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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/38UD/OLR/2014/0188**
Property	:	**25 Whitelock House, Phyllis Court Drive, Henley-on-Thames, RG9 2HU**
Applicant	:	**Dr S Jayaratne, Mr F Haroon Zai and Mrs Q. Faisal Zai**
Representative	:	**Mr G Healey – Counsel instructed by Mercers solicitors** **Mr B Passmore BSc(Hons)Est Man MRICS**
Respondents	:	**Phyllis Court Members Club Limited and Phyllis Court Residents Association Limited**
Representative	:	**Mr A Radevsky – Counsel instructed by Blandy and Blandy Solicitors** **Mr A J Balcombe BSc FRICS FCIArb**
Type of Application	:	**S48 Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs H C Bowers BSc Econ MSc MRICS** **Ms M Henington MRICS**
Date and venue of Determination	:	**16th July 2015 at the Reading Employment Tribunal**
Date of Decision	:	**13th August 2015**

DECISION

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DECISION

The Tribunal determines that the premium payable for the lease extension under s48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for the flat at 25 Whitelock House, Phyllis Court Drive, Henley-on-Thames (the Flat) is £91,801 as shown on the attached valuation.

The costs payable under s60 of the Act total £3,955.80 as set out on the attached document headed Points of Dispute.

The Tribunal declines to make an order for costs against the Applicants under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules)

REASONS

Background

1. This matter came before us for hearing on 16th July 2015 at the Employment Tribunal in Reading. The Applicants were represented by Mr Healey and the Respondents by Mr Radevsky, both very experienced Counsel in these matters.
2. The application to the Tribunal for the determination of the premium and other terms of acquisition was dated 24th November 2014 and records the Applicants' view that the correct premium should be £59,900 and the Respondents' view that it should be £125,136.
3. In addition to the determination of the premium payable we were also required to consider the costs payable by the Applicant under the provisions of section 60 of the Act. The cost issue was extended by reason of the Respondents also seeking an order for costs against the Applicants under the provisions of rule 13 the Rules. We will consider these two costs applications after dealing with the question of the premium payable for the Flat.
4. Not content with these issues a further matter had arisen as a result of the Respondents having to change the valuer during the course of the proceedings. The Respondents had originally chosen to instruct Miss Genevieve Mariner BSc (Hons) FRICS of Strettons. Sadly she had become unwell and was not able to present the case on behalf of the Respondents. As a result the Respondents instructed Mr Balcombe. The 'difficulty' arose in that prior to her incapacitation Miss Mariner had agreed certain issues with Mr Passmore the expert for the Applicant. In particular it had been agreed that the deferment rate should be 5.5% and that the short lease value was £352,000. On becoming instructed Mr Balcombe indicated that he could not support these two elements and that the deferment rate should instead be 5% and the short lease value £340,000.
5. The issue we were asked to consider, in effect as a preliminary issue but not dealt with as such at the hearing, was whether Mr Balcombe and the Respondents could resile from the agreed position in respect of the deferment rate and the short lease value. We had before us skeleton arguments by both Mr Healey and Mr Radevsky. Mr Healey addressed this issue over a number of pages and briefly in submissions at the conclusion of the hearing. The skeleton argument posses the question 'whether it is open to the expert's client to ask him to express his alternative view on the already agreed matters, and to ask the Tribunal to

discount the view of the first expert and accept the view of the second, notwithstanding the earlier agreement.' It is suggested that this 'course of action is an abuse of process and an attempt to resile from a concluded settlement of an issue.' Much is also made of the suggestion that the Respondents had not sought permission to introduce 'contradictory' evidence. The solicitors for the Applicants had written to the Tribunal on this point, in somewhat intemperate terms, suggesting that the case should proceed on papers alone and that the Tribunal members should stand down, neither course of action being accepted by the Tribunal.

6. In response Mr Radevsky replied as follows. The change of expert had been notified to the Applicants' solicitors by email dated 19th June 2015. This email contains the following wording 'in the light of the fact we are now instructed a different expert to avoid any further delays in the case, it does seem sensible that the experts reassess their evidence and discuss the case as a whole with fresh eyes'. Prior to this, in May the Solicitors had contacted the Tribunal who had indicated that as Miss Mariner was unable to fulfil her role as expert an alternative should be found. This was taken as being permission for an alternative expert to be appointed. The unavailability of Miss Mariner was conveyed to the other side and it appears that on 23rd June Mr Balcombe's position on the deferment rate and short lease value is conveyed to Mr Passmore. On 1st July the report of Mr Balcombe was supplied to the Applicants. Further he said, the premium was not agreed between Miss Mariner and Mr Passmore and that accordingly the Tribunal retained jurisdiction to determine all issues. This submission having been made at the conclusion of the hearing he also relied on the evidence given during the hearing by Mr Passmore as to the deferent rate and by Mr Balcombe as to the short lease value.

7. It seems appropriate for us to deal with this issue before we proceed to record the evidence and our findings on the premium payable as it will put the decisions we have made on matter in context.

8. Taking it shortly we find that Mr Balcombe can proceed to present the case based on his evidence unfettered by what may have been agreed beforehand. We were attracted to Mr Radvesky's point that the 'agreement' of these two elements had not resulted in the agreement of the premium payable, which remained in issue and thus within our jurisdiction. The Applicants were aware, we are told from an unchallenged chronology produced at the hearing, that the change of position was known in June, nearly a month before the hearing and the report produced by 1st July. It seems that Mr Passmore may have been away but we found it somewhat surprising when he told us at the hearing that he had not read Mr Balcombe's report. In the absence of Miss Mariner for health reasons we find that the Respondentss had no choice but to instruct a new expert. That new expert is not bound, in our finding, by an agreement reached by his predecessor, the more so as a result of the evidence that came out during the course of the hearing on deferment rates and the short lease value, which we will refer to in due course, but which did impact on our decision to allow Mr Balcombe's evidence to be considered by us in the full.

9. Following the conclusion of the hearing Mr Radevsky sent to the Tribunal a report of the case of Becker Properties v Garden Court NW8

Property, a Lands Tribunal case where the Appellant was allowed to reopen the issue of yield rate notwithstanding that this element had apparently been agreed between the parties before the appeal. The details were supplied to Mr Healey but we did not receive any further submissions. This case appeared to support the decision we have made on this point.

10. Turning now to the substantive hearing we record that prior to same we had received the reports of Mr Passmore and Mr Balcombe, together with copies of the Notice and Counter-Notice, the application, the lease for the Flat and correspondence passing between the parties and the Tribunal. We were supplied with a copy of a witness statement of Dr Jayaratne setting out the circumstances leading to his purchase of the short lease in March 2014. In addition we had details of the costs sought under s60 of the Act and under Rule 13 of the Rules. During the course of the hearing we were supplied with a copy of the brochure produced at the inception of the development, a chronology, referred to above, a schedule of agreements on premium achieved by Mr Passmore in respect of a number of properties at Phyllis Court Drive and a copy of the earlier report of Mr Passmore.

Inspection

11. The development in which Whitelock House is to be found sits close to the River Thames and behind the Phyllis Court Members Club. Entry is by a driveway, with the 'in' and 'out' roads being separated by a cultivated central reservation. The development appears well cared for. Three storey blocks line the entrance road, which curves to the right at the bottom reverting to a single carriage serving four more blocks. It is on this curve that Whitelock House is situated.
12. We made external inspections of Marmyon, Finlay, Molyns, Temple, Swinnerton and Charles Houses. Marmyon House appears to have a flat taking up each floor but it situated close to garaging and car parking and is set back from the other blocks in this part, and is placed behind the main Phyllis Court buildings, with a turning circle in front. Molyns House, next to Marmyon House, is similar to Whitelock House but is dominated by a large cedar tree to the front. Finlay House was similar to Whitelock but at a different orientation.
13. Dr Jayaratne afforded us access to the Flat reached by stairs, which were carpeted, the common parts being in good order. The Flat presented well with a good sized living room to the front where it was just possible to see the Thames. The flat is heated by electric storage heaters and has three bedrooms, a small kitchen and shower room of a good size. We also inspected the garage allocated to the flat which was to be found a block sitting behind Marmyon House.

Hearing

14. Certain matters were agreed, namely
    - The valuation date as 20th March 2014
    - The floor area of the Flat at 883 sq.ft.

- Capitalisation rate of 8%
- Difference between long lease value and freehold value was agreed at 1%.

15. The issues remaining were the deferment rate to be applied and the existing and long lease values.
16. Both Mr Passmore and Mr Balcombe had presented extensive reports and these are common to both parties. We do not propose to recount the contents in this decision, but we confirm that they have been read by us and taken into account in our findings.
17. Mr Passmore gave his evidence first. His report described the Flat and its location as well as the tenure. As to the evidence upon which he based his assessment of the premium at £64,787 he relied on a number of comparable properties all within the development. Before dealing with those, he suggested that the demographic was of leaseholders who tended to be elderly with less mortgage dependency, which may have been part of the explanation for a lack of activity in the selling market at the development. Further his view was that there was a 'distinct pattern in the settlement data' showing ground floors achieving a higher premium, up to 33% more, although for his part he thought this too high.
18. His main comparables, set out in tabular form in his report, for the long lease values were 19 Finlay House, 43 Molyns House and 40 Marmyon House. There were some errors as 40 Marmyon was suggested as having a lift and 43 Molyns House suggested a proposed sale price some £10,000 more than actually marketed at, it having not been sold at the time of the hearing although apparently having been on the market for over a year, with a sale now agreed .Taking these three comparables he concluded that a square footage value of £500 was correct. As to the passage of time to enable comparison he told us that he had used the Land Registry graphs for Oxfordshire which showed a gradual increase, which he had applied to the comparable of 19 Finlay House which completed in October 2013, although this did not seem to sit with the proposed sale of 43 Molyns which suggested to him that the graphs could be misleading. Considering all the evidence he concluded that the long lease value was in the region of £441,500 with an uplift to freehold value making the figure £445,915.
19. As to the short lease values he told us that the evidence he relied upon had been included in his report although he had thought the value had been agreed at £352,000. His comparables for this element were 10 Charles House, the earlier purchase of the flat by the Applicants in March 2014 and 42 Molyns House. These were set out in tabular format in his report but said to be more 'corroborative evidence than prime evidence'. In his evidence to us he suggested that Charles House gave a short lease per square foot value of £430, although he appeared in fact to be advancing a short lease value of £399 psf when taking into account a deduction for the 'no Act world', which Mr Balcombe had suggested would be 5%. This then gave the following analysis by reference to 10 Charles House. He suggested a starting figure for the short lease value of £420,000 to which he applied the 'no Act world' reduction of 5% giving a value of £399,000. This in turn gave a square footage figure for 10 Charles House of £408.81. If this rate is applied to the Flat (883 sq ft) this gives a short lease value of £360,979, considerably higher than the

sum he had agreed with Miss Mariner. However, in his report he considered a further reduction of 7.5% to reflect the 'fact' that the Applicants were special purchasers in March 2014. At the hearing he departed from this, assessing the element to be at a lower rate, perhaps 5%. This mathematical computation was intended to support the long lease value and in his opinion gave rise to a potential relativity of 81.2%. This relativity was supported, he suggested by the various graphs to which he referred at paragraph 8.9 of his report.

20. On the question of the deferment rate, now an issue he openly told us that the rate of 5.5% had been put forward by Miss Mariner from 'day one'. When asked about any deductions that might be made under the principles in Zuckerman he said that if it was decided that Mr Balcombe's review of this element could be advanced he had no evidence to put before us, which would cause us to depart from the Sportelli rate of 5%.
21. Mr Passmore was asked questions by Mr Radevksy. It was put to him that in an earlier report he had assessed the relative value of 40 Marmyon House as though it included a lift, which it is agreed it does not. Yet it was said to him this change had not resulted in any reassessment of the value to be attributed to this flat as set out in his final report. It was suggested that he had 'tried to fit the figure' into his analysis, which he denied. He thought that the flats in Marymon House were superior in that they were on one floor with no party walls and that his figure of £500 per square foot for the long lease length was correct.
22. Mr Passmore was then referred to a document which purported to show lease extensions he had agreed during 2014. The lowest figure shown was £87,000 and the highest £98,600. His response to this was that his clients had ignored his advice and were prepared to pay more to avoid coming to the Tribunal.
23. On the question of relativity he said that he did not think any graph was reliable and that in this case he only used them for corroborative purposes. He also accepted that a deduction for 'no Act rights' could be 5% and that there should also be a deduction for the special purchaser position, accepting as he did that 7.5% was at the top end.
24. On re-examination he thought that the figure of £352,000 was correct for the short lease value, fitting in with the other leases.
25. We then heard from Mr Balcombe. In his report he set out he details relating to location, description and tenure, which are not contentious. As with Mr Passmore no allowance was to be made for condition. His first element was the long lease value and here he relied on comparables at 40 Marmyon House and 19 Finlay House. 40 Marmyon House had a strong correlation with the Flat, being on the same floor with the same accommodation, although it was said the Flat had a better outlook. Of importance was that this property sold on 10th March 2014, very close to the valuation date at a price of £550,000, giving a square foot rate of £552.21. This was his favoured comparable. 19 Finlay House, was, we were told almost identical to the Flat but sold earlier in time, September 2013. The sale price was £440,000 giving a square foot rate of £497.72. However this needed to be uplifted for the passage of time. He had attempted to use Land Registry data but could not agree the relevant area, preferring Windsor and Maidenhead than Oxfordshire. There was also an issue as to what date to use to calculate the impact of time. In this

regard he thought the date should be a notional one relating to the time the bargain was struck, in his view July 2013. Applying that as the starting date for time he applied the average sale price for flats in Windsor and Maidenhead in July and in April 2014, being the date by which data from sales in March might have reached the Land Registry. This gave an uplift of 7.5% and a square footage rate of £530.41. Taking these two comparables he concluded that the value for the long lease would be £480,000. In relation to the freehold value he arrived at a figure of £484,848.

26. His report went on to consider the evidence put forward by Mr Passmore on long lease values which we have considered.

27. As to deferment rate he thought that the Sportelli rate should apply. There was he suggested no obsolescence and that future growth was good and thus it was not necessary to depart from the deferment rate 5%.

28. With regard to the value of the short lease he sought to rely on the actual sale of the Flat to the Applicants at £387,500. If the reduction of 7.5% were applied for the 'special purchaser' element this reduced the price to £358,400 and with a further reduction of 5% for the 'no Act world' the value dropped further to £340,480. He then reflected this to consider the relativity which he considered to be 70%, although concluded that the correct short lease value should be £340,000. He then considered the other evidence given by Mr Passmore in respect of the short lease values but this did nothing to persuade him that his view on the value of £340,000 was wrong. This changed under cross examination by Mr Healey.

29. We turn now to that cross examination. He was asked about his evidence in relation to long lease values. He explained why he considered the Flat to be in a better property than Marmyon House, which was because of location and outlook. He was not persuaded that a flat on the whole of one floor was superior. He confirmed that he placed reliance on both 40 Marmyon and 19 Finlay House. The latter was almost identical, save for time although he was questioned about his use of the dates to create the time line and the appropriate Land Registry index. He told us he had ignored 43 Molyns House as it was not a sale. On the question of the short lease value after an exchange of views with Mr Healey he conceded that the appropriate allowance for the 'special purchaser might be 5%, with a further reduction of 5% for the 'no Act world' to give a short lease value of £349,700, rounded up to £350,000. He said he would 'go with that'. He was also asked why he had not maintained the agreement reached before his involvement. His response was that he was being asked to attend before the Tribunal and to give his honest opinion, which he could not do if he sought to maintain the previous agreement.

30. Final submissions were made by both Counsel which we noted and bore in mind when reaching our findings. Mr Radevsky took us to correspondence addressing the Rule 13 claim for costs, which related only to the 'wasted costs' of the cancelled hearing set for 13th March 2015 caused by the apparent illness of the first Applicant's father.

31. Mr Healey addressed us on the admissibility of Mr Balcombe's report but we have of course dealt with that earlier in the decision. To be fair to the Applicants the case had been conducted on the basis that Mr Balcombe's report would be allowed, although without admitting that it should be.

He had no submissions on the costs as such but only on the principle of same, which was essentially that the Applicants had not acted unreasonably. We will address the issue of the costs in due course.

The Law

32. We have applied the provisions of the Act to the assessment of the value to be attributed to the premium payable and in particular schedule 13.

Findings

33. There are three issues we must consider to enable us to reach a determination on the premium payable for the lease extension of the Flat. The first is the deferment rate to be applied to the reversionary value. To be fair to Mr Passmore he had been, it seems, presented with an offer of 5.5% by Miss Mariner and not unnaturally accepted it. However, applying his independent expert role he conceded that he could not put before us any evidence which would persuade us to depart from the Sportelli rate of 5%. There was no suggestion that any of the departures from the Court of Appeal rate applied, certainly no obsolescence or lack of growth, both covered by Mr Balcombe in his report. In those circumstances we determine that the deferment rate to be applied is 5%.
34. On the question of the short lease value, another element the subject of the earlier agreement, there was, in fact, very little between the experts. In cross examination Mr Balcombe had, in accordance with his role as an independent expert departed from his report figure of £340,000 for this element and accepted a figure closer to the previously agreed value of £352,000. Utilising the price paid for the flat in March 2014 and making agreed reductions for the special purchaser and 'no Act world' led to the figure he was prepared to agree, which rounded up was £350,000. This is the value we find correct for the short lease value.
35. We turn then to the long lease value. Mr Passmore had relied on the same comparables as Mr Balcombe, but added 43 Molyns House, a flat which had not sold. He then introduced short lease sales, apparently with a view to establishing relativity, which settled at 81.2%, for reasons which were not clear from his report. We must confess we found his opinion somewhat confused on this point, varying as it did from 77% using the Southeast Leasehold graph to 78.1% utilising the Savills graph which related to prime central London properties. In any event this exercise was no more than that as he had, he believed, good market evidence for both the long and short lease values. On the long lease value he had settled at a rate per square foot of £500, taking 19 Finlay House, sold in October 2013 and 43 Molyons House, unsold at the time of the hearing as being the best comparables.
36. By contrast Mr Passmore had relied upon the sale of 40 Marmyon House almost at the valuation date and 19 Finlay House, but disregarded 43 Molyns, it not being a sale. We preferred this route to the long lease value. The sale of 40 Marmyon House in March 2014 is clearly a strong comparable. We accept that the building is different to Whitelock House, having one flat on each floor. However, the location is secondary and we

do not think the layout of the flats in the respective blocks will have such a difference on the price. We agree that these differences would counter balance each other leading to this property being a very good comparable. The sale of 19 Finlay House, only some 6 months or so beforehand must also be of relevance, even putting aside the time line to be applied to the uplift of the price. Taking these comparables into account we accept Mr Balcombe's opinion that the value of the long lease should be £480,000, which with an agreed 1% uplift for the freehold gives a value of £484,800, which we have applied to the valuation of the premium.

37. Taking the deferment rate, which we find to be 5%, the short lease value, which we find to be £350,000 and the long lease value, uplifted for the freehold, which we find to be £484,800, together with the agreed capitalisation rate of 8% gives a premium payable of £91,801 as set out on the attached valuation schedule. This includes £71, being the head lease premium.

38. On the question of costs we have attached the Points of Dispute schedule relating to the claim for costs by the Respondents under the provisions of section 60 of the Act. This schedule records our findings on the issues and we determine that the total sum payable for costs under the Act is £3,955.80.

39. We do not consider that the Applicants acted in such a way in respect of their conduct surrounding the cancelled hearing in March of this year that they should be required to pay the Respondents' costs. The awarding of costs under the Rules is a draconian step. The Tribunal's jurisdiction is generally cost free, with the odd exception, such as the provisions under s60 of the Act applicable to this case. In this case it is suggested that the parties were close to an agreement, which did not materialise. The Tribunal agreed that the hearing scheduled for March should be adjourned. Indeed a later hearing scheduled for June had to be adjourned as a result of the incapacity of the Respondents' valuer. We do not suggest that one adjournment cancels out the other but it does impact on the costs of both sides. In addition we are doubtful that costs associated with the adjourned hearing in March were wholly wasted, given that the matter did eventually come before us in July. We do not consider that the conduct of the Applicants leading to the adjournment in March was so unreasonable as to result in a costs order being made. We consider that the approach to be adopted to such an application mirrors the approach taken prior to the introduction of the Rules. The Rules lifted the cap, it did not, in our finding lower the threshold of responsibility.

Andrew Dutton

Tribunal Judge
Andrew Dutton 13th August 2015

IN THE FIRST TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case No.CAM/38UD/OLR/20124/0188

B E T W E E N

DR JAYARATNE & Others — **Applicant**

- and -

PHYLLIS COURT MEMBERS CLUB LIMITED — **Respondent**

POINTS OF DISPUTE SERVED BY THE APPLICANTS

Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993

Point 1 General point	On 11 December 2014 the Respondent's Solicitors indicated that the section 60 costs incurred by the Landlord would be in the amount of £2,200 plus Vat plus disbursements. In addition the Respondent's Solicitors indicated that they had incurred costs of £740.00 plus VAT in challenging the Applicants' right to a new lease. The fees detailed in the Respondent's costs are considerably in excess of these sums. The Respondent is VAT registered (VAT Registration No: 199 1916 13)
	Receiving Party's Reply: It was made clear to the Applicants' solicitor on 8 January 2015 that the costs figure proposed was based on average fees incurred in similar matters relating to lease extensions at Phyllis Court Drive and that if a formal breakdown was required the actual time spent would be likely to be higher. The Respondent had been prepared to accept the lower figure if the Applicants had agreed the proposed figure. The Applicants' solicitor acknowledged the Applicants' liability to pay the Respondent's costs relating to the validity of the Applicants' claim on 15 July 2014 by stating that the Applicants would not be responsible for any further costs incurred from that date in relation to this issue. The Respondent was prepared to limit its costs in this regard to those incurred prior to 15 July 2014 on the basis they were agreed at that time. In the absence of agreement, the full costs incurred have been claimed by the Respondent. It is accepted that the Respondent is VAT registered. However, selling residential property, including leases, (other than where the property is a new building) is outside the scope of VAT and therefore VAT charged on any services relating to such residential property sales cannot be reclaimed. VAT on the related legal fees is therefore an expense which the Respondent is entitled to recover from the Applicants.

	Tribunal's Decision: The correspondence from the Respondent's solicitors makes it clear that the costs will be reviewed (see letters 11.12.14 and 8.1.15) It does not appear that these sums were agreed and the Respondent is therefore entitled to seek to recover fees above the levels originally suggested. However, it is noted that these cost proposals were put forward after the investigation into the Applicants' rights. We have insufficient information to question the VAT position. If the Applicant can show that the Respondent can recover the VAT charged then so be it but we will not disallow that element on the evidence before us.
Point 2 Point of principle	The Applicants do not consider it reasonable to pay for the costs incurred in rebutting a position adopted by the Landlord that was misconceived and was ultimately conceded.
	Receiving Party's Reply: The Respondent is entitled to recover costs incurred investigating the tenant's right to a new lease, pursuant to section 60, including the validity of any new tenant's right following assignment of the tenant's notice. The Respondent's position was not misconceived. Indeed the Applicants' solicitors on 18 June 2014 acknowledged the Respondent's position. It was not until 4 July 2014 that the Applicants' Solicitors changed their position and further pursued the issue.
	Tribunal's Decision: We agree with the Respondent's solicitors view on this point. There is some confusion as to the rights of the Applicants to take over the benefits held by Mrs Pederson. It appears to have been clarified so as to enable the Respondent to concede the rights of the Applicants by email dated 14.8.14. It might be that this concession could have been made earlier but some costs in respect of this element are recoverable and the letter of 1.12.14 sets those at £740 plus VAT
Point 3 A 1 (i) and (ii)	The time attending the client is excessive. The client is an experienced Landlord and has been engaged in numerous lease extensions relating to the properties on the estate over the course of the last 2 to 3 years. Reduce to 2.5 hours at JFI rate.
	Receiving Party's Reply: Additional time spent dealing with validity of Applicants' application.
	Tribunal's Decision: Even allowing for the time spent in considering the Applicants' right to a lease extension over 4 hours attendance on the client does seem high. Originally it was suggested that the costs would be £2,200 plus £740 for the additional time. We agree the Applicants' view that 2.5 hours at JFI rate is appropriate **(£500)**
Point 4 (A 2 (i) and (ii))	The claim for timed attendances on Opponents is excessive. Reduce to 3.5 hours at JFI rate.
	Receiving Party's Reply: Additional time spent dealing with validity of Applicants' application.
	Tribunal's Decision: We agree with the Applicants' submission. The Respondent is claiming considerable time for work done on documents under 6 which is in part not challenged. 3.5 hours at JFI rate is sufficient **(£700)**

Point 5 (A 3 (i) and (ii))	The claim for timed attendance on Intermediate Landlord's Solicitors is excessive and could all have been dealt with by a Trainee Solicitor. Reduced to 6 units at TRDR rate.
	Receiving Party's Reply: The intermediate landlord has to approve the counter notice and be served with it. In addition there were discussions regarding the apportionment of the premium, which could not have been carried out by a Trainee solicitor.
	Tribunal's Decision: We consider that the time charged by JFI to be reasonable. It is not clear what a trainee would add, or has done so that charge is disallowed (sum allowed **£100)**
Point 6 (A 5 (i) and (ii))	The time engaged for attendance on Others including Process Server is excessive. There is no requirement for the Landlord's counter-notice to be served by a Process Server. Reduce time to zero.
	Receiving Party's Reply: In light of the assignment of the tenant's notice and its validity it was necessary for the Respondent to ensure adequate proof of service of the counter-notice. Consequences of non-service would have been severe for Respondent.
	Tribunal's Decision: Service by registered post would have resolved this problem. The deadline is 8th June 2014 and the counter-notice dated 29th May, more than ample to time to have ensured service had taken place. (**nil allowed**)_
Point 7 (A 6 (i), (ii), (iii), (iv) and (v)	The time engaged on A 6 (i), (ii) and (v) is agreed. The time engaged on A 6 (iii) and (iv) is rejected for the reasons stated in point 2 above. Time reduced for those parts reduced to zero.
	Receiving Party's Reply: A 6 (i), (ii) & (v) Noted A 6 (iii) Disputed for the reasons stated in the reply to point 2 above. A 6 (iv) The Respondent is entitled to recover costs pursuant to section 60 in relation to the grant of a new lease. A 6 (iv) does not relate to the issue of the validity of the Applicants' claim. **Tribunal's decision** We will allow £240 for A6(iii) as this gives £740 when added to A1(i) above. In respect of A6(iv) the time claimed for the preparation of a new lease seems on the high side but is allowed (**total under 6 is therefore £1659**)
Point 8 (B 1)	The time estimated to finalise and complete a lease that the Landlord and its Solicitors will be extremely familiar is excessive. Reduce time to 1.00 hour at JASP2 rate.
	Receiving Party's Reply: Noted but disputed. **Tribunal's decision** We agree the Applicants' submission **(£185 allowed)**

Point 8 C 1 and 2	The disbursements claimed for Land Registry fees are agreed. The claimed disbursement for Process Server fee is rejected as being both excessive and unnecessary. The Applicants will agree to the reasonable amount for service of the Landlord's counter notice by registered delivery.	
	Receiving Party's Reply: The objection to the Process Server's fee is disputed for the reasons stated in the reply to point 6 above. The address for service of the counter-notice was in central London. The Respondent's solicitors are in Reading. **Tribunal's decision** Our finding under point 6 applies, (**nil allowed**)	
Summary of Parts A, B and C	Applicants propose Total Part A costs incurred to 18.3.2015	£2,338.00
	Total Part B costs to be incurred	£185.00
	Total Part A and B costs	£2,523.00
	The respondent is VAT registered	£0.00
	Total Part A and B costs excluding VAT	£2,523.00
	Part C Disbursements	£15.00
	Grand Total	**£2,538.00**
	Tribunal findings	
	Part A costs	£3,099.00
	Part B costs	£185.00
	Total Part A and B	£3,284.00
	VAT	£656.80
	Disbursements	£15.00
	Total allowed	**£3,955.80**

Served on 7 April 2015 by Mercers Solicitors on behalf of the Applicants

Respondent's Replies to Applicants' Points of Dispute served on 21 April 2015 by Blandy & Blandy LLP Solicitors on behalf of the Respondent.

Andrew Dutton

Tribunal Judge Andrew Dutton **13th August 2015**

Calculations

Valuation assumptions

Lease expiry date	14/03/2059	
Valuation date	20/03/2014	
Unexpired term	44.98	
Capitalisation rate	8.0%	
Deferment rate	5.00%	
Freehold value	£ 484,800	
Extended lease value	£ 480,000	
Existing lease value	£ 350,000	
Relativity	72.91%	

Value of head lessors interest

Profit rent			3.84			
YP 45 years at 8% and 2.5%			10.8381000	£	42	
Total existing head lease value				**£**	**42**	

A **Value of freehold existing interest**

Loss of ground rent			18.26			
Years Purchase	44.98 years @	8.0%	12.107798	£	221	0.0313761
Loss of reversion to	Freehold value		£ 484,800			
Present Value of £1	44.98 years	5.00%	0.1114052	£	54,009	
				£	**54,230**	

B **Value of landlord's proposed interest**

New reversion			£ 484,800			
Present value of £1 in	134.98	5.00%	0.0013800			
				£	669	
Total Existing freehold value				**£**	**53,561**	

C **Marriage value calculation**

Value of leaseholders new interest			**£ 480,000**
Value of freeholders interest	£	53,561	
Value of head lessors interest	£	42	
Value of leaseholders current interest	£	350,000	
			£ 403,603
Marriage gain			£ 76,397
Landlords 50% share			£ 38,199
Marriage value			**£ 38,199**

Calculation of payments to leaseholder and freeholder

Head lease premium	£	42	0.000776	£	30	**£ 71**
Freehold premium	£	53,561	0.999224	£	38,169	**£ 91,730**
Total	£	53,603				£ 91,801