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

**Case reference** : **LON/00AG/OLR/2016/1101**

**Property** : **Flats 11, 12, 14 and 15 Warren  
Court, Euston Road, London NW1  
3AA**

**Applicant** : **Warren Court Investments LLP**

**Representative** : **Mr T Jefferies of Counsel  
instructed by D A Greenberg**

**Respondent** : **London Underground Limited**

**Representative** : **Mr C Heather of Counsel instructed  
by Eversheds**

**Type of application** : **Application under section 48 of the  
Leasehold Reform Housing and  
Urban Development Act 1993**

**Tribunal members** : **Judge N Hawkes  
Mrs S Redmond BSc(Econ) MRICS**

**Date and venue** : **15<sup>th</sup> November 2016 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **12<sup>th</sup> January 2017**

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**DECISION**

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### **Decisions of the Tribunal**

- (1) The open user clause is not to be modified.
- (2) The insurance clause at clause 8 of the Second Schedule is to provide that the lessor is to give "written notice as soon as reasonably practicable".
- (3) The value of 2014 conversion works is not to be disregarded as an improvement under Schedule 13 of the 1993 Act, paragraphs 3(2)(c), 4A(2)(c) and 4B(2)(c).
- (4) The Tribunal's valuations on the assumption that the value of the 2014 conversion work is not to be disregarded as an improvement are attached to this decision marked Appendix A. The premiums payable are £199,081 in respect of Flat 11, £329,671 each in respect of Flats 12 and 14 and £212,779 in respect of Flat 15.
- (5) The Tribunal has also been asked to provide valuations on the assumption that the value of the 2014 conversion work is to be disregarded as an improvement and includes the alternative valuations at Appendix B.

### **The background**

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for the determination of the premiums payable for the grant of new leases of Flats 11, 12, 14 and 15 Warren Court, Euston Road, London NW1 3AA ("the Flats").
2. The respondent is the freehold owner of Warren Court, Euston Road ("the Building"). The Building includes the Warren Court underground station and the Flats are situated on the first floor of the Building.
3. The applicant holds the Building pursuant to a headlease dated 3<sup>rd</sup> December 1936 ("the Headlease"). The Flats are not sub-let and they therefore form part of the Headlease interest.
4. The applicant states that the Flats were converted into offices in around 1944 and that they were then converted back into flats in 2014 by the applicant. The respondent states that it is common ground that the Flats were previously configured and used as offices until they were converted into flats in 2014. However, it is not agreed that the Flats were originally used for residential purposes prior to 1944.

5. By notices served on 12<sup>th</sup> November 2015 pursuant to section 42 of the 1993 Act, the applicant claimed to exercise the right to acquire new leases of the Flats. The landlord served counter-notices pursuant to section 45 of the 1993 Act on 25<sup>th</sup> January 2016. Applications for the determination of the premiums payable and for the determination of the disputed terms of acquisition of the new leases were made to this Tribunal on 7<sup>th</sup> July 2016.
6. There are two terms of the draft new leases which remain in dispute:
- (i) The user clause at paragraph 10 of the Third Schedule. The respondent contends that the user should be defined as “residential purposes or for such other use or uses as may be permitted by the Lessor”. The applicant contends that there should be an open user clause as is the case under the Headlease.
  - (ii) The insurance clause at paragraph 8 of the Second Schedule. The applicant proposes a requirement that 28 days’ notice be given by the lessor if cover for any risk is being withdrawn. The respondent proposes a requirement that the lessor gives “written notice as soon as reasonably practicable” to the lessee.
7. As regards valuation, the experts have submitted a joint Amended Statement of Agreed Facts and Disputed Issues dated 8<sup>th</sup> November 2016 which provides as follows:

***“Agreed Facts***

*Each lease was granted by virtue of the Head Lease granted for a term of 99 years from 25<sup>th</sup> December 1935 at a Ground Rent of £450 per annum. As a result there is no capitalised Ground Rent payable during the remainder of the term and the Ground Rent payable under the Head Lease remains unaltered.*

*Date of Valuation for all flats      12<sup>th</sup> November 2015*

*Term date of Headlease              24<sup>th</sup> December 2035*

*Unexpired term of Headlease      19.12 years*

*Deferment rate                          5%*

*Agreed gross internal floor areas for each flat:*

Flat 11            436 sq ft

Flat 12            722 sq ft

Flat 14            722 sq ft

Flat 15            466 sq ft

*It is agreed that the existing leasehold value for each flat under the Act will be represented by 44% of the freehold value determined for each flat.*

*It is agreed that whilst there is other sales evidence for flats in the vicinity and as the subject property is on the boundary of three postcodes, WC1, W1 and NW1 the sales evidence to be considered for the freehold value of the subject properties will be derived from the three flat sales at 295 Euston Road adjoining the block.*

...

*It is agreed that the uplift from a 109 year lease to a freehold is 1.5%”*

8. The valuation issues which remain in dispute are as follows:
- (i) Whether the value of the works carried out by the applicant in 2014 to convert the offices into flats should be disregarded as an improvement under Schedule 13 to the 1993 Act, paragraphs 3(2)(c), 4A(2)(c) and 4B(2)(c).
  - (ii) The extended lease value/freehold value for each Flat.

### **The hearing and inspection**

9. The applicant was represented by Mr Jefferies of Counsel and the respondent was represented by Mr Heather of Counsel at the hearing.
10. The Tribunal has been provided with a copy of an expert report dated 11<sup>th</sup> November 2016 prepared by Mr K G Buchanan BSc MRICS on behalf of the applicant and with a copy of an expert report dated 14<sup>th</sup> November 2016 prepared by Mr K Ryan FRICS on behalf of the respondent. The Tribunal also heard oral evidence from Mr Buchanan and Mr Ryan.

11. The Tribunal inspected the Flats on the morning of 16<sup>th</sup> November 2016. Both of the experts were present during the Tribunal's inspection of the common parts but neither expert was present during the Tribunal's inspection of the interior of the Flats. The parties' legal representatives were not expected to be present and did not attend the inspection.

**The disputed lease terms**

12. Section 57(1) of the 1993 Act provides:

*57.— Terms on which new lease is to be granted.*

*(1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—*

*(a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;*

*(b) of alterations made to the property demised since the grant of the existing lease; or*

*(c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.*

13. Section 57(6) of the 1993 Act provides:

*(6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—*

*(a) it is necessary to do so in order to remedy a defect in the existing lease; or*

*(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.*

(1) The user clause

*The submissions*

14. The applicant relies upon Gordon v Church Commissioners LRA/110/2006 (in particular, [39] to [47]) and summarises the position as follows:
- (i) The starting point is the terms of the existing lease.
  - (ii) Section 57(1) gives a wide power to allow changes where it applies.
  - (iii) Section 57(6) does not allow new provisions to be introduced.
  - (iv) A “defect” must be judged objectively, and amount to a defect from the perspective of both landlord and tenant.
15. The applicant states that the starting point is the existing lease which contains no restriction limiting use to residential use. The applicant accepts that the new leases are only of the Flats and that section 57(1)(a) is therefore engaged. However, the applicant submits that there is no justification for tightening the user restrictions just because the new leases do not include the rest of the Building. On the applicant’s case, section 57(1)(b) is not engaged because the applicant contends that the Flats were initially flats when the leases were granted.
16. The applicant states that the proposed change to the user covenant cannot be justified under section 57(6) as a “defect” because the existing user covenant is not a defect from the perspective of the tenant.
17. The applicant submits that the proposed change to the user covenant cannot be justified under section 57(6) as a result of any changes in circumstances. The applicant further states that the test is an onerous one and that, even if there were any relevant changes in circumstances, it must also be shown that in light of those changes, “it would be unreasonable to include or include without modification, the term in question.”
18. The applicant states that the existing user clause has stood the test of time, having been in place since the 1930s, and that nobody has suggested that any problem has been caused by having that open user clause. The applicant submits that there is no justification for changing the user clause and notes that the proposed modification is not that consent to a change of use should not be unreasonably withheld.

19. The respondent relies upon Howard de Walden Estate Ltd v Aggio and Ors [2008] UKHL 44 (in particular, [47]-[50]) and draws the Tribunal's attention to the fact that Gordon was cited in argument in Aggio. The respondent states that the Tribunal is effectively "drafting from scratch" ([47] of Aggio) and that the terms of other underleases "will provide very good guidance to the LVT as to the terms to be included" ([48] of Aggio).
20. The respondent argues that Gordon sets out the general approach on a standard claim where there is an existing lease of a flat and that Gordon is useful as general guidance, but that it must yield to Aggio in circumstances in which a new lease is essentially being crafted. The respondent states that, whilst it is not accepted that Gordon is inconsistent with Aggio, if the Tribunal considers that there is any inconsistency, Gordon has been impliedly overruled by Aggio as it is a later decision of a higher court.
21. The respondent initially contended that, whilst the Building was originally mixed use, it is now entirely residential and that therefore residential user is both natural and appropriate. However, it was subsequently agreed between the parties that the Building remains a mixed use block.
22. The respondent states that:
  - (i) a headlease is a different form of lease from a flat lease;
  - (ii) if other new leases in the block are to be taken as "very good guidance" then all 31 of these leases have the restriction on user contended for by the respondent;
  - (iii) it is unattractive for the tenant to say that it should be able to convert to a residential use in order to obtain the benefit of the 1993 Act and a new lease for 90 years at a peppercorn rent and then to seek unlimited freedom to convert back to commercial use in the future;
  - (iv) the proposed user clause is not an absolute limitation and it does admit the possibility of a change of use in the future as may be permitted by the lessor; and
  - (v) it is preferable for estate management reasons to have all the leases of flats in the same form.

23. In response, the applicant states that:

- (i) it has paid a high price for the residential use and it is difficult to envisage how the landlord could complain if the applicant subsequently wanted to change to a different use;
- (ii) the terms of the new leases which are relied upon by the respondent as providing “good guidance” were based on underleases and not on the terms of the headlease so the position in respect of those leases was different; and
- (iii) the mere fact that use is residential does not justify a restricted user clause, there was no restricted user clause in the past and the landlord has to justify the proposed change but has failed to do so.

***The Tribunal’s determination***

24. The Tribunal is not of the view that Aggio is inconsistent with Gordon. The Tribunal notes that Lord Neuberger states at [50] of Aggio:

*“...a lessee (even one whose demise consists of a block of flats) making a claim under Chapter II will have a lease which, as section 57(1) expressly acknowledges, should form the template on which the terms of any new lease are based.”*

25. At [47], Lord Neuberger states:

*“I accept that the covenants and other terms in a lease of a flat, or even in a lease of several flats, would be, at least normally, relatively easy to transfer, without substantial alterations, into a new lease granted pursuant to Chapter II, whereas more considerable alterations would be likely to be needed on translating the terms of a lease of a block of flats into a new lease of a flat.”*

26. At [48], Lord Neuberger states that the terms of other new leases are to be taken as “very good guidance”. He does not state that the terms of such leases must in all circumstances be determinative.

27. The starting point is the terms of the existing lease. The Tribunal is not persuaded that there is any significant difficulty in transferring the user clause of the existing lease into the new leases.

28. The Tribunal notes that the Building is currently mixed use and that there is no suggestion that this going to change. The Tribunal also



notes that that it has not been suggested that any problem has been caused by having had an open user clause in place since the mid-1930s. The Tribunal is not satisfied that the fact that use of the Flats is residential use within a mixed use building justifies the change to the proposed restricted user clause.

29. The Tribunal notes that the terms of the 31 other leases which are relied upon by the respondent were based on underleases and not on the terms of the headlease. In response to questions from the Tribunal, the respondent confirmed that the only estate management difficulty which it is envisaged may flow from retaining the existing user clause is the need to remember that some of the leases are in different terms from others.
30. The Tribunal is not satisfied that the limited estate management inconvenience of having to consider the user clause of each lease in the event of a change of use and to note any differences between the various leases is sufficient to justify the proposed modification. The Tribunal further notes that the respondent is not proposing that consent to a change of use should not be unreasonably withheld.
31. In all the circumstances of this case, the Tribunal is not satisfied that the modification which has been contended for is either required or appropriate to take account of the omission from the new leases of property included in the existing lease but not comprised in the Flats or (if applicable) to take account of alterations made to the property demised since the grant of the new lease.
32. Further, the Tribunal is not satisfied that the proposed modification is necessary in order to remedy a defect in the existing lease. The Tribunal accepts the applicant's submission that the existing user clause cannot objectively be said to contain a defect when viewed from the standpoint of a reasonable tenant. Further, the Tribunal is not satisfied that it would be unreasonable in the circumstances to include without modification the existing user clause in view of changes occurring since the date of commencement of the existing lease.

## **(2) The insurance clause**

### ***The submissions***

33. At present, the tenant insures pursuant to the clause 8 of the Headlease. Since the new leases are to be granted in place of the Headlease, it will be necessary for the landlord to insure after the determination of the Headlease. It is common ground that a new clause is required under section 57 of the 1993 Act.

34. The applicant submits that the new clause should as nearly as possible give the applicant the rights which it has now. The proposed clause relieves the landlord from insuring risks if it is not possible or economic to do so. The applicant states that, in the circumstances, the tenant should have the right to sufficient notice to enable it arrange its own insurance and that the suggested 28 days is not unreasonable. The applicant states that the landlord simply needs to make sure that it obtains terms for renewal more than 28 days before the renewal date.
35. The respondent argues that it is in the hands of the insurers when they tell the landlord what the premium is or when they provide the terms of the new cover. However, organised the landlord is, the landlord may not receive the relevant information 28 days in advance.

### ***The Tribunal's determination***

36. The Tribunal accepts that the landlord may have no control over when relevant information is received from the insurers and finds that the appropriate wording is therefore "written notice as soon as reasonably practicable" rather than "28 days written notice".

### **The valuations**

#### **(1) Tenant's Improvements**

##### ***The submissions***

37. The applicant contends that the effect on value of works which were carried out in 2014 to convert the Flats from offices into flats ("the 2014 conversion works") should be disregarded.
38. Schedule 13 of the 1993 Act, paragraph 3(2)(c) provides that the landlord's interest is to be valued:

*"on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded."*

39. Similar assumptions appear at paragraphs 4A(c) and 4B(c) of Schedule 13 to the 1993 Act.
40. The applicant contends that the 2014 conversion works were improvements carried out at the expense of the tenant which increased the value of the Flats.
41. The applicant referred the Tribunal to Shalson v John Lyon [2004] 1 AC 802, a case under the Leasehold Reform Act 1967 ("the 1967 Act")

and, in particular, to Lord Millet's explanation of the disregard at [31] to [32]:

*"31 ...In order to lead to a diminution in the price the works must (i) consist of an "improvement" (ii) be carried out by the tenant or a predecessor in title at his expense and (iii) increase the value of the house and premises at the relevant time. Nothing more is required. All three conditions were satisfied by the work of reconverting the property to a single undivided house. The work was an improvement, that is to say it was not merely a work of repair or renewal. It was carried out by the tenant at his expense. And it increased the value of the property at the relevant time, in that the property would have been worth less if the work had not been carried out and the house had remained divided into flats. There is no further condition that the work should not consist only of reversing some earlier work or merely restore the property to an earlier state.*

*32 Such a condition would frustrate the purpose of the subsection. It is designed to avoid the tenant having to pay a price which reflects a value in the property for which he has already paid: see Hague on Leasehold Enfranchisement, 3rd ed, p 199, para 9-30. If the tenant carries out alterations to the property which enhance its value he thereby increases the value of the landlord's reversionary interest which he afterwards claims to acquire. The subsection prevents his own expenditure resulting in an increase in the price he has to pay. This would be the case whether or not the work consisted of merely reversing the effect of some earlier work. If the tenant in the present case had served his notice before commencing the work of reconversion, he could not have been required to pay a price which represented more than the current value of a house divided into flats. There is nothing in section 9 to enable the landlord to require the depreciatory consequences of the subdivision to be ignored; nor would this be appropriate when the reduction in the value of the property was due to works to which he had consented or at least not objected (and in the present case for which he had stipulated). It would make no sense to require the tenant to pay a higher price for the property because he served the notice after completing the work of reconversion instead of before commencing it. It would also be unfair when the increase in the value of the property was the result of works which he had carried out at his own expense."*

42. The respondent emphasises that Schedule 13 of the 1993 Act paragraph 3(2)(c) provides that the landlord's interest is to be valued (emphasis added):

*"on the assumption that any increase in the value of **the flat** which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded."*

43. The respondent states that, for the disregard to be engaged, the improvement must be of “the flat” and not of some other kind of property, for example, an office.

44. “Flat” is defined in section 101 of the 1993 Act as follows (emphasis added):

*“flat” means a separate set of premises (whether or not on the same floor)—*

*(a) which forms part of a building, and*

*(b) which is **constructed or adapted for use for the purposes of a dwelling**, and*

*(c) either the whole or a material part of which lies above or below some other part of the building*

45. A “dwelling” is defined in section 101 of the 1993 Act as follows:

*“dwelling” means any building or part of a building occupied or intended to be occupied as a separate dwelling*

46. The respondent contends that the definition of “flat” points towards each of the Flats not being a “flat” until the completion of the conversion works pursuant to the planning permission in 2014 because use for the purposes of a dwelling is key. It is common ground that the Flats were configured as offices and were not being used as separate dwellings prior to the completion of the 2014 conversion works.

47. The respondent states that there is a substantial similarity between the words “constructed or adapted for use for the purposes of a dwelling” in section 101(1)(b) of the 1993 Act and the definition of “house” in section 2(1) of the 1967 Act.

48. The respondent submits that the decision of the House of Lords in Hosebay Ltd v Day [2012] 1 WLR 2884 on the meaning of the words “designed or adapted for living in” in the definition of a “house” at section 2(1) of the 1967 Act is analogous and that the use of the Building rather than its physical appearance is determinative. The respondent notes the inclusion of the word “use” in the 1933 Act definition of “flat”.

49. The respondent states that it follows that, before completion of the conversion works, the Flats were offices and not “flats” as defined by the 1993 Act.

50. The respondent submits that this approach is supported by the decision of the Court of Appeal in Rosen v Trustees of Campden Charities [2002] Ch 69. That case concerned whether the construction of a house pursuant to a building lease amounted to an improvement to the “house and premises” which fell to be disregarding in valuing the freehold under section 9(1A) of the 1967 Act.
51. The Tribunal was referred, in particular, to [15] and [16] of the judgment. At [16], Evans-Lombe J stated (the respondent’s emphasis added):
- “The building of a new house on a bare site (whether a green field or a site on which a previous building which was not a house has been demolished) is not the improvement of the ‘house and premises’ but the provision of a house.”*
52. The respondent submits that the same reasoning can be applied by analogy in the present case. If there was no flat (because it was an office) then the creation of a flat on the site where previously there was an office is not an improvement of “the flat” but the provision of “the flat”. Thus any value associated with the conversion works does not fall to be disregarded under Schedule 13.
53. The respondent states that the disregard is a creature of statute and that such disregards are not universal (Hughes v Borodex [2010] 1 WLR 2682 at [21]). In order to get the benefit of the right to a new lease that is given by the 1993 Act, it was necessary for the applicant to carry out the conversion works. Without carrying out this work, the applicant would not have had any right to a further 90 years at a peppercorn rent. The tenant has not therefore given something for nothing. By spending money on the 2014 conversion works, the tenant has secured the right to a substantial new lease at a peppercorn rent which otherwise it would not have had.
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54. The applicant seeks to distinguish the present case from Rosen on the basis that:
- (i) The present case concerns lease extensions under the 1993 Act rather than a claim for the freehold under the 1967 Act. The wording of the disregard is different. Rosen is not an authority under the 1993 Act.
  - (ii) In Rosen, the tenant carried out the work under an agreement for a lease, the tenant in the present case did not.

- (iii) In the present case, the work was carried out as an improvement to an existing building; it was not the construction of a new house on a bare site.
55. The applicant states that it is common ground that the Flats were within the definition of “flat” at the date of the section 42 notices and submits that this is the only relevant date. The applicant states that it cannot be a requirement that the flat was the same “separate set of premises” when the improvements were carried out.
56. The applicant gave the examples of two flats which are combined or one flat which is divided and, in the process, completely refurbished and submits that it would be contrary to the policy of the disregard to say that the improvements in question cannot be disregarded because they were not to the very same flat which exists at the valuation date.
57. The applicant also submits that it cannot be a requirement that the use was the same when the works were carried out. The applicant gives the examples of a house which was used as a hotel and during that time was not a house or a flat which was in business use, such as a doctor’s surgery. The applicant submits that, if such properties were improved and converted to residential use, the improvements should be disregarded.
58. The applicant contends that it does not matter that when the works were carried out both the layout and the use were different. The applicant states that the Tribunal must look at the Flats as they are now and ask whether they are worth more if the physical work which was carried out in 2014 is disregarded.
59. The applicant contends that the overriding principle is that explained in Shalson and that it would be grossly unfair if the tenant had to pay for the value of the improvements it has carried out at its own expense.

### ***The Tribunal’s determination***

60. The Tribunal is of the view that the respondent’s analysis which has been summarised at Paragraphs 42 to 49 above is correct and that the definition of “flat” in the 1993 Act points towards each of the Flats not being a “flat” until the completion of the conversion works pursuant to the planning permission in 2014.
61. The Tribunal notes that it was stated in Shalson [29] that (emphasis added):

*“Some time before the relevant date for valuation the tenant had at his own expense converted the property from a **house divided into flats to a single house.**”*

62. The issue was not whether conversion works amounted to the provision of a house.
63. In Rosen, it was common ground that the word "improvement" imports a relativity, that is there must be some subject matter for improvement. The question is therefore what is the object to which the word "improvement" is directed.
64. It was argued in Rosen [14] that the 1967 Act contemplates that an application to enfranchise might be made in respect of land which, if there was a building on the land, was one which did not fall within the definition of house.
65. At [15] and [16] Evans-Lombe J stated (emphasis added):

*"15 The tribunal dealt with the matter in this way:*

*"The question is to what must the improvement relate if it is to be a relevant improvement for the purposes of the paragraph? It appears to me that, grammatically, Mr Gaunt (for the trustees) must be right. Mr Berry rightly says that the matter could have been made clear if the draftsman had added the word 'thereto' to 'improvement' thereby referring back directly to 'house and premises'. But I think that in the absence of express direction elsewhere, the reference would grammatically be taken back to the last mentioned object. This, for the reasons which I have already given and are common ground, cannot be 'the value'. The immediate reference back is therefore to the last words of the antecedent phrase that is 'the house and premises'. Certainly there is no grammatical basis for referring to the demised property which is never mentioned in the subsection and is not the subject matter of the valuation. The 'house and premises' are defined by section 2 of the Act. It is provided in subsection (3) that 'the reference to premises is to be taken as referring to [appurtenances] which at the relevant time are let with the house and are occupied with and used for the purposes of the house'. **It follows that in the absence of a house there is no house, nor can there be any premises, nor any 'house and premises' to improve.** From this it must follow that the erection of a house, where no house was there before, cannot be an improvement within the paragraph."*

*16 I respectfully agree with the tribunal. Paragraph (d) does not use such words as "the demised premises" nor are they used in the Act generally. The term used is "house and premises" not "house or premises". From the definition of "house and premises" in section 2(3) it is clear that "premises" cannot exist independently of a house. The building of a new house on a bare site (whether a green field or a site on which a previous building which was not a house has been demolished) is not the improvement of "the house and premises" but the provision of the house."*

66. Whilst Rosen is not an authority under the 1993 Act, the Tribunal accepts the respondent's submission that the reasoning can be applied by analogy in the present case. The Tribunal is not persuaded that the reasoning in Rosen is only applicable in circumstances in which the tenant has carried out the work under an agreement for a lease or where there is no existing building.
67. Accordingly, the Tribunal finds that the value of 2014 conversion works is not to be disregarded as an improvement under Schedule 13 of the 1993 Act paragraphs 3(2)(c), 4A(2)(c) and 4B(2)(c).

## **(2) The freehold values**

68. The Flats comprise two one bedroom and two two bedroom self-contained flats which are situated on the first floor of the Building. The experts have agreed that the sales evidence to be considered for the freehold value of the Flats will be derived from three flat sales at 295 Euston Road adjoining the block, namely the sales of the first floor flat, the second floor flat and the third floor flat at 295 Euston Road.
69. The experts agree that, after adjusting to a lease length of 109 years in November 2015, the rates per square foot are as set out in their table, namely, £797 per square foot in respect of Flat 1; £922 per square foot in respect of the First Floor Flat, and £914 per square foot in respect of the second floor flat.
70. The Tribunal has found that the value of 2014 conversion works is not to be disregarded as an improvement under Schedule 13 of the 1993 Act paragraphs 3(2)(c), 4A(2)(c) and 4B(2)(c).
71. However, the Tribunal has been asked, in any event, to provide alternative valuations on the assumption that the value of the 2014 conversion work is to be disregarded as an improvement. The experts agree that the difference between the improved and the unimproved values of the Flats is £122.50 per square foot.

## ***Adjustments to the comparable sales evidence***

### ***The differences between Warren Court and 295 Euston Road***

72. The differences are helpfully set out in tabular form in the applicant's Skeleton Argument. Mr Ryan is of the view that 295 Euston Road is an inferior building in comparison to Warren Court and he has made adjustment of 10% to reflect this opinion. Mr Buchanan has made no adjustment and the Tribunal is not satisfied that it is appropriate to make any such adjustment.



73. Both Warren Court and 295 Euston Road are in essentially the same location; Warren Court looking over a busy station and 295 Euston Road adjacent but shielded behind a mature tree.
74. Warren Court has what might appear to be a more imposing entrance hall from the exterior. However, although the Tribunal's attention was drawn to Art Deco features, on inspection the entrance hall was neither imposing nor well maintained.
75. The entrance hall was at best in "basic" condition; the carpets were worn; the lift was out of order and had been for two months; the lobby doors needed decoration; and it was clear from the landlord's notices that there were difficulties in keeping unwanted visitors from entering Warren Court.
76. 295 Euston Road is arguably more attractive than Warren Court externally, although it is in need of some repair. Since 295 Euston Road contains a smaller number of flats with fewer people going in and out of the building, it would be likely to be easier to prevent unwanted visitors from entering 295 Euston Road. The Tribunal noted that a bench outside the building had been slept on.
77. A letter box inspection of 295 Euston Road confirmed the absence of any sizeable hallway and the presence of steep stairs rising to the rear.
78. The Tribunal considers that each building has its benefits and disadvantages and the Tribunal is not satisfied that there is any significant difference between the two buildings.

*The First Floor Flat at 295 Euston Road*

79. Since Mr Ryan's 10% adjustment is the only adjustment which has been made in respect of the sales evidence relating to the first floor flat at 295 Euston Road, the Tribunal finds that no adjustments are required and it adopts the agreed adjusted rate of £922 per square foot.

*The Second Floor Flat at 295 Euston Road*

80. Mr Ryan has made a 1% adjustment to reflect the fact that this flat is located on the second floor and, when giving oral evidence, Mr Buchanan accepted that it is appropriate to make a 1% adjustment in respect of each floor level above the first floor. The Tribunal finds that it is appropriate to make a - 1% adjustment to reflect the fact that this flat is located on the second floor of the block
81. Mr Buchanan made a 5% adjustment and Mr Ryan made a 10% adjustment to reflect the absence of a lift. Since the staircase is steep,

Tribunal prefers Mr Ryan's evidence on this point and makes a + 10% adjustment.

82. Unlike the second and third floor flats at 295 Euston Road, the Warren Court Flats and the First Floor flat at 295 Euston Road have no residents' parking rights.
83. Mr Buchanan has made an adjustment of 3% to reflect the absence of parking rights. In his opinion, if there were two identical flats and one had parking rights but the other did not, the parking rights would be likely to affect the amount which a purchaser would be prepared to pay.
84. Mr Ryan has made no adjustment. In his opinion, anyone who is buying or renting one of the Flats will have chosen such a central location close to or on top of an underground station because they have no car and no need for a car and use public transport. He also gave evidence that there is in fact very little residents' parking in the vicinity of Warren Court.
85. The Tribunal accepts that to have potential parking rights would be a minor advantage although it considers that many people in the relevant market would not have cars and it accepts Mr Ryan's evidence that there are not many parking spaces available in the immediate vicinity. The Tribunal finds that, in all the circumstances, it is appropriate to make a small 1% adjustment in respect of the parking rights.
86. Mr Buchanan has made an adjustment of 10% to reflect the condition of this property relative to the improved Flats and Mr Ryan has made an adjustment of 5%. The Tribunal has not inspected the interior of the comparables and neither had either expert. Doing its best on the limited available evidence, the Tribunal makes an adjustment of + 7.5%.

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*The Third Floor Flat at 295 Euston Road*

87. The parties agree that a 2% adjustment should be made to reflect the floor level and the Tribunal is satisfied that a - 2% adjustment is appropriate.
88. Mr Buchanan made a 5% adjustment and Mr Ryan made a 10% adjustment to reflect the absence of a lift. Since the staircase is steep, Tribunal prefers my Ryan's evidence on this point and makes a + 10% adjustment.
89. For the reasons set out above, the Tribunal makes a - 1% adjustment in respect of the parking rights.

90. Mr Buchanan has made an adjustment of 10% to reflect the condition of this property relative to the improved Flats and Mr Ryan has made an adjustment of 5%. The Tribunal has not inspected and, doing its best on the limited available evidence, it makes an adjustment of + 7.5%.
91. The Tribunal applies a total adjustment of + 14.5% to the agreed adjusted value of £797 per square foot to derive an adjusted figure of £1,046 per square foot.

*Proposed adjustments for size*

92. Mr Ryan has made an adjustment for size for flats 12 and 14 of 1% and an adjustment for size for Flats 11 and 15 of 2.5% on the basis that flat 1 at 295 Euston Road (the second floor flat) is 1002 square foot; the first floor flat is 877 square foot; and flat 2 (the third floor flat) is 970 square foot compared to the subject flats at 436, 466 and 722 square foot. Mr Buchanan stated that these differences are not significant between the two blocks overall.
93. The Tribunal does not accept that there is enough difference between the flats in this location to warrant making an adjustment on account of size.

***The settlement evidence for Flat 16 Warren Court and the 2010 Tribunal decisions***

94. At paragraph 6.1 of his report, Mr Buchanan states that he has relied upon the three sales at 295 Euston Road supported by settlement evidence relating to flat 16 Warren Court (with a valuation date in June 2013) and, to a limited extent, on 2010 Tribunal decisions which have been adjusted for time. In oral evidence, Mr Buchanan stated that the Tribunal decisions are “not out of kilter” with the settlement evidence but that he does not rely to any great degree on the Tribunal decisions. Mr Ryan simply relies upon the three sales at 295 Euston Road.
95. The Tribunal finds that the settlement evidence relating to flat 16 Warren Court is only relevant as background information because it is both settlement evidence and 2.5 years before the valuation date. The Tribunal has not placed any weight on the Tribunal decisions which, in any event, do not appear to have been relied upon by Mr Buchanan.
96. The Tribunal therefore takes the average of the adjusted figures for the comparable flats at £963 per square foot and derives a FHVP value of £978 per square foot after applying the agreed uplift for the subject flats in an unimproved condition without any adjustment for 2014 conversion works.

### **(3) The Tribunal's valuations**

97. The Tribunal's valuations are attached to this decision marked Appendix A and Appendix B.
98. The premiums payable are therefore £199,081 in respect of Flat 11, £329,671 each in respect of Flats 12 and 14 and £212,779 in respect of Flat 15.
99. The alternative premiums if, contrary to this decision, the value of the 2014 conversion work were to be disregarded as an improvement would be £173,636 in respect of Flat 11, £287,535 each in respect of Flats 12 and 14 and £185,584 in respect of Flat 15.

Judge N Hawkes

12<sup>th</sup> January 2017

## Appendix A

### VALUATION FOR PREMIUM FOR A NEW LEASE

Leasehold Reform, Housing and Urban Development Act 1993

Flats 11, 12, 14 and 15, Warren Court, Euston Road LONDON NW1 3AA

#### Agreed facts and matters

Approximately 19.12 years remaining on Headlease

Ground rent: nil

Valuation date: 12th November 2015

GIA: 436, 722, 722, 466 sq.ft.

Capitalisation rate n/a

Deferment rate 5%

Relativity 44%

Uplift to Freehold reversion value 1.5%

Headlessee's loss nil

295 Euston Road comps per agreed schedule adjusted to 109 years lease November 2015:

Flat 1 797 psf; First floor flat 922 psf; Flat 2 914 psf

Agreed value of improvements for alternative valuation £122.50 psf

#### Determined by tribunal

Long leasehold value unimproved, no deduction for 'conversion' improvement £963 psf

FHVP unimproved, no deduction for 'conversion' improvement £978 psf

#### Flat 11

##### Diminution in Value of Freeholder's interest

Reversion

Virtual freehold value

Deferred 19.12 years @ 5%

Less Freeholder's interest at end of extended lease

Deferred 109.12 years @ 5%

##### Calculation of Marriage Value

Value of proposed interests:

Landlord's

Tenant's new 109.12 year lease at a peppercorn

Less value of existing interests:

Landlord's

Tenant's existing lease

Marriage Value

50% marriage value attributed to landlord

**TOTAL PREMIUM PAYABLE Flat 11**

|   | £               | £              | £                              |
|---|-----------------|----------------|--------------------------------|
| Reversion   |                 |                |                                |
| Virtual freehold value                              | 426,408         |                |                                |
| Deferred 19.12 years @ 5%                           | <u>0.393507</u> | 167,795        |                                |
| Less Freeholder's interest at end of extended lease | 426,408         |                |                                |
| Deferred 109.12 years @ 5%                          | <u>0.004874</u> | <u>2,078</u>   |                                |
|   |                 |                | 165,716                        |
| Value of proposed interests:                        |                 |                |                                |
| Landlord's  | 2,078           |                |                                |
| Tenant's new 109.12 year lease at a peppercorn      | <u>420,012</u>  |                |                                |
|   |                 | 422,144        |                                |
| Less value of existing interests:                   |                 |                |                                |
| Landlord's  | 167,795         |                |                                |
| Tenant's existing lease                             | <u>187,620</u>  | <u>355,414</u> |                                |
| Marriage Value                                      |                 | 66,730         |                                |
| 50% marriage value attributed to landlord           |                 |                | <u>33,365</u>                  |
| <b>TOTAL PREMIUM PAYABLE Flat 11</b>                |                 |                | <b><u><u>\$199,081</u></u></b> |

**Flats 12 and 14**

|   | £               | £              | £                       |
|---|-----------------|----------------|-------------------------|
| <b>Diminution in Value of Freeholder's interest</b>     |                 |                |                         |
| Reversion   |                 |                |                         |
| Virtual freehold value                                  | 706,116         |                |                         |
| Deferred 19.12 years @ 5%                               | <u>0.393507</u> | 277,862        |                         |
| Less Freeholder's interest at end of extended lease     | 706,116         |                |                         |
| Deferred 109.12 years @ 5%                              | <u>0.004874</u> | <u>3,442</u>   |                         |
|   |                 |                | 274,420                 |
| <b>Calculation of Marriage Value</b>                    |                 |                |                         |
| Value of proposed interests:                            |                 |                |                         |
| Landlord's  | 3,442           |                |                         |
| Tenant's new 109.12 year lease at a peppercorn          | <u>695,524</u>  |                |                         |
|   |                 | 699,055        |                         |
| Less value of existing interests:                       |                 |                |                         |
| Landlord's  | 277,862         |                |                         |
| Tenant's existing lease                                 | <u>310,691</u>  | <u>588,553</u> |                         |
| Marriage Value  |                 | 110,502        |                         |
| 50% marriage value attributed to landlord               |                 |                | <u>55,251</u>           |
| <b>TOTAL PREMIUM PAYABLE for each of Flat 12 and 14</b> |                 |                | <b><u>\$329,671</u></b> |

**Flat 15**

|   | £               | £              | £                       |
|---|-----------------|----------------|-------------------------|
| <b>Diminution in Value of Freeholder's interest</b> |                 |                |                         |
| Reversion   |                 |                |                         |
| Virtual freehold value                              | 455,748         |                |                         |
| Deferred 19.12 years @ 5%                           | <u>0.393507</u> | 179,340        |                         |
| Less Freeholder's interest at end of extended lease | 455,748         |                |                         |
| Deferred 109.12 years @ 5%                          | <u>0.004874</u> | <u>2,221</u>   |                         |
|   |                 |                | 177,119                 |
| <b>Calculation of Marriage Value</b>                |                 |                |                         |
| Value of proposed interests:                        |                 |                |                         |
| Landlord's  | 2,221           |                |                         |
| Tenant's new 109.12 year lease at a peppercorn      | <u>448,912</u>  |                |                         |
|   |                 | 451,191        |                         |
| Less value of existing interests:                   |                 |                |                         |
| Landlord's  | 179,340         |                |                         |
| Tenant's existing lease                             | <u>200,529</u>  | <u>379,869</u> |                         |
| Marriage Value                                      |                 | 71,321         |                         |
| 50% marriage value attributed to landlord           |                 |                | <u>35,661</u>           |
| <b>TOTAL PREMIUM PAYABLE Flat 15</b>                |                 |                | <b><u>\$212,779</u></b> |

## Appendix B

### VALUATION FOR PREMIUM FOR A NEW LEASE

Leasehold Reform, Housing and Urban Development Act 1993

Flats 11, 12, 14 and 15 ,Warren Court, Euston Road LONDON NW1 3AA

#### Agreed facts and matters

Approximately 19.12 years remaining on Headlease

Ground rent: nil

Valuation date: 12th November 2015

GIA: 436, 722, 722, 466 sq.ft.

Capitalisation rate n/a

Deferment rate 5%

Relativity 44%

Uplift to Freehold reversion value 1.5%

Headlessee's loss nil

295 Euston Road comps per agreed schedule adjusted to 109 years lease November 2015:

Flat 1 797 psf; First floor flat 922 psf; Flat 2 914 psf

Agreed value of improvements for alternative valuation £122.50 psf

#### Determined by tribunal

Long leasehold value unimproved, adjusted for 'conversion' improvement £840.50 psf

FHVP unimproved, adjusted for 'conversion' improvement £853 psf

#### Flat 11

##### Diminution in Value of Freeholder's interest

Reversion

Virtual freehold value

Deferred 19.12 years @ 5%

Less Freeholder's interest at end of extended lease

Deferred 109.12 years @ 5%

##### Calculation of Marriage Value

Value of proposed interests:

Landlord's

Tenant's new 109.12 year lease at a peppercorn

Less value of existing interests:

Landlord's

Tenant's existing lease

Marriage Value

50% marriage value attributed to landlord

**TOTAL PREMIUM PAYABLE Flat 11**

|   | £               | £              | £                       |
|---|-----------------|----------------|-------------------------|
| Virtual freehold value                              | 371,908         |                |                         |
| Deferred 19.12 years @ 5%                           | <u>0.393507</u> | 146,348        |                         |
| Less Freeholder's interest at end of extended lease | 371,908         |                |                         |
| Deferred 109.12 years @ 5%                          | <u>0.004874</u> | <u>1,813</u>   |                         |
|   |                 |                | 144,536                 |
| Landlord's  | 1,813           |                |                         |
| Tenant's new 109.12 year lease at a peppercorn      | <u>366,329</u>  |                |                         |
|   |                 | 368,189        |                         |
| Landlord's  | 146,348         |                |                         |
| Tenant's existing lease                             | <u>163,640</u>  | <u>309,988</u> |                         |
| Marriage Value                                      |                 | 58,201         |                         |
| 50% marriage value attributed to landlord           |                 |                | <u>29,100</u>           |
| <b>TOTAL PREMIUM PAYABLE Flat 11</b>                |                 |                | <b><u>\$173,636</u></b> |

**Flats 12 and 14**

| <b>Diminution in Value of Freeholder's interest</b>     | £               | £              | £                       |
|---|-----------------|----------------|-------------------------|
| Reversion   |                 |                |                         |
| Virtual freehold value                                  | 615,866         |                |                         |
| Deferred 19.12 years @ 5%                               | <u>0.393507</u> | 242,348        |                         |
| Less Freeholder's interest at end of extended lease     | 615,866         |                |                         |
| Deferred 109.12 years @ 5%                              | <u>0.004874</u> | <u>3,002</u>   |                         |
|   |                 |                | 239,346                 |
| <b>Calculation of Marriage Value</b>                    |                 |                |                         |
| Value of proposed interests:                            |                 |                |                         |
| Landlord's  | 3,002           |                |                         |
| Tenant's new 109.12 year lease at a peppercorn          | <u>606,628</u>  |                |                         |
|   |                 | 609,707        |                         |
| Less value of existing interests:                       |                 |                |                         |
| Landlord's  | 242,348         |                |                         |
| Tenant's existing lease                                 | <u>270,981</u>  | <u>513,329</u> |                         |
| Marriage Value  |                 | 96,379         |                         |
| 50% marriage value attributed to landlord               |                 |                | <u>48,189</u>           |
| <b>TOTAL PREMIUM PAYABLE for each of Flat 12 and 14</b> |                 |                | <b><u>\$287,535</u></b> |

**Flat 15**

| <b>Diminution in Value of Freeholder's interest</b> | £               | £              | £                       |
|---|-----------------|----------------|-------------------------|
| Reversion   |                 |                |                         |
| Virtual freehold value                              | 397,498         |                |                         |
| Deferred 19.12 years @ 5%                           | <u>0.393507</u> | 156,418        |                         |
| Less Freeholder's interest at end of extended lease | 397,498         |                |                         |
| Deferred 109.12 years @ 5%                          | <u>0.004874</u> | <u>1,937</u>   |                         |
|   |                 |                | 154,481                 |
| <b>Calculation of Marriage Value</b>                |                 |                |                         |
| Value of proposed interests:                        |                 |                |                         |
| Landlord's  | 1,937           |                |                         |
| Tenant's new 109.12 year lease at a peppercorn      | <u>391,536</u>  |                |                         |
|   |                 | 393,523        |                         |
| Less value of existing interests:                   |                 |                |                         |
| Landlord's  | 156,418         |                |                         |
| Tenant's existing lease                             | <u>174,899</u>  | <u>331,317</u> |                         |
| Marriage Value                                      |                 | 62,206         |                         |
| 50% marriage value attributed to landlord           |                 |                | <u>31,103</u>           |
| <b>TOTAL PREMIUM PAYABLE Flat 15</b>                |                 |                | <b><u>\$185,584</u></b> |