale of Chaucer House is the next nearest comparable. This sold for £115,000 for a smaller flat but with a garage, in a superior block and with full gas central heating. These factors would generally appear to balance each other out. However, this suggests that the unimproved Long Lease value of the subject flat at £118,000 is a little high. Accordingly, the Tribunal conclude that the Long Lease value of the subject flat is £115,000.

Short Lease Value

28. Mr Thompson adopted a figure of £93,500 as the Short Lease value in an unimproved condition of the subject flat. He had made no deduction to reflect the "No Act World" assumptions.
29. The comparables that he relied upon were 10, Winchester House which sold on 3rd July 2014 for £78,000 for an un-extended lease. It was understood that the property was "completely wrecked" and the purchaser spent £17,500 on repairs, including a new kitchen, new bathroom and re-decoration of the flat.
30. 7 Winchester House completed in December 2014 at £75,000 for an un-extended lease. It is suggested that the property was suffering from damp penetration from the adjoining flat 8 that had been abandoned and boarded up at the date of the sale. Refurbishment works were required to this property.
31. 5, Winchester House is currently under offer at £107,500 for an un-extended lease. This is a three-bedroom flat, but it is suggested that the room sizes are similar to the subject property. An adjustment was made to reflect that this is a three-bedroom flat (£10,000) and the benefit of a garage (£5,000). However, at the hearing he confirmed that this flat had no garage. 14 Winchester House was also available on the basis of £125,000 for an extended lease or £115,000 for the short lease. Mr Thompson acknowledged that less weight should be placed on comparables where the transaction had not completed.

32. Mr Thompson made no adjustment to the sale prices to reflect the passage of time as his discussions with local agents suggested there was no market movement. However, he did make adjustments to reflect the poor condition of 10 and 7 Winchester House. From this evidence he concluded that the Short Lease Value was £93,500.
33. In response to questions Mr Thompson acknowledged that a deduction should be made for the No Act World.
34. Mr Jones also used the completed sales of 7 and 10 Winchester House as evidence of the Short Lease value. In respect of 7 Winchester House, it was suggested that it was not in such poor condition. The photographs in the sales particulars did not show any signs of damp and there was adduced in evidence email correspondence from Andrew Fuller of Hurst Estate Agents, dealing with the transaction indicating the property was in average/good condition with no signs of damp. Responding to questions, Mr Jones acknowledged that the position of the subject flat next to the derelict flat 8 could have a minor impact on value. But that difference would be the difference between the two sale prices of £75,000 and £78,000. In his written evidence Mr Jones considered that it is unlikely that 10 Winchester House was in a "wrecked" condition when it sold for £3,000 more than 7, Winchester House. He accepted that double glazing had been installed in number 10. He then conceded that an adjustment to 10, Winchester House of £7,500, presumably for condition would bring the figure up to £85,500.
35. Mr Jones seemed not to have made any adjustment for time, but adopted the higher of the two sales as the Short Lease Value of £78,000. He had made no adjustment for the No Act World, but accepted this was an approach that was taken and that adjustments were usually in the region of 1-1.5%. Although he had not relied on 5, Winchester House, it was suggested that this three-bedroom property was larger as it was situated with an area above the external stairwell.

Tribunal's findings: Short Lease Value

36. In this case the Tribunal is in the unusually advantageous position of the parties having adduced evidence of two completed sales of comparable , but do not accept flats subject to short leases, within the same development. In examining these comparables, we accept the evidence of Mr Thompson that the condition of 10 Winchester House was poor, but we do not accept his adjustment of nearly 20% to reflect its condition for the following reasons: he produced no specific

evidence to support the adjustment, absent of which, it was an unsupported opinion. Mr Jones position on condition reflected a 10% differential. In respect of 7, Winchester House, we accept the evidence produced by Mr Jones that this was in a fairly average/good condition, supported by the photographs shown in the sales particulars. However, we note that both experts agree that there would have been some blight to the property due to the adjacent, abandoned and boarded up flat at 8 Winchester House. Mr Thompson did not provide any detailed explanation as to the actual adjustments that he made. In the light of the lack of evidence adduced by the experts to support their differing positions, doing the best that we can on the limited evidence and using our generalised skill and knowledge as an expert Tribunal we find that a deduction of 10% for the condition of 10, Winchester House would be more appropriate. Also, noting the concession made by Mr Jones, the Tribunal finds that the Short Lease Value of the subject property is £85,500.

Relativity

37. The experts did not directly rely on relativity, which was derived as a consequence of their positions on the main elements. Both experts stated that as there was local evidence, particularly of Short Lease values, this should be utilised in preference to the data from the graphs. However, Mr Thompson took the view that he should use the relativity graphs as a check. It appears that he had made adjustments to his comparables to reflect the relativities from the graphs.
38. From the conclusions drawn by Mr Thompson as to the Long and Short Lease values, the consequential relativity calculates to be 85%. His main reliance is on open market transactions and he considered the RICS Research Report as a check on his approach. For a period of 59 years unexpired, the relativity from the LEASE graph is 86.2% and the average for all of the Greater London and England graphs (outside of Prime Central London) is 85.13%. He did suggest in response to questioning that market transactions were of greater importance than the data derived from the graphs. Local markets could be sensitive to Short Lease scenarios.
39. Mr Jones had relied on transactional evidence, rather the tables of relativity. The transactions were in the same block and very close to the valuation date and hence there was no need to look at the relativity tables. This was an approach supported by the decision made in Coolrace and other appeals [2012] UKUT 69(LC). The market transactions that he relied upon produced a relativity of 62%.

40. Ms Sargent drew the Tribunals attention to the decision in Arrowdell Limited v Coniston Court (North) Hove Limited [2007] R.V.R. 39 that provided at paragraph 39 that a tribunal should “*do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity, as we say below, and later on we suggest that greater guidance could be derived from this particular type of evidence*”. At paragraph 57 the Lands Tribunal considered that the graphs were capable of providing useful guidance but finally concluded that “*Such graphs could be used as evidence by LVTs, with the relativities shown being applied by them in the absence of evidence compelling the adoption of other figures*”. In Coolrace paragraph 24, the approach taken in Arrowdell was confirmed, namely transactional evidence is preferable to data from the graphs.

Tribunal’s findings: Relativity

41. The Tribunal accepts the submissions of the parties that there was sufficient, relevant transactional evidence to permit a determination of the Short Lease value, without the need to resort to reliance on the graphs: this was their preferred position and approach. Therefore, we have taken this transactional approach as suggested by the Upper Tribunal in their decisions in Arrowdell and Coolrace. A double check of the relativity that this approach produces of 74% as against the graphs, show that it is below those figures, the disparity is not sufficient to give rise to concerns that the transactional approach is not appropriate.

44. In conclusion the Tribunal determines that the disputed items are:

Capitalisation Rate	8%
Deferment Rate	5.00%
Long Lease (Unimproved)	£115,000
Short Lease (Unimproved)	£85,500
Relativity	74%

These variables have been used in the valuation to calculate the premium for the lease extension at £18,214.00. The valuation is reproduced in Appendix 2.

Chairman:

Date: 21st August 2015.

APPENDIX 1

**Leasehold Reform, Housing and Urban Development Act
1993**

Section 48.— Applications where terms in dispute or failure to enter into new lease.

(1) Where the landlord has given the tenant—

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] 1 may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] 1 under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] 1 under subsection (1)—

(i) the period of two months beginning with the date when the decision of the

tribunal under subsection (1) becomes final, or
(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "*the terms of acquisition*", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Schedule 13 PREMIUM AND OTHER AMOUNTS PAYABLE BY TENANT ON GRANT OF NEW LEASE

Paragraph 2.

The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Paragraph 3.

(1) The diminution in value of the landlord's interest is the difference between—

- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
- (b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at [the relevant date] 1 that interest might be expected to realise if sold on the open market by a willing seller (with [neither the tenant nor any owner of an intermediate leasehold interest] buying or seeking to buy) on the following assumptions—

- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
- (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
- (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
- (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "*the relevant lease*" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires

assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at [the relevant date] 1 any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

Paragraph 4.

(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is [50 per cent. of that amount.]

(2) [Subject to sub-paragraph (2A), the] marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease,

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

(b) the aggregate of—

(i) the value of the interest to be held by the tenant under the new lease,

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and

(iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

[(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.]

(3) For the purposes of sub-paragraph (2)—

[(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;]

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of [sub-paragraph (2)] is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8 , and shall be so determined as at [the relevant date]

Paragraph 4A.

(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at [the relevant date] 2 that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at [the relevant date] 2 the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by [the appropriate tribunal] 3 under this Chapter.]

Paragraph 4B.

(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at [the relevant date] that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at [the relevant date];

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at [the relevant date] then has effect.

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at [the relevant date] the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by [the appropriate tribunal] under this Chapter.

Paragraph 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 of 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).

APPENDIX 2

**12, Winchester House,
Bishops Walk, Aylesbury
Buckinghamshire, HP21 7LD**

Valuation Date	07/11/2014		
Capitalisation Rate	8.00%		
Deferment Rate	5%		
Long Lease Value	£115,000		
Short Lease Value	£85,500		
Term 1			
Ground Rent	£45		
YP for 26.13 years @ 8%	<u>10.8268</u>		
		£487	
Term 2			
Ground Rent	£60		
YP for 33 years @ 8%	11.5139		
PV for 26.13 years @ 8%	<u>0.1339</u>		
		£93	
Reversion			<u>£580</u>
Freehold value	£115,000		
Deferred 59.13 years @ 5.0%	<u>0.0559</u>		
		£6,428	
less			
Freehold value	£115,000		
Deferred 149.13 years @ 5.0%	<u>0.0007</u>		
		<u>£80</u>	
			<u>£6,348</u>

			£6,928
Marriage value			
Proposed			
Long Lease Value	£115,000		
less			
Existing			
Short Lease Value	£85,500		
Landlord's Interest	<u>£6,928</u>		
Marriage Value		<u>£22,572</u>	
50:50 division			<u>£11,286</u>
Total Premium Payable			<u>£11,286</u> £18,214