

2987



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

Case Reference : **LON/00BK/OLR/2014/0520**

Property : **Flat 4, 83 Duke Street, London W1K
5PF**

Applicant : **Grosvenor West End Properties**

Representative : **Mr Michael Pryor (Counsel)
Boodle Hatfield LLP (Solicitors)**

Respondent : **Mr Stephen Paul McBride**

Representative : **Mr David Radford (Surveyor)**

Type of Application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mrs Helen Bowers MRICS (Valuer
Member)**

**Date and venue of
Hearing** : **19 and 20 August 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **09 October 2014**

DECISION

Decision of the tribunal

- (1) The tribunal determines in accordance with section 48 and schedule 13 of the Leasehold Reform, Housing and Urban Development Act (“the 1993 Act”) that the premium payable in respect of the grant of a new lease for Flat 4, 83 Duke Street, London W1K 5PF (“the Flat”) is £552,474 (five hundred and fifty two thousand, four hundred pounds).**
- (2) Schedules setting out the tribunal’s calculation of the premium are attached.**

The background

1. The Applicant is the head lessee of 83 Duke Street, London W1K 5PF (“the Property”), which is Grade II listed, Edwardian property located on the east side of Duke Street at its junction with Duke’s Yard. The Building forms part of a four-storey terrace, with retail units on the ground floor and residential accommodation on the upper floors. There are four flats in the Building. The Respondent is the under lessee of the Flat, which is on the fourth floor.
2. On 18 December 2013 the Respondent served a notice of claim on the Applicant pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The notice proposed a premium of £357,000 for the new lease.
3. On 07 February 2014 the Applicant served a counter-notice admitting that on the relevant date the Respondent was entitled to a new lease of the Flat. The counter-notice proposed a premium of £711,400.

The application

4. On 07 April 2014 the Applicant submitted an application to the Tribunal pursuant to section 48 of the 1993 Act, to determine the premium and other terms of acquisition for the new lease. Directions were issued on 23 April 2014.
5. The application was listed for hearing on 19 and 20 August 2014. By the time of the hearing the parties had agreed all of the terms of acquisition save for the premium for the new lease.

The hearing

6. The Applicant was represented by Mr Michael Pryor of Counsel at the hearing and relied upon expert evidence from two Chartered Surveyors,

Mr Kevin Ryan FRICS and Mr Charlie Coombs MRICS. Both Mr Ryan and Mr Coombs gave oral evidence at the hearing. The Respondent was represented by Mr David Radford, who acted as both his advocate and expert witness. Mr Radford also gave oral evidence.

7. The tribunal members were supplied with a hearing bundle that included copies of the notice of claim, counter-notice, application, directions, head-lease, underlease, agreed form of new underlease and Land Registry entries. The tribunal were also supplied, separately, with copies of the experts' proofs of evidence. The Applicant is referred to as GWEP in the proofs and in the attached valuation calculations.

The head-lease and the underlease

8. The head-lease was granted by Grosvenor (Mayfair) Estate to the Applicant on 26 February 1999 and is for a term of 185.25 years from 25 December 1998 to 24 March 2184.
9. The underlease was granted by the Applicant ("the Landlords") to Mrs Carole Van Wieck ("the Tenant") for a term of 65 years from 25 December 1983 to 24 December 2048. The Respondent is a successor in title to Mrs Wieck, having purchased the Flat on 04 May 2004.
10. The Applicant is the competent landlord for the Flat for the purposes of section 42 of the 1993 Act in that the duration of its leasehold interest is such as to enable it to grant a new lease of the Flat in accordance with Chapter II of that Act.
11. The ground rent provisions are to be found at clause 1 of the underlease. The rent is payable by four equal quarterly payments in advance on the usual quarter days and the sums payable are recited below:
 - (a) *from the Twenty-fifth day of December One thousand nine hundred and eighty-three until the Twenty-fifth day of December Two thousand and four the rent of One hundred and fifty pounds (£150.00) ("the reserved rent")*
 - (b) *from the Twenty-fifth day of December Two thousand and four ("the first review date") until the Twenty-fifth day of December Two thousand and Twenty-five ("the second review date") the greater of the first reserved rent or such rent as shall be agreed between the Landlords and the Tenant as being equal to ten per cent (10%) of the open market rent of the demised premises at the first review date*
 - (c) *from the second review date until the Twenty-fifth day of December Two thousand and forty-six ("the third review date")*

the greater of the rent payable immediately before the second review date or such sum as shall be agreed between the Landlords and the Tenant as being equal to ten per cent (10%) of the open market rent of the demised premises at the second review date

(d) from the third review date until the Twenty-fourth day of December Two thousand and forty-eight the greater of the rent payable immediately before the third review date or such sum as shall be agreed between the Landlords and the Tenant as being equal to ten per cent (10%) of the open market rent of the demised premises at the third review date..”

12. Clause 1 of the underlease then sets out various provisos regarding the operation of the ground rent reviews.
13. The parties agree that the ground rent reviews are onerous.

Inspection

14. During the afternoon of 19 August 2014, the tribunal inspected the Flat in the presence of the Respondent. They also inspected the internal common-ways at the Building and viewed the exterior of the Building and each of the comparable properties put forward by Mr Radford and Mr Ryan.
15. At the hearing the following morning, Mr Pryor explained that he had been unable to attend the inspection as he had been refused access to the Flat by the Respondent. This is regrettable and it was unreasonable for the Respondent to refuse access. However there was no resulting prejudice to the Applicant, as both of its experts had previously inspected the Flat.
16. The Building is an attractive end of terrace property. The main entrance to the flat is in Dukes Yard. The entrance hall is small and there is an extremely small lift serving the upper floors. A narrow flight of stairs provides access from the fourth floor up to the Flat entrance. The internal common-ways are well maintained.
17. The Flat consists of a master bedroom with en-suite bathroom, a further double guest bedroom with an en-suite shower room, reception, bathroom, kitchen and guest WC. There is a mansard roof at the Building, resulting in partially pitched walls at the front of the Flat. This compromises some of the floor space in the reception room and master bedroom. Each of these rooms has a large dormer window in the mansard, looking out to the west.

18. The reception room is dual aspect, looking out to Duke Street and Brown Heart Gardens through the main dormer window and down Duke Street towards Grosvenor Square, through three smaller windows in the south elevations.
19. The Flat is in good decorative condition but the windows and window frames require attention.

The issues

20. By the time of the hearing the only issues in dispute were the capital value of the flat and the relativity rate. The following matters had been agreed:

(i) Valuation date	19/12/2013
(ii) Term date of underlease	24/12/2048 (35.01 years)
(iii) Term date of head-lease	24/03/2184 (170.26 years)
(iv) Gross internal area	915 square feet
(v) Underlease passing rent	£2,200 per annum
(vi) Calculation basis for review	10% of full open market rental
(vii) Rent on review (25/12/2025)	£4,575 per annum
(viii) Capitalisation rate	5.5% for rent passing 5.5% on review
(ix) Deferment rate for Applicant's existing reversion of 135.25 years as at 24/12/2048	5.5%
(x) Deferment rate for Applicant's proposed reversion of 45.25 years as at 24/12/2038	5.5%
(xi) Extended lease/freehold relativity for new underlease	98.5% for 125.01 years
(xii) Relativity for Applicant's existing reversion as at 24/12/2048	99% for 135.25 years

(xiii) Relativity for Applicant's proposed reversion as at 24/12/2038
70.2% for 45.25 years

(xiv) Basis for valuing existing occupational lease, with 35.01 years unexpired and accounting for onerous ground rent

Stage 1: Assess value of existing lease assuming a palatable ground rent at a base relativity (% of FHVP to be determined

Stage 2: Deduct adjustment for onerous ground rent assuming palatable rent of 0.1% of freehold value with the onerous element to be capitalised using a single rate of 5.5% for the rent passing and 5.5% for the rent on review

21. It follows that the issues to be determined by the tribunal, as agreed by the parties experts, are:
- (a) The value of the proposed extended lease with 125.01 years unexpired, assuming vacant possession and disregarding the value of qualifying tenant's improvements, if any.
 - (b) Value of the freehold in possession, assuming vacant possession ("FHVP"), disregarding improvements and calculated in accordance with paragraph 20(xi) above.
 - (c) The value of the Applicant's existing reversion with effect from 24 December 2048, calculated in accordance with paragraph 20(xii) above.
 - (d) The value of the Applicant's proposed reversion with effect from 24 December 2138, calculated in accordance with paragraph 20(xiii) above.
 - (e) The value of the Respondent's existing interest, disregarding rights to enfranchise and tenant's improvements, if any, calculated in accordance with agreed item 20(xiv) above, with the base relativity to be determined by the tribunal.
 - (f) The resultant premium payable by the Respondent under schedule 13 to the 1993 Act.
22. The tribunal were supplied with a detailed proof of evidence from each of the experts and does not intend to recite the contents of these documents in full, which are there for the parties to see.

Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the disputed issues as set out below.

The Applicant's evidence

Capital value of the Flat

23. The Applicant's first expert, Mr Ryan, dealt with the capital value of the Flat. He is a partner in the firm of Carter Jonas LLP and is based at their office at One Chapel Place, London W1. Mr Ryan is a Fellow of the Royal Institution of Chartered Surveyors and has over 40 years' experience in residential estate agency in central London.
24. In his proof of evidence, dated 14 August 2014, Mr Ryan valued the Flat with an extended lease of 125.01 years and a peppercorn ground rent at a figure of £1,986,750 (One million, nine hundred and eighty six thousand, seven hundred and fifty pounds).
25. Mr Ryan has made a global deduction of £50,000 for tenant's improvements to reflect changes to the layout of the Flat, which included the creation of an additional bathroom, since the underlease was originally granted.
26. Mr Ryan relies on sales of 12 comparable properties, spanning the period October 2011 to July 2014. He calculated the price per square foot for each of the comparables and then made various adjustments to reflect differences to the Flat, which he broke down into the following categories:
 - Lease length;
 - Date of sale;
 - Floor level; and
 - Condition, location and other.
27. In order to adjust the transactions to the valuation date, Mr Ryan has used the Savills PCL Capital Values Index adopting the Central Flats Index. The index figures have been agreed with Mr Radford. In relation to the lease length, Mr Ryan has adjusted the comparables sold on long leases to 125 years by the Gerald Eve Graph and for those sold on medium term leases he has adopted the Savills Enfranchisable Graph, again as agreed with Mr Radford.

28. Mr Ryan's figures for the adjusted rate per square foot for each of the comparables is:

<u>Address</u>	<u>Sale Date</u>	<u>£/psf</u>
Flat 5, 61a South Audley Street	July 2014	£2,128
Flat 3, 64 South Audley Street	March 2014	£2,418
Flat 6, Curzonfield House	November 2013	£2,353
Flat 4, Curzonfield House	November 2013	£2,515
Flat 5, 30 South Audley Street	October 2013	£2,189
Flat 9, Savile House	September 2013	£2,386
Flat 2, 65 South Audley Street	July 2013	£2,565
Flat 5, Duke Street Mansions	May 2013	£1,937
Flat 3, 81 Duke Street	April 2013	£1,916
Flat 4, 81 Duke Street	April 2013	£1,083
Flat 7, 26a North Audley Street	January 2013	£2,174
10 Duke Street Mansions	October 2011	£1,774

Flats 3 and 4 at 81 Duke Street were sold together and Mr Ryan also calculated the adjusted rate per square foot for the combined sale at £2,045, by using a total GIA area for both the flats of 3,566 sq ft.

29. In his oral evidence, Mr Ryan explained the reasoning behind the subjective adjustments he had made. In relation to floor levels, he has made an adjustment of +/- 1% per floor. This is upon the basis that flats on higher floors are generally considered to be more desirable than those on lower floors, due to the reduced noise and improved light and views. Mr Ryan has not made any adjustment for the mansard roof at the Flat. His view is that some purchasers like mansards, as the slope of the roof adds character and some do not. Only usable floor area, where the ceiling height is 1.5 meters or more, has been taken into account when measuring the Flat. Mr Ryan pointed out that the Flat has the benefit of being on the top floor, with nothing above, which mitigates any negative impact of the mansard roof.

30. Mr Ryan has not made any adjustments for condition but has made adjustments for location, based on the perception of attractiveness and cachet of the comparables. His adjustments are different to those proposed by Mr Radford, save that they agree there should be no adjustment for the flats at 81 Duke Street. Mr Ryan has then made separate adjustments for other factors, including views. He considers that the views at the Flat are superior to all of the comparables, save those in South Audley Street. From the Flat there are views over the Brown Hart Gardens "piazza" to the west and towards Grosvenor Square to the south. The adjustments for views range from 1.5-2.5%.
31. Mr Ryan has adjusted each of the floor rates for Flat 5, 61a South Audley Street and Flat 2, 65 South Audley Street by 10%, to reflect the absence of lifts at the property. He has also made adjustment for "quantity" for the larger flats, upon the basis that there is a tipping point after which the rate per square foot begins to drop. In the case of the flats at 81 Duke Street, which have a combined floor area of 3,566 square feet, Mr Ryan has made an adjustment of 7% for quantity,
32. The flats at 81 Duke Street are closest, geographically, to the Flat. They are both situated in the adjacent property, which is within the same terrace. However Mr Ryan considers that the sale prices achieved for these flats in April 2013 are of limited value, as they were sold at the same time by one vendor and to the same purchaser. Originally Flat 3 was marketed at a price of £4,200,000 and Flat 4 was marketed at £795,000. The sale prices achieved were £3,850,000 for Flat 3 and £765,000 for Flat 4 and Mr Ryan believes that the purchaser was able to negotiate favourable terms by buying both flats at the same time. Further he believes that the price apportionment is artificial, as it results in a very low adjusted rate per square foot for Flat 4 (£1,083) relative to that for Flat 3 (£1,916). The discrepancy between these rates does not make sense, as the two flats are adjacent. Flat 3 spans the third and fourth floors. Flat 4 is just on the fourth floor. It may be that the purchase prices of these flats were apportioned with a view to limiting the stamp duty land tax ("SDLT") payable on the purchase of Flat 3.
33. Mr Ryan has used a figure of £2,226 per square foot when valuing the Flat. This is the mean average of the adjusted rates for all of the comparables, using the combined sale rate rather than individual rates for Flats 3 and 4 at 81 Duke Street. Applying this average rate to the agreed floor area of 915 square feet gives a figure of £2,036,790. From this figure, Mr Ryan has made the deduction of £50,000 for tenant's improvements. This results in a figure of £1,986,790, which he has rounded down to £1,986,750. Mr Ryan considers that this fairly represents the value of the Flat at the valuation date, having stood back and considered the figure and having regard to the £2,000,000 SDLT threshold.

34. Mr Ryan also calculated the average adjusted rate for the comparable, including the floor area of the two flats at 81 Duke Street on an individual (rather than combined) basis. This gave a figure of £2,120 per square foot. The averaged adjusted rate for the comparables excluding the flats at 81 Duke Street was £2,244 per square foot.
35. Mr Ryan explained that he had used a wider geographical area than Mr Radford, who had focussed on the comparables in Duke Street. His view is that a wider approach is appropriate, so as to find the best comparables. Mr Ryan believes that the sales closest to the valuation date and with long leases make the best comparables. All of his comparables were chosen for their similarities to the Flat and he believes that the sales at 61a and 64 South Audley Street and 6 Curzonfield House are the best comparables. Mr Ryan suggested that a prospective purchaser would prefer the Flat over these three comparables.
36. In relation to the comparables in Duke Street, Mr Ryan pointed out that the sale of 10 Duke Street Mansions was more than two years before the valuation date and the flats at 81 Duke Street both had short leases (35.25 years). The flat at 5 Duke Street Mansions had a long lease (122 years) and was sold approximately six months before the valuation date.
37. In cross examination, Mr Ryan accepted that his suggested adjustment of +/-1% per floor was not appropriate for ground floor or basement flats. On occasions he has agreed adjustments of 2% per floor but has consistently argued for 1%, when giving evidence before the tribunal.
38. Mr Ryan was also cross-examined regarding the sale of the flats at 81 Duke Street. He confirmed that the purchaser was currently in negotiations with the Applicant to amalgamate the two flats into one. Mr Ryan has no information, as to whether the purchaser plans to sell on the amalgamated property.
39. In relation to the quantity adjustment, Mr Ryan was asked if the SDLT threshold of £2,000,000 was more of a factor than floor area. He did not accept this and referred to the "kiosk effect", where smaller properties pay high rates per square foot than larger ones. Mr Ryan also pointed out that in relation to the flats at 81 Duke Street, the SDLT threshold made no difference as the combined price was substantially in excess of £2,000,000.
40. Mr Radford challenged Mr Ryan regarding the impact of the views from the Flat, referring to the restricted access to the windows in the west elevation caused by the mansard roof. There are also views from the south elevation and Mr Ryan considers that the views over Grosvenor Square, which he described as the "jewel in the crown", adds a certain cachet to the Flat.

41. The Building is a short distance from the Marriott Hotel, which has an entertainment licence until 3am. Mr Ryan does not consider that the proximity of the hotel, which he referred to as “high class”, has any negative impact on the value of the Flat. To the contrary he considers that the restaurants and bars in the hotel provide a local amenity.

Relativity

42. Mr Coombs dealt with the enfranchisement valuation on behalf of the Applicant. He is a partner in the firm of Gerald Eve LLP and is a Professional Member of the Royal Institution of Chartered Surveyors. Mr Coombs has worked in the residential sector in central London for the last 14 years and has been involved with enfranchisement valuations since 2002.
43. Mr Coombs values the premium for the lease extension at £592,500 (five hundred and ninety two thousand five hundred pounds); all of which is apportioned to the Applicant. His valuation uses Mr Ryan’s figure for the capital value of the flat (£1,986,750) and relativity of 61.01%, which has then been adjusted to take account of the onerous ground rent.
44. Both Mr Coombs and Mr Radford rely on relativity graphs, rather than analysis of sales evidence of comparable existing leases. Mr Coombs relies on the Gerald Eve graph, which was originally created in 1996 in collaboration with John D Wood. This graph points to a relativity of 61.01% compared to the value of the freehold in possession, for an unexpired lease term of 35.01 years and assuming a palatable ground rent. The experts have agreed on the method for accounting for the onerous ground rent (see paragraph 20(xiv) above).
45. In his proof, Mr Coombs commented on the various other PCL relativity graphs referred to in the RICS Research report published in October 2009. He also exhibited a letter from Gerald Eve to the RICS, dated 07 December 2007 that provided a detailed explanation of how their graph was prepared and which addressed various criticisms of the graph. The graph was compiled at the request of the Grosvenor Estate and the data on which it was based included settlements struck between 1974 and 1996 for enfranchisements and lease extensions under the Leasehold Reform Act 1967 and the 1993 Act, prices realised on sales of leases without rights, prices realised on the sales of freeholds with vacant possession and opinion.
46. The other PCL graphs give the following relativities for 35.01 years:

Knight Frank (RICS report)	63.51%
Knight Frank (June 2011)	62.26%

Cluttons (flats)	62.21%
John D Wood (RICS report)	70.01%
John D Wood (pure tribunal 2011)	65.01%
W A Ellis	60.01%
Charles Boston	65.01%

47. Mr Coombs is of the opinion that the Gerald Eve graph provides the most comprehensive guide to relativities for leases of different unexpired terms in PCL. Most of the data used pre-dates the introduction of the 1993 Act and is not tainted by the Act. Further the graph is kept under continuous review to ensure that Gerald Eve are satisfied as to its application. Mr Coombs has based his valuation upon the relativity figure of 61.01% taken from the graph.
48. In cross-examination Mr Coombs explained that he had used the Gerald Eve graph prior to joining the firm 3 years ago. In a previous role, at W A Ellis he had advised leaseholders to adopt the graph. Whilst at that firm Mr Coombs would often seek an uplift in negotiations but when producing formal reports for leaseholders he would rely on the graph. In his current role, he always applies the graph but will occasionally in negotiations to achieve a commercial settlement.
49. Mr Coombs was cross-examined regarding lease extensions agreed for the two flats at 81 Duke Street that were negotiated by Gerald Eve on behalf of the Grosvenor Estate. He explained that the premiums had been agreed, as a "horse trade" and that the extensions were completed earlier in the year. Mr Radford suggested that the premiums had been agreed using a rate of £1,900 per square foot for capital values. Mr Coombs was unable to confirm this. He has requested the files from Gerald Eve's archive but they were not available at the time of the hearing.

The Respondent's evidence

Capital value of the Flat

50. Mr Radford is a partner in the firm of Boston Radford Chartered Surveyors, who are based at 22a Ives Street, London W3. He has practised as a specialist in leasehold enfranchisement work with particular specialism in the prime residential areas in Central London, predominantly acting for lessees.

51. Mr Radford's proof of evidence is dated 13 August 2014. He values the Flat with a 135.2 year lease at £1,702,800 (one million, seven hundred and two thousand, eight hundred pounds), based on an adopted share of freehold rate of £1,875 per square foot.
52. Mr Radford has used the same comparables as Mr Ryan but their approach to adjustments and ranking differs. Mr Radford has adjusted the sale prices of the comparables to take account of tenant's improvements, rather than adjusting the value of the Flat. He has made further global adjustments to cover other factors such as location, type of accommodation, aspect, type of building, amenity and condition. Mr Radford accepts that these adjustments are subjective and that making subjective adjustments can give rise to disputes. He also makes the point that most valuers accept the fewer the adjustments, the more reliable the evidence.
53. Mr Radford primarily relies on the 4 comparables in Duke Street, being geographically closest to the Flat. In relation to the two flats at 81 Duke Street, he has not made any adjustments for tenant's improvements or other factors. Mr Radford has calculated the adjusted rate per square foot at £1,926, based on the combined (usable) floor area of both flat.
54. Mr Radford rejects Mr Ryan's suggestion that the Flat is more valuable than the same flat on the third floor. He considers that the mansard has a negative impact on value, as it results in partially pitched walls at the front of the Flat and restricted views from the front windows. Further Mr Radford considers that the views from the Flat have been overstated and have little impact on its value. He undertook an alternative calculation to reflect the fact that major part of Flat 3 at 81 Duke Street lies on the third floor and does not have the mansard roof or restricted views. In Mr Radford's opinion, this would result in difference in the relative values of the third and fourth floors of 10%. Taking this adjustment into account would give a rate per square foot of £1,825.
55. In relation to the comparables at Duke Street Mansions, Mr Radford has made adjustments for other factors and has calculated the price per square foot for 5 Duke Street Mansions to be £1,936 and the rate for 10 Duke Street Mansions to be £1,740. However he makes the point that the sales of the two flats at 81 Duke Street are the most compelling evidence, as they share a number of characteristics with the Flat that avoids the need for subjective adjustments. He has used a price per square foot of £1,875 when valuing the flat, which results in a rounded figure for open market value of £1,720,000 (one million seven hundred and twenty thousand pounds) for the freehold interest.
56. Both in his proof and in his oral evidence, Mr Radford referred to the lease extensions for the flats at 81 Duke Street. He is aware that they were sold with the benefit of Notices of Claim under section 42 of the

Deleted:

1993 Act. Mr Radford has been advised by the agent acting for the purchaser that the premiums agreed for the lease extensions reflected a share of freehold rate of £1,900 per square foot overall for a valuation date in March 2013.

57. Mr Radford's opinion is that the comparables in Duke Street are good evidence and that it is unnecessary to look further afield. However he has also considered the other comparables and made adjustments for their condition and other factors, as he considers appropriate. Mr Radford did not make any adjustments for quantity. The mean average floor rate before subjective adjustments is £2,074 and after adjustments is £1,855. Mr Radford considers that this is a useful check on and supports his suggested rate of £1,875 per square foot. These averages are based on all 12 comparables, including the two flats at 81 Duke Street.
58. Mr Radford was cross-examined at some length regarding his approach to valuing the Flat and the adjustments he had made when assessing the comparables. In his proof of evidence he referred to complaints about noise from the nearby Marriott Hotel. Mr Radford acknowledged that he had made no specific adjustments for the proximity of the hotel when assessing the comparables.
59. Mr Radford, on being questioned by Mr Pryor, accepted that the market for the Flat was individuals seeking to purchase properties in the area close to the Flat that were in the region of 1,000 square feet, with two bedrooms, situated above shops and on reasonably busy thoroughfares. He also accepted that estate agents when approached by such individuals would show properties in the local area and not just those in Duke Street.
60. In relation to quantity, Mr Radford acknowledged that floor area can be a factor. He suggested that for residential property the "kiosk effect" is only really applicable to small pied-a-terres up to 400-500 square feet and there is no discernible difference in rates for larger properties. In relation to the comparables, Mr Radford does not consider that any adjustments for quantity are appropriate. He does not believe that the market for flats of 3,000 square feet is much smaller than that for flats of 1,000 square feet. Mr Radford considers that the £2,000,000 SDLT threshold could have an impact on rates, so that there are slightly lower rates per square foot for flats above the threshold. However he considers that the differential cannot be more than 2%, being the marginal increase in the SDLT threshold above this threshold.
61. Mr Radford considers that location is paramount when looking at comparables. He believes that selling agents would only look at properties in the immediate area, when suggesting an asking price. It is for this reason that Mr Radford has primarily based his valuation on the flats in Duke Street and particularly those at 81 Duke Street. He

feels unable to rely on the other comparables, given the difference in location and other subjective factors.

62. Mr Radford's view is that when looking at comparables, the number of subjective adjustments has an impact on the reliability of the valuers. He considers that the adjustments for lease length and date of sale are objective, as most valuers use the same methodology when dealing with these factors. Mr Radford accepts that several small adjustments could have less impact on reliability than one or two large adjustments.
63. In cross-examination, Mr Pryor pointed out that the comparables at Duke Street, Duke Street Mansions and 26a North Audley Street had the largest time adjustments. He suggested that adjustments for time became less reliable the longer the time difference due to "shifting sands in terms of fashionability" of different locations. Mr Pryor also pointed out that the flats at 81 Duke Street and 10 Duke Street Mansions had the greatest relativity adjustments.
64. Mr Pryor drew attention to the circumstances in which the flats at 81 Duke Street were purchased and the unusual apportionment of the purchase price. He challenged Mr Radford's approach to adjusting the rate per square foot for that part of Flat 3, which is on the fourth floor. Mr Radford accepted that he did not know the floor area for the fourth floor. Rather he had used a "rough and ready approach" and assumed that the third and fourth floors each had the same floor area.
65. Mr Pryor suggested that the best comparable in Duke Street was that at 5 Duke Street Mansions, having been sold in May 2013 with a long lease and a similar floor area (1,077 square feet). Mr Radford accepted that a prospective purchaser would pay more for the Flat than 5 Duke Street Mansions. This flat sold for £1,850,000 in May 2013. The sale price adjusted to the valuation date equates to approximately £1,967,000.

Relativity

66. Mr Radford, like Mr Ryan, has based his relativity figure on graphs rather market evidence. He has adopted a relativity of 62.86%, by taking a mean average of the following graphs for PCL:

Gerald Eve	61.01%
Knight Frank (RICS report)	62.26%
Cluttons (flats)	62.21%
Cluttons (Houses)	60.51%

WA Ellis	60.01%
Charles Boston	64.01%
John D Wood (RICS report)	70.01%

67. Mr Radford considers that there are flaws and faults in the methodology used in producing each of the graphs. He considers that a rational and balanced approach would be to take an average of all 7 graphs, rather than rely on just one of the graphs. The tribunal pointed out that the John D Wood figure is significantly higher than the others and Mr Pryor suggested that this figure should be excluded if an average approach should be used. Mr Radford pointed out that the John D Wood graph had been based on over 900 transactions. His view is that the average should be based on all 7 graphs, including that from John D Wood.
68. After adjusting the relativity of 62.86% to take account of the onerous ground rent, Mr Radford has valued the premium on the lease extension at £496,561. (four hundred and ninety six thousand, five hundred and sixty one pounds).

The tribunal's decision

Capital value

69. The tribunal determines that the capital value of the Flat with an extended lease(125 years unexpired), as at the valuation date, was £1,905,615 (one million, nine hundred and five thousand, six hundred and fifteen pounds).

Reasons for the tribunal's decision

70. For the reasons advanced by Mr Ryan and Mr Pryor, the tribunal concluded that the flat sales at 81 Duke Street were not reliable comparables. It is highly likely that the purchaser was able to secure a discount on the total price of the flats by buying them together. Further the apportionment of the price is clearly skewed. In addition the leases were short and in the case of Flat 3 the floor area is more than 4 times that of the Flat.
71. The tribunal also concluded that flat sales at 64 and 65 South Audley Street and 10 Duke Street Mansions were of limited assistance. All three of these flats had short leases and therefore any analysis would be circular in respect fo the issue of lease length. Also in the case of 10 Duke Street Mansions, the sale was over two years before the valuation date.

72. The tribunal disregarded all of the flats referred to at paragraphs 70 and 71 above when assessing the capital value. Rather it relied solely on the other 7 comparables. The tribunal agrees with Mr Ryan that it is necessary to look further afield for comparables, given that the sales evidence for the flats at 81 Duke Street was unreliable and given the significant adjustments required for 10 Duke Street Mansions.
73. When looking at the remaining 7 comparables, the tribunal made global adjustment to each of these properties to take account of location and views (and in the case of the flats at 30 and 61 South Audley Street, the absence of a lift). The tribunal did not make any adjustments for the top floor location, as it concluded that the internal impact of the mansard roof counteracted any perceived benefit of being on the top floor. Further there was no need for the tribunal to consider making any adjustment for quantity, as the 7 comparables used are all similar in size to the Flat.
74. The tribunal placed little weight on the evidence regarding the rates agreed for the lease extensions at 81 Duke Street, as this was anecdotal.
75. The attached schedules include a table showing the tribunal's adjustments to the 7 comparables that it relied upon. The mean average rate is £2,169 per square foot, which gives a total flat value of £1,984,635.
76. In relation to tenant's improvements, the tribunal prefer Mr Ryan's approach of a global reduction of £50,000 against the Flat value and this sum has been deducted from the figure of £1,984,635. This is preferable to making adjustments to the comparables, based on the perceived difference between the condition of each of these properties and the unimproved condition of the Flat.
77. There is one final adjustment to reflect the agreed extended lease/freehold relativity of 98.5%. This reduces the extended lease value of the Flat at the valuation date to £1,905,615. Standing back and considering this figure in the light of all of the evidence presented to it and the SDLT threshold of £2,000,000, the tribunal concluded that this figure fairly reflected the value of the Flat.

Relativity

The tribunal's decision

78. The tribunal determines that the appropriate relativity is 61.82%.

Reasons for the tribunal's decision

79. Not surprisingly the parties have been unable to produce market evidence on relativity. It follows that it is for this tribunal to determine relativity based on the various graphs referred to by the experts. Unfortunately no composite graph has been uniformly agreed by surveyors and the tribunal is familiar with the different methodologies and data sets used in the various graphs. These differences have given rise to certain criticisms and some of the graphs are perceived to be more landlord friendly whilst others are perceived to be more tenant friendly.
80. The Gerald Eve graph is often adopted by landlords. The tribunal considered whether it should be followed in this case. It concluded that the balanced approach suggested by Mr Radford, taking a mean average from all the PCL graphs, is preferable. The tribunal also considered whether the John D Wood graph should be disregarded. Looking at this graph, there is nothing atypical about the curve at the 35.01 year mark that could justify its exclusion. All of the PCL graphs have been subject to criticisms. If the tribunal were to exclude the John D Wood graph based on these criticisms then it would need to go on and consider whether any of the other graphs should be excluded. This would require detailed analysis of each of the graphs and the criticisms made. The tribunal do not consider this to be appropriate in this case and have followed Mr Radford's approach of taking a mean average of all 7 graphs, which gives a relativity of 62.86%.
81. The figure of 62.86% assumes no onerous ground rent. The adjusted relativity, taking account of the onerous ground rent is 61.82%. The calculation of the adjusted relativity is also set out in the schedule.

Summary

82. Having determined the capital value of the Flat at £1,905,615 and the relativity at 61.82%, the tribunal determines that the lease extension premium is £552,474 (five hundred and fifty two thousand, four hundred and seventy four pounds).

Name: Jeremy Donegan

Date: 09 October 2014

Onerous Rent Review

Palatable Rent Review
FHVP

£1,934,635 0.10% 1935

Current Passing Rent
less

£2,200

Palatable Rent Review
Excess Rent

£1,935

£265

YP for 12.02 years @ 5.5%

8.6269

£2,286

Rent on Review
less

£4,575

Palatable Rent Review
Excess Rent

£1,935

£2,640

YP for 23 years @ 5.5%

12.8745

Deferred 12.02 years @5.5%

0.5255

£17,861

Onerous Rent Review

£20,147

FHVP

£1,934,635

Relativity @ 62.86%

£1,216,112

less

Onerous Rent Review

£20,147

Value of lessee's existing
interest after adj for
onerous rent

£1,195,965

Equals 61.82% relativity