



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

Case Reference : **MR/LON/00AH/OCE/2014/0321**

Property : **1 Tennison Road, London SE25 5SA**

Applicants : **Alison Tobin (1), Richard Bruce Pearson (2), Tracey Vaughan (3), Matthew Pitt (4), Guldeep Singh Mankoo (5) and Silver Park Developments Limited (6)**

Representative : **Mr Phillip Sissons (Counsel)**

Respondents : **David Malcolm Poulter (1), Elizabeth Caroline Poulter (2), Caroline Louise Nevard (3) and Julia Frances Poulter (4)**

Representative : **Mr Simon Brook MRICS (South East Leasehold Limited Chartered Surveyors)**

Type of Application : **Section 24 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 : **16 and 24 June 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27 August 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines the price payable for the freehold of 1 Tennison Road, London SE25 5SA ('the Property'), pursuant to section 24(1) and schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') is £91,008 (Ninety One Thousand and Eight Pounds), as set out in the attached schedule.

The background

1. The Applicants are the leaseholders of Flats 2, 3, 6, 7, 8 and 10 at the Property. There are a total of 9 flats at the Property, all of which are let on long leases. There are 3 two-bedroom flats (Flats 2, 6 and 8), three one-bedroom flats (Flats 5, 9 and 10) and three studios (Flats 3, 4 and 7).
2. The Respondents are the joint freeholders of the Property and an adjacent single-storey house known as The Lodge, which is the subject of a separate enfranchisement claim under the Leasehold Reform Act 1967. They are also the freeholders of an adjacent, purpose-built block of flats known as Pebworth Lodge.
3. On 15 May 2014 the Applicants served an Initial Notice on the Respondents pursuant to section 13 of the 1993 Act, seeking to exercise their right to collective enfranchisement. 1 Tennison Road Management Limited was named as the nominee purchaser in the notice, which proposed a purchase price of £62,000 for the freehold interest in the "specified premises" and £1,000 for "additional freeholds", being the appurtenant land shown coloured green on the accompanying plan. The leaseholders of Flats 4, 5 and 9 did not participate in the service of the notice.
4. On 17 July 2014 the Respondents served a Counter-Notice admitting that on the relevant date the Applicants were entitled to exercise their right to collective enfranchisement. The Counter-Notice proposed a purchase price of £147,000 for the freehold interest in the specified premises and £10,000 for the appurtenant land

The application

5. On 09 December 2014 the Applicants submitted an application to the tribunal to determine various terms of acquisition. Directions were issued on 05 January 2015. Paragraph 1 provided that any application to determine the Respondents' costs was stayed. There has been no

application to lift the stay. Accordingly the tribunal was not required to determine the Respondents' costs under section 33 of the 1993 Act.

The hearing

6. The application was heard on 16 June 2015. The Applicant was represented by Mr Sissons and the Respondents were represented by Mr Brook. The Respondents also attended the hearing. The tribunal heard oral evidence from the parties' valuation experts, Mr Roger Armstrong FRICS for the Applicants and Mr Brook for the Respondent. The Respondent's architect, Mr Mayur Vashee Dip Arch RIBA, gave oral evidence regarding the potential to extend the Property, which went to the issue of development value.
7. The tribunal members were supplied with a paginated hearing bundle, which included copies of the application, directions, a statement of issues, Initial Notice, Counter-Notice, Land Registry entries, a sample lease, the agreed form of transfer deed and valuation reports.
8. The tribunal members were also supplied with a helpful skeleton argument from Mr Sissons, dated 15 June 2015 and copies of the Upper Tribunal's decision in ***Money and others v Cadogan Holdings Limited [2013] UKUT 0211 (LC)***.
9. During the course of the hearing the tribunal members were supplied with maps showing the location of the comparable properties and photographs of some of the comparables.
10. In his cross-examination of Mr Armstrong, Mr Brook sought to rely on a letter from the leaseholder of Flat 5 dated 12 September 2014, requesting a lease extension. This was opposed by Mr Sissons, as the letter had not been disclosed prior to the hearing. The tribunal refused Mr Brook's request, as the letter was disclosed far too late. Given that the letter was sent in September 2014, it could and should have been disclosed when the experts exchanged their valuation reports. Had the tribunal admitted the letter then this could have prejudiced the Applicants. At the very least it would have necessitated an adjournment so that Mr Sissons could seek instructions from the Applicants, who did not attend the hearing.
11. The hearing concluded just before 5pm on 16 June 2015. The tribunal undertook an inspection during the morning of 17 June. It then reconvened on 24 June 2015 to determine the application.

The leases

12. The original leases of the Flats were each for a term of 99 years from 25 March 1981. The lease of Flat 9 was extended on 13 December 2012,

with a new term of 189 years from 25 March 1981. Following service of the Initial Notice the lease of Flat 4 was extended to 125 years from 25 March 2011.

13. During the course of the hearing, Mr Sissons confirmed that the freehold should be valued based on the lease terms, as at the valuation date. This is the date of service of the Initial Notice (15 May 2014). This means that it is to be valued based on the original, rather than the extended, lease term for Flat 4.
14. The ground rents specified in the original leases were £20 per annum to 25 March 1989, £30 pa to 25 March 1996, £40 pa to 25 March 2003, £50 pa to 25 March 2010 and £60 pa for the remainder of the terms.
15. The lease of Flat 8 was varied by a deed of variation dated 23 September 1993. This altered the ground rents to £100 per annum to 24 March 1996, £200 pa to 24 March 2017, £400 pa to 24 March 2038, £600 pa to 24 March 2017 and £800 per pa to 24 March 2080.
16. The extended lease of Flat 9 provides for a peppercorn ground rent.
17. The hearing bundle contained a copy of a sample lease for Flat 2. This was granted by Penelope Jane Sheen, John Forster Priestley and Robert Loraine Priestley (“the Landlords”) to Barbara Ann Cutting (“the Purchaser”) on 10 July 1981.
18. The Property is referred to as “*the Building*” throughout the lease.
19. The definitions are to be found at clause 2 of the lease and include:
 - (a) *The term “the Demised Premises” shall be deemed to mean and refer to the premises hereinbefore described and hereby demised*
 - (b) *The term “the specified period” shall be deemed to mean and refer to the period commencing on the date hereof and enduring for seventy years calculated from the Commencement Date and such period shall be the perpetuity period applicable to this lease*
 - (c) *The term “the Development” shall be deemed to mean and refer to the piece or parcels of land edged red on Plan No. 1 Together with all buildings structures erections walls fences lawns gardens grounds accessways paths hard-surfaced areas watercourses gutters sewers drains gulleys cisterns pipes pumps apparatus ducts vents conduits wires timbers cables installations appliances and service media now or within the specified period situate thereon therein thereover or thereunder or belonging or appurtenant thereto*

- (d) *The term "the Retained Premises" shall be deemed to mean and refer to such part of the Development as is not comprised in the Demised Premises*
20. The rights and easements benefitting the Purchaser are set out in the first schedule and include
1. *The right (in common with the Landlords and the tenants and lawful occupiers for the time being of each and every part of the Retained Premises and (where appropriate) of Pebworth Lodge and all persons authorised by them or now or hereafter having or enjoying the like rights) at all times during the said term for the Purchaser and members of his family his workmen servants invitees and other persons having lawful occasion to use the same in connection with the use of the Demised Flat as a single private residence in the occupation of one family and the use of the Purchaser's Car Space as a private car parking space appurtenant to the Demised Flat and the use of the Visitors Car Parking Area in accordance with the provisions of this lease but for no other purposes whatsoever: -*
 - (a) *To go pass and repass on foot only over and along any access road intended for vehicular traffic in Pebworth Lodge*
 - (b) *To go pass and repass on foot only over any pedestrian footpaths and pedestrian accessways in the Development and in Pebworth Lodge outside the buildings respectively comprised therein*
 - (c) *To go pass and repass on foot only over such of the halls staircases pedestrian accessways passages and landings in the Building as afford access to and egress from the Demised Flat*
 - (d) *To use the Refuse Bin Store*
 - (e) *To use and enjoy all such parts of the Retained Premises as shall for the time being be provided by the Landlords for the use enjoyment or benefit in common with each other of the Purchaser and the other lessees in the development*
 - (f) *Subject to any rights of way whatsoever to permit the use of the Visitors Car Parking Area for the temporary parking of private motor vehicles belonging to visitors to the Building but for no other purposes whatsoever*

The issues

21. By the time of the hearing, the only issues in dispute were the long lease values of the flats, the hope value attributable to Flats 4 and 5 (the non-participating flats), the value of the cellar and development value.
22. The following matters had been agreed, as set out in the statement of agreed facts in the hearing bundles, dated 19 May 2015:
 - (i) Valuation date: 15 May 2015
 - (ii) Capitalisation rate: 7%
 - (iii) Deferment rate (for participating flats): 5%
 - (iv) Relativity rate: 89%
 - (v) The form of the transfer deed, subject to insertion of the price

The inspection

23. The tribunal inspected the Property in the presence of the Ms Vaughan and Ms Nevard. Flats 6, 8 and 10 were inspected along with the exterior of the Property, the communal grounds and the cellar. The tribunal also undertook 'walk-by' and 'drive-by' inspections of the various comparable properties put forward by the two experts, with the exception of Flat 1, 68 Enmore Road.
24. The Property is a substantial and attractive, late Victorian detached house that is on the east side of Tennison Road, near the junction with Selhurst Road (A213). The road is quiet and is adjacent to South Norwood Recreation Ground. The Property is arranged over three floors and is constructed of solid brick walls under a pitched and tiled roof. There have been two single storey additions, one earlier extension with a pitched roof and a later extension with a flat roof, which provides additional accommodation for Flat 2. There is a refuse bin store to the left of the Property (looking from the road).
25. The Property stands in its own grounds, which it shares with Pebworth Lodge and The Lodge. There is car parking to the rear of the site, approached by a side drive. There are lawned garden areas to the front and rear. The cellar is accessed from a very small external entrance at the rear of the Property. It has vaulted ceilings and there was evidence of dampness.

Valuation evidence

26. Both experts are experienced valuation surveyors, with particular expertise in leasehold enfranchisement valuations.
27. Mr Armstrong is the sole director of Westburys Chartered Surveyors, which currently operate from offices in Epsom and Streatham Hill. He qualified as a Professional Associate of the Royal Institution of Chartered Surveyors, became a Fellow in 1992 and has practised in South London, both as a surveyor and an estate agent, since 1982.
28. Mr Brook has a degree in Building Surveying and is a director of South East Leasehold Limited, which is based in Worthing, West Sussex. He was elected as an Associate of the RICS in 2000 and has been principally involved with leasehold reform valuations since 2004, both in the London area and on the South Coast.
29. The tribunal were supplied with a report from each expert, who also gave oral evidence. It is unnecessary for the tribunal to recite the contents of these reports in detail, as the reports are there for the parties to see. The experts' evidence on each of the disputed issues is briefly summarised below:

General

30. Mr Armstrong's report was dated 01 June 2015. He valued the freehold of the Property at £77,360. This was based on long lease values of £170,000 for the two-bedroom flats, £135,000 for the one-bedroom flats and £100,000 for the studios. Mr Armstrong adopted an uplift of 1% for freehold values and a figure of 5% for hope value the two non-participating short lease flats (Flats 4 and 5). He attributed no development marriage value to the Property and no value to the cellar.
31. Mr Brook's report was dated 02 June 2015. He valued the freehold at £140,000 based on long lease values of £222,200 for the two-bedroom flats, £175,000 for Flats 9 and 10, £150,000 for Flat 5 and £139,700 for the studios. Mr Brook did not adopt any uplift for freehold values. He adopted a figure of 50% for hope value for Flats 4 and 5 and attributed £23,105 to development marriage value and £5,000 to the cellar.

Capital values of the flats

Mr Armstrong

32. In his report, Mr Armstrong relied on sales of nine comparable flats (three two-bedroom flats, three one-bedroom flats and three studios). The sale dates were close to the valuation date, so there were no adjustments for time. Mr Armstrong did not provide lease details or produce any sales particulars for the comparables. Further he made no

- specific adjustments for location or other factors, such as condition, size or the absence of parking or communal gardens.
33. The two-bedroom comparables ranged in price from £165,000 to £178,000, the one-bedrooms ranged from £135,500 to £147,000 and the studios ranged from £97,500 to £107,000. Mr Armstrong had regard to these sale prices when valuing the flats but unlike Mr Brook did not base his valuations on the mean averages.
 34. In his valuation calculations, Mr Armstrong applied an uplift of 1% to the long lease value of the flats to arrive at the freehold values.
 35. Mr Armstrong was cross-examined at some length on the suitability of his comparables and his failure to make specific adjustments. He was also challenged on his failure to analyse sales within the Property and his failure to distinguish Flat 5, which is much smaller than the other one-bedroom flats and is an extended studio. Mr Armstrong accepted that his valuations of the flats were on the low side, in the light of Mr Brook's comparables. He suggested alternative figures of £190,000 for two-bedroom flats, £145,000 for the one-bedroom flats and £117,500 for the studios.
 36. Mr Armstrong was also cross-examined on his failure to make time adjustments for his comparables. He felt these were unnecessary, given the proximity of the sale dates to the valuation date. Mr Brook referred to the time lag between a sale being agreed and completion. Mr Armstrong pointed out that this varied between transactions but accepted that the normal time lag is between one and six months. In his experience it is rare for the parties to renegotiate the price during this period but sometimes a seller will withdraw and remarket when prices are rising. Accordingly he did not consider that such time lags warranted adjustments to his comparables.
 37. In re-examination, Mr Armstrong stated that he had studied the sales particulars and had looked at lease length and the size of the comparables, when selecting the nine flats in question. He also stated that he had made adjustments to the sale prices when reaching his valuations but not in percentage terms. He took a general rather than specific approach when making these adjustments, based on "feel". Mr Armstrong expressed the view that valuation is an art not a science and that making percentage adjustments was too formulaic.

Mr Brook

38. Mr Brook relied on nine different comparable sales in his report (three for each size of flat) and copies of the sales particulars were appended to the report. The comparables included sales of Flats 4 and 9 at the Property in September 2009 and November 2012, respectively.

39. Mr Brook took a rather more scientific approach to Mr Armstrong and had made adjustments for time and lease length, where appropriate. However he had not made adjustment for other factors. When adjusting for time he had worked on the basis of a three-month lag between terms being agreed and completion and had used the Land Registry price index for Croydon.
40. Mr Brook based his long lease values on the average of the adjusted sale prices, being £222,222 for the two-bedroom flats, £167,366 for the one-bedroom flats and £139,732 for the studios. In the case of the two-bedroom flats and studios, he simply rounded down the average figures to the near £100. For the one-bedroom flats he applied a differential of £25,000 between the larger flats (Flats 9 and 10) and the smaller Flat 5.
41. Mr Brook did not make any adjustment to arrive at the freehold value of the flats. In his opinion the long lease and freehold values are the same. Mr Brook contended that they are treated as being the same for mortgage valuations and there was no evidence to justify a 1% uplift. He referred to two FtT cases where he had given expert evidence. In **5 Oberstein Road LON/00BJ/OCE/2014/0268** the tribunal made a 1% adjustment whereas in **Greenhill Gate CAM/11UF/OLR/2013/0135** there was no adjustment. In the latter case management of the development was within the control of the leaseholders, via a leaseholder management company. Mr Brook suggested that this was akin to the situation at the Property, which is managed by a Right to Manage Company.
42. In cross-examination, Mr Brook described Flats 3, 4 and 7 as being large for studios (350-400 square meters) and Flat 2 as very large for a 2-bedroom flat. He accepted that the two flats on the top floor (Flats 9 and 10) had unusual layouts, being in the eaves of the roof but suggested that this added character.
43. Mr Brook was cross-examined on his time adjustments with Mr Sissons suggesting that it was preferable to use the certainty of the completion dates, rather than estimating the time lag between terms being agreed and the completion date.
44. Mr Brook was also cross-examined on the suitability of his comparables, some of which had private gardens. He pointed out that the Property has communal grounds and is close to the recreation ground. Given these amenities, a private garden would only have an impact on value if it was substantial and secluded.

Submissions

45. In his closing submissions, Mr Sissons argued that Mr Armstrong's comparables should be preferred to those put forward by Mr Brook. He

pointed out that Mr Armstrong's comparables all had sales dates that were close to the valuation date, which avoided the need for time adjustments. He also referred Mr Armstrong's long experience of valuing properties in this part of London and suggested that there was nothing inherently wrong with a "feel" approach to valuation.

46. In relation to any uplift for freehold values, Mr Sissons argued that there was a difference in leasehold and freehold values, both in perception and reality. He suggested that it was not a complete answer for Mr Brook to rely on the existence of a Right to Manage Company, as the freeholders were "*still on the scene*".
47. Mr Brook acknowledged that he could not compete with Mr Armstrong in terms of length of experience. However he does have considerable experience of valuing properties in the local area. Further he had carefully analysed the comparables and made specific adjustments, where necessary, unlike Mr Armstrong. This meant his comparables were more reliable.

The tribunal's decision

48. The tribunal determines the long lease values of the flats, as at the valuation date, as follows:

| | |
|--------------------------|-----------------|
| Two-bedroom flats | £191,000 |
| One-bedroom flats | |
| Flat 5 | £140,000 |
| Flat 9 | £151,750 |
| Flat 10 | £151,750 |
| Studio flats | £117,500 |

49. The tribunal determines that there should be a 1% uplift in the long lease values of the flats to reach the freehold values.

Reasons for the tribunal's decision

50. The tribunal preferred Mr Brook's valuation approach of making specific adjustments for time and lease length. Neither expert made adjustments for other factors. The tribunal formed its own view of the suitability of the comparables when it undertook its 'drive-by' and 'walk-by' inspections. Some were clearly more useful than others.

51. The tribunal disregarded those comparables that were markedly different to the subject flats and those in far inferior locations. For example 80 Sangley Road is immediately adjacent to the Crystal Palace football stadium and 73 Selhurst Road is on a busy stretch of the main road and is adjacent to a railway bridge. The tribunal also disregarded the sale of Flat 4 within the Property in September 2009, as this required a time adjustment approaching 5 years which is simply too long.

52. The Tribunal concluded that the best comparables were:

Two-bedroom flats – 8 Balfour Road, Flat 1 at 68 Enmore Road, Flat 7 Phoenix Court and 18 Upper Grove

One-bedroom flats – 10 Birchanger Road, Flat 9 at the Property and Flat B at 183 Selhurst Road

Studio flats - Flat C at 253 Holmesdale Road, Flat 1 at 44 Prince Road and 37 Shinnars Close,

53. The tribunal made time adjustments for all of these comparables, using the database for properties in Croydon appended to Mr Brook's report and the actual completion dates rather than earlier dates. It agrees with Mr Armstrong that the time lag varies between transactions and that it is rare, but not unheard of, for a seller to renegotiate the price once terms are agreed. Mr Brook's approach of selecting a notional date 3 months prior to completion was too speculative and uncertain.

54. The tribunal accepted the lease length adjustments for Mr Brook's comparables. Its adjusted figures for the best comparables are:

Two-bedroom flats

| | |
|------------------------|-----------------|
| 8 Balfour Road | £204,200 |
| Flat 1, 68 Enmore Road | £172,300 |
| Flat 7 Phoenix Court | £174,400 |
| 18 Upper Grove | £213,668 |
| Average | £191,142 |

One-bedroom flats

| | |
|---------------------------|-----------------|
| 10 Birchanger Road | £149,665 |
| Flat 9 at the Property | £153,928 |
| Flat B, 183 Selhurst Road | £151,649 |
| Average | £151,747 |

Studio flats

| | |
|-----------------------------|-----------------|
| Flat C, 253 Holmesdale Road | £132,663 |
| Flat 1, 44 Prince Road | £108,943 |
| 37 Shinnars Close | £95,983 |
| Average | £112,529 |

55. The tribunal rounded down the average figure for the two-bedroom flats to £191,000 and used this for Flats 2, 6 and 8. It used the one-bedroom average figure of £151,750 for Flats 9 and 10. It adopted a lower figure of £140,000 for Flat 5, which is much smaller and closer in size to the studio flats. The average figure for the studio flats of £112,529 was below Mr Armstrong's adjusted figure of £117,500. The tribunal adopted the latter for Flats 3, 4 and 7.
56. Based on the members professional knowledge and experience, the tribunal agree with Mr Sissons that there is a difference (albeit slight) in the long leasehold and freehold values of the flats. This justifies an uplift of 1%. The amount of the uplift was not challenged by Mr Brook. The fact that the Property is managed by a Right to Manage Company does not alter the position. Although the Company now exercises the management functions under the leases, the leaseholders do not have complete control. There are still some decisions that rest with the Respondents, as the freeholders. Further the Respondents are entitled to membership of the RTM Company so could have some input in the running of the Company.

Hope value for Flats 4 and 5

57. The leaseholders of Flats 4 and 5 did not participate in the enfranchisement claim. Both of these leases had less than 80 years

unexpired at the valuation date. Although no marriage value is payable for these flats, there might be some hope value. This reflects the 'hope' that the nominee purchaser will be able to grant lease extensions and receive premiums for these flats.

58. Mr Armstrong used a figure of 5% of marriage value, when calculating hope value. Mr Brook used a figure of 50%. Neither expert explained their bases for selecting these figures, either in their reports or in oral evidence.

The tribunal's decision

- 59. The tribunal determines that the hope value for Flats 4 and 5 is 5% of marriage value for these flats.**

Reasons for the tribunal's decision

60. Given the lack of evidence from the experts, the tribunal relied on its own knowledge and experience. Mr Brook's figure was clearly too high. He was suggesting that the proportion of marriage value for the non-participating flats should be the same as that for the participating flats, which cannot be right. There was no evidence that the leaseholders had expressed any interest in extending their leases, as at the valuation date. The fact that they did not participate in the enfranchisement claim suggests the contrary.
61. Given the length of the leases, it is possible that a notional buyer of the freehold would pay something extra for the prospect of granting lease extensions for these flats. However this prospect is uncertain and calls for speculation. Having regard to this uncertainty, the tribunal concluded that Mr Armstrong's figure of 5% was far more realistic than that proposed by Mr Brook.

Cellar

62. Mr Brook valued the cellar at £5,000, whereas Mr Armstrong considered that it has no value. In cross-examination, Mr Armstrong accepted that the cellar extends to the full footprint of the Property. He had only inspected it from the entrance and had not been inside.
63. Mr Armstrong pointed out that the cellar had restricted headroom and there was water on the ground. He accepted that it could conceivably be used for storage, if it was tanked to make it watertight. However it has not been used in this way for the last 30 years. Mr Armstrong had been advised by one of the Applicants (Ms Vaughan) that there was extensive rubble in the cellar.

64. In his closing submissions, Mr Sissons challenged Mr Brook's basis for claiming £5,000 under schedule 6 to the 1993 Act. He also queried whether a hypothetical purchase would pay this sum for the cellar.
65. Mr Brook suggested that the cellar is of value to the leaseholders at the Property, as it can be used for storage. This is of particular benefit to the leaseholders of the studio flats, which have limited storage space. Mr Brook advised that the RTM Company is already allowing the cellar to be used for storage by some of the leaseholders. There is a water pump in the cellar and it is only wet because the pump has not been properly maintained.
66. Mr Brook considered that a hypothetical purchaser of the Property could extract value from the cellar, by charging the leaseholders for storage. There was some debate, as to whether the leaseholders have the right to use the cellar. The cellar is not specifically referred to in the first schedule to the leases but some of the leaseholders are already using it for storage. Arguably they have express rights to use it under paragraph 1(e). The leaseholders might also have acquired implied rights to use the cellar.

The tribunal's decision

67. **The tribunal determines that the sum to be paid for the cellar is £0 (Nil)**

Reasons for the tribunal's decision

68. Mr Brook did not set out the statutory basis for seeking an additional £5,000 for the cellar. Potentially it falls to be valued under paragraph 3 of the sixth schedule, as part of the Respondents' interest in the Property. However it is for the Respondents to establish that the cellar could be sold at £5,000. There was no evidence to suggest that the cellar could be sold at this figure, or any sum. Further there was no evidence that Respondents (or a hypothetical purchaser) could charge for the use of the cellar. There was no suggestion that the leaseholders currently pay storage fees.
69. A hypothetical purchaser would inspect the cellar and study the leases, before deciding whether to bid. Given the restricted access and headroom and the dampness, the cellar would have very limited appeal. It would have to be made watertight, if it is to be used for storage of valuable items and the cost of this work would be prohibitive. Arguably it could be used in its current condition for storage of water resistant items, such as bicycles or garden equipment. However the access is very small, making it unsuitable for large items. Further the possibility that the leaseholders have express and/or implied rights to use the cellar would deter purchasers. Any attempts to charge for storage but

would be met by objections from the leaseholders. The cost of investigating whether they have rights over the cellar (and potential litigation to establish the position) would probably exceed any storage charges and make the cellar a very unattractive proposition.

Development value

70. The claim for development value relates to the potential to extend 4 of the 9 flats at the Property. Mr Brook's valuation included a figure of £23,105 for development value, whereas Mr Armstrong valuation included no development value.
71. It is convenient to deal with evidence from the Respondent's witnesses (Mr Brook and Mr Vashee) first, given that they were putting forward a positive case for development value.

Mr Brook

72. Mr Brook contends that Flats 3, 4, 6 and 7 can be extended by constructing a ground and first floor extension on land that currently forms part of the communal grounds and bin store. Once the freehold purchase has been completed, the leases can be varied to remove any restrictions that might prevent the construction of the extension. This will release development value to leaseholders of the four flats, as they can profit by extending their flats.
73. No planning permission has been obtained for the development. If it is undertaken then it would add one additional bedroom to Flats 3, 4 and 7 and two additional bedrooms to Flat 6. Based on build cost figures produced by Mr Vashee, Mr Brook calculated the gross development value (the increase in the value of the four flats less the build costs) to be £53,500. He discounted this figure by 10% to acknowledge that planning permission might not be obtained and then deferred the net sum at 5% for the unexpired lease terms of 65.8 years (for the four flats in question), to arrive at additional value. Mr Brook contended that the Respondents are entitled to 50% of the adjusted figure, being £23,105.
74. In his report, Mr Brook indicated that development value was claimed under paragraphs 3 and 4 of Schedule 6 to the 1993 Act. However his valuation calculation referred to marriage value, which suggested that the claim was being made under paragraph 4 as development marriage value.
75. In his oral evidence, Mr Brook suggested that once the Applicants purchase the freehold they can vary their leases so as to remove any restrictions that might prevent the development and thereby release marriage value. He also suggested that any objections from the non-

participating leaseholders could be overcome by varying their leases in the same way.

76. Mr Brook was cross-examined at some length regarding the basis of the development value claim. He accepted that it would be for the leaseholders of Flats 3, 4, 6 and 7 to fund the cost of the proposed extension but argued that their financial circumstances and ability to fund the works was immaterial. Mr Brook suggested that the proposed development would be particularly attractive to the leaseholders of Flats 3, 4 and 7, as they would be able to extend their studios into one-bedroom flats.
77. Mr Brook accepted that if the development value figure was deferred for 155 years, to reflect the unexpired lease term for Flat 9, then this would reduce the additional value from £1,939 to £24.08.
78. Mr Brook also accepted that his calculation of development value assumed that the estimated build costs figures were accurate. In his opinion the figures put forward by Mr Vashee were accurate.

Mr Vashee

79. Mr Vashee is a Chartered Architect and Chartered Building Surveyor. He is the managing director of ARC3 Architects Limited and has over 30 year's architecture experience. He had produced two documents relating to the potential to extend the Property, which were both dated 01 June 2015. The first was headed "*EXPERT REPORT (Interim)*" and the second was headed "*Preliminary Projected Final Account Costs Projection*".
80. In his report, Mr Vashee provided details of a pre-planning meeting that he had attended with the First and Second Respondents and a Planning Officer from the London Borough of Council, Mr Sean Scott, on 07 May 2015. At the meeting he tabled drawings and documents for the proposed development and Mr Scott did not make any adverse comments. However guidance was given on sensitive issues to be addressed in the planning application.
81. Based on the pre-planning meeting, Mr Vashee's opinion is that the proposed "*..Planning Application is warranted and the proposal is most likely to be supported by the Planners..*". If planning consent is granted then the proposed extension can be built in phases.
82. The second document from Mr Vashee provided a detailed breakdown of the estimated build cost for the proposed extension. The estimated cost of construction is £80,216.35 and the total anticipated cost including planning fees, contingency, consultants fees etcetera "*..equates to close to £100,000*". Mr Vashee prepared the estimate with

the assistance of Mr B Rabadiya, who is a director of BKR Construction Limited. He accepted that if the extension is phased then the build costs would increase but felt unable to comment on the amount of the increase.

83. In cross-examination, Mr Vashee accepted that the estimated build costs did not include any VAT. He also accepted that total build costs would increase to approximately £120,000, if VAT is payable at 20%. Mr Vashee was also cross-examined on the duration of the proposed works, the disruption that would be caused by the works and the figures in the cost breakdown. The estimated build costs equates to £1,129 per square meter. Mr Vashee suggested that the 'going rate' for this type of project was £1,000 per square meter.
84. Mr Vashee suggested that it might be possible to use contractors that are not VAT registered, if the work was undertaken on a "*piecemeal basis*", which would avoid any VAT liability.

Mr Armstrong

85. In his report, Mr Armstrong expressed the opinion that no additional value could be created from further development at the Property for the following reasons:
- a) The proposed development would be on the communal grounds, which would require the agreement of all affected leaseholders;
 - b) The proposed development would only increase the areas of the existing flats and not create further flats;
 - c) The nature of the proposed extension would incur substantial build costs and he has not seen a development of this type before;
 - d) Development value might not exist given the substantial build costs, relative to the increase in accommodation; and
 - e) The substantial nature of the building works would require all residents to move out, incurring substantial alternative accommodation costs.
86. In cross-examination, Mr Armstrong accepted that his initial reservations about the nature of the extension and the build costs were based on a previous scheme of work. However he remained of the view that there was no development value, as the current scheme would still involve substantial and costly work. Most, if not all, of the residents would need to move out during the work and the alternative accommodation costs would also be substantial. The total cost of the

development, including alternative accommodation expenses, might well exceed the uplift in the value of the four flats.

87. Mr Armstrong was also cross-examined on the need to vary all of the leases, to release rights over the communal grounds, before any development could take place. His view was that obtaining 100% agreement would be very difficult in practice. Some of the leaseholders are not participating in the enfranchisement claim and not all of the flats can be extended.

Submissions

88. Mr Brook referred to the Upper Tribunal's decision in *Money and others Cadogan Holdings Limited [2013] UKUT 0211 (LC)*. He contended that the claim for development value was not undermined by that decision, which concerned the ability of the participating leaseholders' to remove a restriction on the use of a caretaker's flat following enfranchisement. Mr Brook also referred to the FtT decision in *5 Oberstein Road*, where the Tribunal had allowed marriage value arising from development potential in similar circumstances.
89. Mr Sissons largely relied on the detailed submissions in his skeleton argument. He suggested that Mr Brooks was hedging his bets by referring to both paragraphs 3 and 4 of Schedule 6 in his report and in his methodology when calculating development value.
90. Mr Sissons also suggested that Mr Brook had misunderstood the operation of paragraphs 3 and 4. The Respondent's claim for development value, as formulated, could only be under paragraph 3 and for a nominal sum, at best. Paragraph 4 is concerned with the potential ability of participating tenants to have new leases granted to them, following enfranchisement.
91. Mr Sissons submitted that the development value claim advanced by the Respondents had nothing to do with marriage value. He referred to paragraphs 64 and 65 of the decision in *Money*, where the Upper Tribunal said:

"Paragraph 4 of Schedule 6 is precisely framed. And in our view one should be wary of reading more into that paragraph than the draftsman saw fit to include, lest one distorts the valuation exercise encapsulated in paragraph 2.

Paragraph 4 defines marriage value specifically as a form of value "attributable" to the potential ability of the participating tenants, upon enfranchisement, "to have new leases granted to them" without their having to pay any premium and without any restriction on the length

of the term. It does not refer to the variation of existing leases. Nor does it refer to the prospect of negotiated agreements for the release or adjustment of restrictions in such leases”

92. If development marriage value is allowed under paragraph 4 then the risk discount of 10% is far too low. The prospect of the development every taking place is far from certain. Planning permission has not been obtained or even applied for.
93. Mr Sissons accepted that development value could be payable, in principle, under paragraph 3. Under this paragraph it is necessary to consider what a hypothetical purchaser would be prepared to pay for the development potential. Mr Sissons argued that any development value would be very low, given that the development cannot be carried out until the expiry of the existing lease terms, as tacitly acknowledged in Mr Brook’s calculation of additional value.
94. Mr Sissons pointed out that Mr Brooks’ calculation of additional value was wrong, as any development cannot take place unless all 9 leaseholders release their rights over the communal grounds or until all 9 leases expire. The lease of Flat 9 does not expire until 2180 so the potential development value would have to be deferred by 155 years, which reduces the additional value figure to only £24.08. This figure assumes that the estimated build costs are accurate. If the actual build costs are higher the figure will come down.
95. Mr Sissons submitted that a hypothetical purchaser would regard the prospect of releasing value from any development as too remote to affect their bid. It follows that no development value should be allowed under paragraph 3.

The tribunal’s decision

96. **The tribunal determines that the sum to be paid for development value is £0 (Nil)**

Reasons for the tribunal’s decision

97. The tribunal agrees with Mr Sissons that the Respondents’ claim for development value, as formulated, can only be recovered under paragraph 3. There is no claim for development marriage value under paragraph 4, as the proposed development is contingent upon all of the existing leases being varied to remove the rights over the communal grounds and the dustbin store. It is not attributable to the grant of new leases to the participating leaseholders.
98. Having regard to the wording of paragraph 4 and the decision in **Money**, the tribunal accepts that there is no development marriage

value in this case. The tribunal is not bound by the FtT decision in **5 Oberstein Road**. Further it appears that there was no legal argument in that case. as to the operation of paragraph 4.

99. Development value can be recovered, in principle, under paragraph 3. However the development can only take place with the agreement of all leaseholders, as they each have express rights to use the refuse bin store and the communal grounds under paragraphs 1 (d) and (e) of the first schedule to the leases. Five of the leaseholders will derive no benefit from the development and have no incentive to give up these rights, unless they receive compensation. The amount of the compensation is likely to be substantial, as they can hold the other flats to ransom. If compensation can be agreed with these five leaseholders then the development could proceed but this would reduce the development value. However the tribunal thinks this is unlikely, as any one of the leaseholders could block the proposed development by enforcing the over the bin store and grounds.
100. The prospect of all leaseholders agreeing to the necessary lease variations are very slim, in which case the development value can only be released when all 9 leases expire. This means that development value must be deferred for 155 years, to take account of the extended lease of Flat 9. Based on the figures produced by Mr Brook and Mr Vashee this would reduce the additional value to a nominal sum of £24,008. Even this sum will be overstated if the build costs are more than Mr Vashee's estimate, as canvassed by Mr Sissons. Further the tribunal agrees with that the risk discount of 10% is too low, given that there has been no planning application to date. Having regard to all of these factors, a hypothetical purchaser would pay no additional sum for development value.

Summary

- 101. Having determined the capital value of the flats (as set out at paragraphs 48 and 49 of this decision), the hope value for Flats 4 and 5 at 5% of marriage value and having concluded that the no sums are to be paid for the cellar or development value, the tribunal determines that the price payable for the freehold on the valuation date was £91,008, as set out in the attached schedule.**

Name: Tribunal Judge Donegan **Date:** 27 August 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1992 (as amended)

Schedule 6

- 3 (1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with [no person who falls within sub-paragraph (1A)] buying or seeking to buy) on the following assumptions –
- (a) on the assumption that the vendor is selling for an estate in fee simple –
 - (i) subject to any leases subject to which the freeholder's interest in the specified premises is to be acquired by the nominee purchaser, but
 - (ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser
 - (b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant);
 - (c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to any improvement carried out at his own expense by the tenant or by any predecessor it title is to be disregarded; and
 - (d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with an subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with an subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7

.....

- 4 (1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent of that amount
- (2) Subject to sub-paragraph 2A, the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the

aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value –

- (a) which is attributable to the potential ability of participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term; and
- (b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

(2A) Where at the relevant date, the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

(3) For the purposes of sub-paragraph (2) the value of the freehold or any intermediate leasehold interest in the specified premises when held by the person from whom it is to be acquired by the nominee purchaser and its value when acquired by the nominee purchaser –

- (a) shall be determined on the same basis as the value of the of the interest is determined for the purposes of paragraph 2(1)(a) or (as the case may be) paragraph 6(1)(b)(i); and
- (b) shall be so determined as at the relevant date.

(4) Accordingly, in so determining the value of an interest when acquired by the nominee purchaser –

- (a) the same assumptions shall be made under paragraph 3(1) (or, as the case may be, under paragraph 3(1) as applied by paragraph 7(1) as are to be made under that provision in determining the value of the interest when held by the person from whom it is to be acquired by the nominee purchaser; and
- (b) any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser shall be disregarded.

Flats 2-10, 1 Tennison Road
London, SE25 5SA

Valuation Date 15th May 2014

Participating Flats

Flats 2, 3, 6, 7, & 10

| | |
|--|----------|
| Total Long Lease Value | £768,750 |
| Total Freehold Value - 1% uplift | £776,437 |
| Existing Lease Values @ 89% relativity | £691,029 |

Freeholder's Present Interest

Term

| | | |
|----------------------------|----------------|--------|
| Rent Reserved 5 x £60 p.a. | £300 | |
| YP 65.8 years @ 7% | <u>14.1192</u> | |
| | | £4,236 |

Reversion

| | | |
|-----------------------------|---------------|----------------|
| FH Reversion | £776,437 | |
| PV of £1 in 65.8 years @ 5% | <u>0.0403</u> | |
| | | <u>£31,290</u> |
| | | £35,526 |

Marriage Value

| | | |
|-------------------------|-----------------|----------------|
| Freehold Value of Flats | £776,437 | |
| less | | |
| Freeholder's Value | £35,526 | |
| Existing Lease Values | <u>£691,029</u> | |
| | | £49,882 |
| 50% Share | | <u>£24,941</u> |
| | | £60,467 |

Flat 8

| | |
|--|----------|
| Total Long Lease Value | £191,000 |
| Total Freehold Value - 1% uplift | £192,910 |
| Existing Lease Values @ 89% relativity | £171,690 |

Term

| | | |
|---------------------------------|---------------|------|
| Term 1 | | |
| Rent Reserved | £200 | |
| YP to 1st review 2.8 years @ 7% | <u>2.4654</u> | |
| | | £493 |

| | | |
|--------------------------------|---------------|--------|
| Term 2 | | |
| Rent Reserved | £400 | |
| YP to 2nd review 21 years @ 7% | 10.8355 | |
| PV of £1 @ 7% in 2.8 years | <u>0.8274</u> | |
| | | £3,586 |

| | | |
|--------------------------------|---------------|--------|
| Term 3 | | |
| Rent Reserved | £600 | |
| YP to 3rd review 21 years @ 7% | 10.8355 | |
| PV of £1 @ 7% in 23.8 years | <u>0.1998</u> | |
| | | £1,299 |

| | | |
|-------------------------|---------|--|
| Term 4 | | |
| Rent Reserved | £800 | |
| YP to end 21 years @ 7% | 10.8355 | |

| | | | |
|-----------------------------|-----------------|---------------|---------------|
| PV of £1 @ 7% in 44.8 years | <u>0.0483</u> | | |
| | | £419 | |
| Reversion | | | |
| FH Reversion | £192,910 | | |
| PV of £1 in 65.8 years @ 5% | <u>0.0403</u> | | |
| | | <u>£7,774</u> | |
| | | | £13,571 |
| Marriage Value | | | |
| Freehold Value of Flat | £192,910 | | |
| less | | | |
| Freeholder's Value | £13,571 | | |
| Existing Lease Value | <u>£171,690</u> | | |
| | | £7,649 | |
| 50% Share | | | <u>£3,824</u> |
| | | | £17,395 |

Non - Participating Flats

Flats 4 & 5

| | | | |
|--|----------|--|--|
| Total Long Lease Value | £257,500 | | |
| Total Freehold Value - 1% uplift | £260,075 | | |
| Existing Lease Values @ 89% relativity | £231,467 | | |

Freeholder's Present Interest

Term

| | | | |
|----------------------------|----------------|--------|--|
| Rent Reserved 2 x £60 p.a. | £120 | | |
| YP 65.8 years @ 7% | <u>14.1192</u> | | |
| | | £1,694 | |

Reversion

| | | | |
|-----------------------------|---------------|----------------|---------|
| FH Reversion | £260,075 | | |
| PV of £1 in 65.8 years @ 5% | <u>0.0403</u> | | |
| | | <u>£10,481</u> | |
| | | | £12,175 |

Hope Value

| | | | |
|-------------------------|-----------------|---------|-------------|
| Freehold Value of Flats | £260,075 | | |
| less | | | |
| Freeholder's Value | £12,175 | | |
| Existing Lease Values | <u>£231,467</u> | | |
| Marriage Value | | £16,433 | |
| Hope Value 5% Share | | | <u>£822</u> |
| | | | £12,997 |

Flat 9

| | | | |
|----------------------------------|----------|--|--|
| Total Long Lease Value | £151,750 | | |
| Total Freehold Value - 1% uplift | £153,267 | | |

Term

| | | | |
|---------------|------------|--|--|
| Term 1 | | | |
| Rent Reserved | Peppercorn | | |

Reversion

| | | | | |
|------------------------------|-----------------|--------|------------|----------------|
| FH Reversion | £153,267 | | | |
| PV of £1 in 155.8 years @ 5% | <u>0.0005</u> | | <u>£77</u> | |
| Hope Value | | | | £77 |
| Freehold Value of Flat | £153,269 | | | |
| less | | | | |
| Freeholder's Value | £77 | | | |
| Existing Lease Value | <u>£151,750</u> | | | |
| Marriage value | | £1,442 | | |
| Hope Value 5% Share | | | <u>£72</u> | £149 |
| | | | | |
| Total Payable | | | | £91,008 |