

We exercise our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct the clerical mistake, accidental slip or omission at paragraph 44 of and the Appendix to our Decision dated 12 December 2018. Our amendments are made in bold. We have corrected our original decision because of a clerical mistake in the formulae entered into a spreadsheet application used by the Tribunal.

Signed: Tribunal Judge Mark Loveday

Dated: 15 February 2019



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

Case Reference	: CHI/29UC/OLR/2018/0146
Property	: Flat 4 Cecil Court, Herne Bay, Kent CT6 6DN
Applicant	: Colwell Ltd (Tenant)
Representative	: P Tapsell of counsel, instructed by Parry Law, solicitors
Respondent	: Roger Johnson (Landlord)
Representative	: J Wilkins FRICS
Type of Application	: Lease extension under Leasehold Reform Housing and Urban Development Act 1993
Tribunal Members	: Judge M Loveday R Athow FRICS MIRPM
Date and venue of hearing	: 18 October 2018, The Courthouse, Cecil Square, Margate CT9 1RL
Date of Decision	: 12 December 2018

DECISION

Introduction

1. This is an application for a lease extension under Chapter II of Part I of the Leasehold Reform Housing and Urban Development Act 1993. The

matter relates to a flat and garage at 4 Cecil Court, Herne Bay, Kent CT6 6DN. The Applicant is the tenant of the flat and the Respondent is the landlord.

2. The Flat is demised by a lease dated 16 August 1962 for a term of 99 years from 25 March 1962 (“the flat lease”). The garage is let on a separate lease dated 12 December 1967 for a term of 99 years from 12 December 1967 (“the garage lease”). The two leases are not therefore coterminous.
3. By a s.42 Notice of Claim dated 30 October 2017, the Applicant’s predecessors in title claimed a new lease or leases of the flat and garage and proposed a premium of £14,800. The Respondent gave a s.45 Counternotice dated 12 January 2018 which admitted the right to acquire a new lease and counter proposed a premium of £53,765. The parties were unable to agree matters, and by an application dated 4 July 2018, the Applicant sought a determination under s.48(1) of the Act. The terms of the new tenancy appear to have been agreed, and the disputed premium was therefore listed for hearing on 18 October 2018. The Tribunal inspected the subject premises (and a number of the comparables) on the same day.
4. At the hearing, the Applicant was represented by counsel, Mr Paul Tapsell, who relied on the valuation evidence of Mr Charles Oliver FRICS. The Respondent was represented by Mr Julian Wilkins FRICS. The Tribunal is grateful to counsel and both valuers for their succinct and helpful submissions and evidence.

Inspection

5. The subject premises are located close to Herne Bay Town Centre and station approximately 500m from the seafront. They are on the first floor of a purpose-built block of flats c.1962 on a small estate. The 2-storey block is built of brick under a pitched concrete tile roof with uPVC windows and doors. The flat itself comprises a living room, 2 bedrooms, kitchen and bathroom/WC with stairs down to a private

street door at the front of the block. Mr Wilkins measured the internal GIA of the flat at 68.2m² and this is consistent with what was seen on inspection. Internally, there is a full range of fitted cupboards, kitchen units and radiators. Space and water heating are provided by a modern boiler in a cupboard in the hallway. Externally, there is a shared garden to the rear and a separate garage block containing the garage for the subject premises. The estate, the block and the interior of the flat are generally in good order.

6. The Tribunal inspected a number of comparables in Herne Bay externally, including the properties at 28b East Street, Ground Floor Flat 4 Tyndale Park and 17 Arkley Road.

Agreed matters

7. There is a Statement of Agreed Facts dated 17 September 2019, and the following matters were agreed:
 - a. The valuation date is 31 October 2017.
 - b. The unexpired term of the flat lease on the valuation date was 43.39 years and the unexpired term of the garage lease on the valuation date was 49.11 years.
 - c. A capitalisation rate of 7%.
 - d. A deferment rate of 5%.
 - e. The long leasehold value of the garage is £13,000.
8. At the start of the hearing, the experts further agreed the value of the term of the flat lease was £135, and the value of the term of the garage lease was £28.
9. The following issues are in dispute:
 - a. The long leasehold value of the flat;
 - b. Relativity;
 - c. Disregard for improvements;
 - d. Uplift to Freehold Value, and;
 - e. The long leasehold value of the flat.

The extended leasehold value of the flat

10. The Applicant's case. Mr Oliver's report is dated 20 September 2018. At section 9 of his report, he referred to eight sales of flats in Herne Bay:

- a. A sale of Flat 3, Cecil Court for £119,000 in November 2014, which was as two-bedroom flat in the same block. He updated this to October 2017 values using the Land Registry Price Index to produce a value of £144,500.
- b. A sale of Flat 6, Cecil Court for £60,000 in December 2011.
- c. A sale of a two bedroom flat in Beltinge Road for £117,000 in July 2015.
- d. A sale of a two bedroom flat at 26 Cavendish Road for £175,000 in December 2017.
- e. A sale of a two bedroom flat in Oakdale Road for £167,000 in June 2017.
- f. A sale of a two bedroom flat in South Road for £140,000 in September 2017.
- g. A sale of a two bedroom flat in Arkley Road for £163,000 in May 2017.
- h. A sale of a two bedroom flat in Weyman Terrace for £176,000 in September 2017.

Taking all these into account, Mr Oliver considered the extended lease value for the flat on the valuation date should be £175,000.

11. At the hearing, Mr Oliver was cross-examined by Mr Wilkins. Mr Oliver agreed he had made no adjustments to the comparables to reflect such details as condition, tenure, the benefit of a garden or shared garden etc. However, he considered a valuer would say that such matters "had no value at all". For example, in respect of the garden some buyers might prefer not to have use of one. It was suggested by Mr Wilkins that the comparable amounted to little more than a "simplified list" which was unhelpful – but Mr Oliver disagreed. Mr Oliver also accepted his comparables produced a wide range of outcomes (excluding 6 Cecil Court, the range was between £117,000 and £176,000).

12. In closing, Mr Tapsell submitted that the comparables relied upon by Mr Wilkins were unreliable. They did not bear any resemblance to the subject property. And referring to a map in the bundle showing the location of the comparable, Mr Tapsell suggested they were not geographically close.
13. The Respondent's case. The report of Mr Wilkins is dated 25 September 2018. Section referred to eight comparables in and around Herne Bay (including two sales considered by Mr Oliver):
- a. A sale of a one-bedroom apartment at 7a Douglas Road for £180,000 in November 2017. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £191,300.
 - b. The sale of a two bedroom flat at 2 Weyman Terrace for £176,000 in November 2017 referred to above. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £182,250.
 - c. A sale of a two-bedroom maisonette at 29 Kite Farm, Swalecliffe for £216,000 in March 2018. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £204,500.
 - d. A sale of a two-bedroom flat at 24 St Augustine's Court for £205,000 in April 2018. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £188,500.
 - e. A sale of a two-bedroom flat at 28b East Street for £180,000 in July 2018. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £199,500.
 - f. A sale of a flat at 4 Tyndale Park for £228,000 in April 2018. Mr Wilkins made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £216,500.

- g. The above sale of a two bedroom flat at 26 Cavendish Road for £175,000 in December 2017. He made various adjustments and updated to October 2017 values using the Land Registry Price Index to produce a value of £177,400.
- h. A sale of a two bedroom flat at Flat 1, 62 Mickleburgh Hill for £187,500 in December 2017.

Mr Wilkins considered three (Douglas Road, Tyndale Park and Mickleburgh Hill) to be most comparable in terms of location, and two (Kite Farm and St. Augustine's Court) to be most comparable in terms of building type and accommodation. He concluded the extended lease value for the flat on the valuation date was £180,000.

- 14. Mr Wilkins was cross-examined by counsel about the comparables. In response to questions from the Tribunal, he accepted that having adjusted the eight comparables for various features and updated for time to October 2017, he had not placed any particular weight on any of the individual sales. He had not taken an average, because his approach was "conservative". Moreover, when asked which was the 'best' comparable, he replied "none".
- 15. In closing, Mr Wilkins submitted that he had adjusted the comparables in a conventional way, but that Mr Oliver's comparables lacked any detail.
- 16. Discussion. In relation to the long leasehold value of the flat on the valuation date, the experts are only some £5,000 (or 2%) apart. However, the Tribunal has significant reservations about the approach adopted by both valuers.
 - a. It accepts Mr Oliver ought properly to have considered adjustments to the sales values to reflect the very different features of each comparable transaction, such as sales dates and condition. Adjustments for matters such as location, physical state, tenure, purpose and time are fundamental features of any comparative market approach to valuation: see for example,

Modern Methods of Valuation, (12th Ed.), Ch.4. Taking the one example used at the hearing, the Tribunal considers that an adjustment for presence of a garden or a shared garden would ordinarily be made by valuers – and there was no evidence produced that this kind of feature would not make any difference to values in Herne Bay. Failure to make these commonplace adjustments results in Mr Oliver producing a very wide range of unadjusted sales values (£117,000 to £176,000, excluding 6 Cecil Court), which is of practically no assistance in helping the Tribunal determine what is only a 2% difference in capital values between the experts. Moreover, there is no attempt at any analysis of the figures by giving weight to some or rejecting others for reasons which are explained.

- b. Mr Wilkins did adopt a conventional approach to adjustments for property type, condition and time etc. However, he too did not attempt to give weight to any particular transaction or group of transactions. Mr Wilkins specifically declined the invitation of the Tribunal to take an average of any group of his comparables or to select a 'best' comparable transaction. Again, Mr Wilkins produces an unacceptably wide range of values derived from comparables, which is of limited assistance to the Tribunal in this case.

17. The Tribunal has therefore considered afresh the 14 comparables referred to by the experts, particulars of which are given in the appendices to the two expert reports. According to these particulars, most are flat conversions (as opposed to purpose-built modern properties), which the Tribunal considers is a different market. It has then disregarded sales more than 10 months before and after the valuation date, since the required adjustments for time would render these comparables unreliable. Of the sales of the remaining purpose-built flats:

- (a) 17 Arkley Road. This is a maisonette in a terrace of properties built about 100 years ago and is not of similar construction.

- (b) 2 Weyman Terrace. This is of similar size to the subject property, but over 1.5 mile from Herne Bay Town Centre.
- (c) 29 Kite Farm. This is 3 miles from Herne Bay Town Centre in the Swalecliff residential area. This is a very different geographical location.
- (d) 24 St Augustine's Court. This is of similar size, but again 1.2 miles from Herne Bay Town Centre.

The Tribunal therefore places no weight on this sales evidence.

18. Ultimately, the Tribunal prefers to rely on the sale of the purpose-built two bedroom flat at 28b East Street. This is close to the subject premises in the Town Centre, is a sale of first floor two-bedroom flat purpose built flat and it is of modern construction. The Tribunal adopts Mr Wilkins's adjustment for time derived from the Land Registry House Price Index (Flats and Maisonettes, Canterbury) to produce a value of £179,476 for 28b East Street on the valuation date (say £179,500). It then makes the following adjustments:

- a. Mr Wilkins adds £10,000 for the use of a garden at the subject premises (the flat at East Street has no garden). However, the garden at the subject premises is shared and is not at the same level as the premises themselves. The Tribunal therefore adds £3,000 for the benefit of the garden.
- b. Mr Wilkins adds a further £10,000 for location, based on the fact that 22b East Street is adjacent to a public house and a takeaway shop. However, the Tribunal adds nothing for this. 22b East Street is in a busier location, but it is not directly over commercial premises. Any marginal effect of the takeaway and pub are likely to be balanced by the East Street premises being even more centrally located and closer to the sea front.
- c. Although 22b East Street does not have off-street parking, there is (much-prized) residents' on-street parking available immediately outside the block. The Tribunal deducts a further £2,500 for this factor.

- d. The comparable is evidently larger than the subject premises and has the benefit of a small *ensuite* bathroom. The Tribunal would deduct £5,000 for size.

The above produces a long leasehold value for the flat alone of £174,500, say £175,000. This is the figure adopted by Mr Oliver (albeit that we have reached this conclusion by a different route to that advanced by the expert). As explained above, the long leasehold value of the garage is agreed at £13,000.

Disregard for improvements

19. The Applicant's case. Mr Oliver contended that it was also necessary to disregard tenant's improvements. His report stated that the subject property had recently sold for £100,000 with a short lease. A Mr Burrochi had informed him that after he bought the flat he undertook significant works to bring it up to the condition seen on inspection. Much of the work was maintenance, but £4,155 was spent on a new central heating system.
20. In his evidence, Mr Oliver disagreed with Mr Wilkins's opinion about the possible value of the alleged improvements. If someone spent £4,155 on heating for a flat, they would usually expect to increase the value by more than that. He referred to the sales particulars for the subject premises, which specifically mentioned that "central heating could be installed". This suggested the flat had no central heating as at the date of marketing on 29 March 2017.
21. In closing, the Tribunal directed the Applicant to the relevant test in Sch.6 para 3 to the Act. Mr Tapsell submitted that one could infer from the sales particulars that the improvements had been carried out by the tenant or the tenant's predecessor in title at his own expense.
22. The Respondent's case. Mr Wilkins did not consider any disregard should be made for tenant's improvements. He referred in his report to the test in LRHUDA 1993 Sch.13. There had to be evidence that the

tenant or the tenant's predecessor in title carried out the improvements at his own expense. He contended that the central heating had been installed after the valuation date, and that this did not therefore affect valuation. In any event, cost and value were not the same and in his view the addition of central heating would (in his view) not normally affect the value by more than £1,500-£2,500.

23. In closing, Mr Wilkins submitted there was no evidence to support any disregard for improvements under Sch.13.

24. Discussion. There is a dispute about the value of any improvements which might be disregarded. But more fundamentally, Mr Wilkins specifically raised the issue about who carried out the alleged central heating works and who paid for them. LRHUDA 1993 Sch.13 para 3(2)(c) states that in valuing the diminution of the landlord's interest, the price payable in the open market is assessed "on the assumption that any increase in the value of any 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." As the Tribunal explained to the parties at the hearing, this involves questions of fact, and the burden lies on the tenant to prove the requisite elements of the disregard on the balance of probabilities¹.

25. As to the evidence of improvements, Mr Oliver was able to give some hearsay evidence about the timing of the installation of central heating. There are also the sales particulars which tend to suggest there may not have been a central heating system in place before the most recent sale. However, there is simply no evidence at all that the tenant (now Colwell Ltd) or its predecessors in title installed the new heating system, or that this was at the expense of the tenant or predecessor. The tenant has not discharged the evidential burden under the Act – and no disregard should therefore be made under Sch.13 para 3(2)(c).

¹ See *Shalson v John Lyon's Charity* [2004] 1 A.C. 802 and *Portman Estate v Jamieson* [2018] UKUT 0027 (LC).

Uplift to Freehold Value

26. This is a relatively brief point. Mr Wilkins states at para 3.17 of his report that there is no difference in value between the long leasehold vacant possession value and the freehold vacant possession value.
27. In closing, Mr Wilkins submitted it was not always the case that there was a difference in value between a long lease and a freehold. With a lot of flats, it made no difference at all. Mr Wilkins referred to Worthing, West Sussex, where there were a lot of flying freeholds, and where the prices were much the same as leasehold flats.
28. Mr Oliver's valuation also made no uplift. He simply adopted a freehold value of £170,845 by deducting "heating costs" of £4,155 from his extended lease value of £175,000. But when asked by the Tribunal, Mr Oliver accepted there must be some uplift from this figure to freehold value.
29. Discussion. The Tribunal does not agree with Mr Wilkins on the point. Even for a lease with 100 years' unexpired, it is common practice to make a small adjustment to reflect the additional value of a freehold. Since the hearing, the Tribunal's attention has been drawn to the case of *Contactreal Limited v Smith* [2017] UKUT 178 (LC)², where an allowance of 1% was described as being "in accordance with Tribunal practice and valuation principle": at para 73. The Tribunal therefore adopts this approach to long leasehold to freehold relativity. This uplift can be applied to both the flat lease and the garage lease.
30. It follows that the Tribunal finds the notional freehold value of the flat with vacant possession should be £175,000 + £1,750 (1%) = £176,750. the notional freehold value of the garage with vacant possession should be £13,000 + £130 (1%) = £13,130.

² See also *Elmbirch Properties plc, re: 51 and 85 Humphrey Middlemore Drive* [2017] UKUT 314 (LC) and *Sinclair Gardens Investments (Kensington) Ltd re: Flats 9 and 11 George Court, 37 George Street, Chelmsford* [2017] UKUT 0494 (LC).

Relativity

31. For the purposes of leasehold relativity, it is necessary to consider the flat lease and garage lease separately.
32. The Applicant's case. Mr Oliver's report dealt with relativity fairly briefly. He relied on the myleasehold Graphs of Relativity website, where he input an unexpired term of 43.39 years for the flat lease and 49.10 years for the garage lease. For the flat lease, this website gave an average of the Greater London and England graphs of relativities as 66.92%. He then applied this to his £170,845 freehold value for the flat to arrive at an existing lease value of £114,329.47.
33. At the hearing, Mr Wilkins cross-examined Mr Oliver at some length about his reliance on graph evidence of relativities. Mr Wilkins took Mr Oliver to the relevant passages in *Trustees of Sloane Stanley Estate v Mundy and others* [2016] UKUT 0223(LC); [2016] L&TR 32. Mr Oliver argued he had not ignored the guidance in *Mundy*, because there was no reliable evidence of a sale of a short lease within the block, as envisaged in para 168 of the decision. The sale of the lease was a probate sale, which it was recognised would be below market value. The flat and garage had first been marketed for £135,000 in March 2017: see Rightmove sales particulars. But the Applicant eventually completed the purchase of the flat (and garage) for £100,000 on 8 November 2017: see Office Copy entries for title number K163294. It sold for less than the true market value. Mr Wilkins put it to Mr Oliver that the property had been fully marketed by the agents whose name appeared on the particulars (Ward & Partners) for several months, and that the offer of £100,000 was *prima facie* the best offer received. Mr Oliver accepted it was a market sale, but the price had been affected by the tired condition and the circumstances of the sale. It was necessary to compare like with like, and the November 2017 sale was a sale of a wholly unimproved property. Mr Oliver submitted that Mr Wilkins's analysis was totally 'out of synch' with the tables of relativity.

34. The Respondent's case. Mr Wilkins referred to and relied upon the guidance in *Mundy*. In this case he submitted there was evidence within the block of a market transaction in the 'Act World' with a short lease, since the flat and garage were sold together with their existing leases for £100,000 on 8 November 2017. The sales particulars suggested the flat was sold in "reasonable order throughout", and this was supported by the photographs in the sales particulars. Mr Wilkins accepted that some allowance for condition of the flat should be made, and in particular that a prudent purchaser would allow £2,000 for re-wiring. The short leases with 'Act Rights' were therefore worth £102,000. As to the adjustment for 'Act Rights', Mr Wilkins referred to some 12 appeal cases between 1999 and 2018, which showed a broad pattern of allowances for 'Act Rights' which increased as the terms got shorter. He relied in particular on the decision of the Lands Tribunal in the appeal cases known as *Nailrile v Earl Cadogan* [2009] 2 EGLR 151, where a relativity of 7.5% was found for an unexpired term of 45 years. Mr Wilkins produced a graph based on these decisions showing an allowance of 8.34% at 43.39 years unexpired for the flat lease and 6.87% at 49.11 years unexpired for the garage lease. He adopted an allowance of 8%% for 'Act Rights' for both leases. The short lease value in the 'no-Act' world was therefore £102,000 less 8% = £93,840. Applying this to combined extended lease values of the flat and the garage (£180,000 + £13,000 = £193,000) gave a relativity of 48.6%. In cross-examination, Mr Oliver mounted a sustained attack on the reliability of the short lease comparable, but Mr Wilkins took the view that the short lease sold after the flat had been openly marketed for some time. He defended his allowance of £2,000 for re-wiring, pointing out that the issue was one of the discount to value of the property in its unimproved state, not the amount the buyer would in fact spend to bring it up to a letting condition.

35. Discussion. In *Mundy*, the Upper Tribunal gave specific guidance about relativity in future cases at paras 168-9:

“168 Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act”.

“169 Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.”

36. In this case, there is a “transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act”. But the main issue is whether the sale of the un-extended lease in 2017 was (in the words of para 168 of *Mundy*) “a true reflection of market value” or (in the words of para 169) a “reliable market transaction”.

37. The Applicant has sought to undermine the weight to be attached to this sale as a comparable in two respects, namely (i) the significant difference between the asking price of £135,000 and the completion price of £100,000, and (ii) that the sale of the flat was a ‘probate sale’. The Tribunal is not satisfied there is any evidence to support either of these criticisms. *Prima facie*, the property was openly marketed by reputable sales agents. It was also exposed to the internet on the Rightmove website for several months (the Rightmove data page suggests the property was marketed for 226 days). Plainly, the £135,000 asking price could be explained in a number of different ways, most obviously because it was an overambitious asking price on the part of the sales agents. There is no evidence from that sales agent to suggest the sales price achieved was out of kilter with the market, as opposed to the asking price being overstated. As to the suggested effect of a probate sale, it again appears the property was openly marketed by reputable agents over a period of time – which seems inconsistent with the kind of ‘fire sale’ suggested by the Applicants. In any event, executors are trustees, and have an obligation to secure best value in any probate sale. And there is no suggestion any Inheritance Tax threshold would explain the sale price of £100,000. On both points, it is perhaps significant there was no evidence before the Tribunal from the buyer of the property in November 2017, which was of course the Applicant in the present matter. If anyone was in a position to give factual evidence to explain why the sale was not “a true reflection of market value” or a “reliable market transaction”, it was the Applicant. But such evidence was wholly absent.

38. It follows that the starting point is the sale of the short leases of the flat and garage in November 2017, as anticipated in para 168 of *Mundy*. There is no justification for pursuing the alternative approach outlined in para 169 of the Upper Tribunal’s decision. We are fortified in this approach by the fact the sale of the short lease in November 2017 does not require “artificially extensive manipulation in order to apply it to

the subject valuation”: see *Mallory v Orchidbase Limited* [2016] UKUT 468 (LC) at para 42.

39. Before turning to adjustments, the Tribunal is mindful that it has to undertake a separate valuation for the flat lease and the garage lease. The Tribunal has already found that the long leasehold value of the flat is £175,000, and the parties have agreed a long leasehold value of £13,000 for the garage. This suggests the flat is worth 93% of the total value of the combined property and the garage is worth 7% of that value. Applying these percentages to the adjusted sales price of £100,000 for the subject property in November 2017 produces figures of £93,000 for the flat lease and £7,000 for the garage lease.
40. Dealing first with the flat lease, there is no dispute that some allowance should be made to the £93,000. Mr Wilkins accepts that at least £2,000 should be allowed for the lack of modern wiring to bring the flat up to the condition expected of a flat sold for investment purposes. However, there is force in Mr Oliver’s argument that an allowance of £2,000 understates the difference in condition between the property in November 2017 and a flat modernised to a ‘letting standard’. At the sale date, it had dated decorations and lacked modern central heating. Doing its best, the Tribunal therefore allows £2,000 for lack of modern wiring and a further £5,000 for decorative condition and lack of central heating to arrive at an adjusted sale price of £100,000 for the short lease of the flat alone.
41. As to the value of ‘Act Rights’, the Tribunal is aware of the invitation of the Upper Tribunal for valuers to agree a banding approach to ‘Act Rights’ reflecting previous appeal decisions: see *Re: Midland Freeholds and Speedwell Estates* [2017] UKUT 463 (LC)³. Mr Wilkins is to be commended for his research and for his graph, but the Tribunal is not at this stage prepared to rely on this graph without evidence that it is

³ See also the table of cases in *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 0494 (LC) at para 60.

accepted by valuers in the market. Doing its best, the Tribunal prefers to rely on the *Nailrile* decision itself, which suggested a 7.5% allowance for the effect of the Act at 45 years un-expired, and which applied the same allowance to the unexpired terms of both the flat lease and the garage lease.

42. There was no suggestion the sale price of the garage lease needs any adjustment for condition and the Tribunal applies the same allowance for the effect of the Act.
43. The above produce the following values for a sale of short leases of the subject premises in modernised condition on 4 November 2017, allowing for 'Act Rights':
- a. The flat lease: £100,000 less 7.5% = £92,500.
 - b. The garage lease: £7,000 less 7.5% = £6,475.

Conclusions

44. Adopting the above figures, the premium payable is **£51,823.01** for the flat and **£3,866.66** for the garage, which amounts to **£55,689.67** (say **£55,700**). Details appear in the Appendix attached hereto.

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Tribunal Judge Mark Loveday
12 December 2018
(corrected under Rule 50 on 15 February 2019)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

LEASEHOLD REFORM HOUSING & URBAN DEVELOPMENT ACT 1993

Lease Extension

<u>FLAT 4 Cecil Court</u>	<u>GARAGE 4 Cecil Court</u>																																																
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Value of Landlord's Proposed Interest					
		£ 176,750.00			
PV	133.3				
@	9				
	5%	0.0015	£ 263.36	£ 21,146.02	
<u>MARRIAGE VALUE</u>					
Value of new lease to lessee		£ 175,000.00			
Value of new lease to Lessor		£ 263.36			
				£ 175,263.36	
Less					
Landlord's existing value		£ 21,409.37			
Plus Existing lease value		£ 92,500.00			
				£ 113,909.37	
Marriage Value			£ 61,353.98		
Half Share				£ 30,676.99	
TOTAL PREMIUM				£ 51,823.01	

Value of Landlord's Proposed Interest					
		£13,130.00			
PV	139.1				
@	1				
	5%	£ 0.0011	£ 14.77	£ 1,208.32	
<u>MARRIAGE VALUE</u>					
Value of new lease to lessee		£ 13,000.00			
Value of new lease to Lessor		£ 14.77			
				£ 13,014.77	
Less					
Landlord's existing value		£ 1,223.09			
Plus Existing lease value		£ 6,475.00			
				£ 7,698.09	
Marriage Value			£ 5,316.68		
Half Share				£ 2,658.34	
TOTAL PREMIUM				£ 3,866.66	

£ 55,689.67
SAY **£55,700.00**