

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT- house – price – entirety value – investment and comparable methods – investment method acceptable subject to appropriate yield – site ratio – settlement evidence and cleared site evidence – 30% adopted - unexpired term – price determined at £19,389 – section 9(1), Leasehold Reform Act 1967 – appeal allowed

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE
FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

SABAH EL-GADHY
ZARA EL-GADHY

Appellants

AND

LIVERPOOL CITY COUNCIL

Respondent

Re: 20-22 Larkhill Place, Liverpool, L13 9BS

Determination on Written Representations

P D McCrea FRICS

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The following cases are referred to in this decision:

Haresign v St John's College, Oxford (1980) 255 EG 711

Clarise Properties Ltd, Re: [2012] 1 EGLR 83

DECISION

Introduction

1. This is an appeal by Sabah and Zara El-Gadhy (“the appellants” or “the tenants”) from a decision of the First-tier Tribunal (Property Chamber) (“the F-tT”) dated 24 April 2015 whereby the F-tT determined that the price payable under s.9(1) of the Leasehold Reform Act 1967 by the long leaseholder appellants to Liverpool City Council (“the Council”) for the freehold interest of 20-22 Larkhill Place, Liverpool L13 9BS (“the appeal property”) should be £29,852.

2. In its decision, the F-tT adopted the parties’ three stage approach, aggregating the value of the present rental income (zero), the value of the rental income for a 50-year extension of the lease, and an addition to reflect the value of the reversion at the end of that 50-year extension to arrive at the current value of the freehold subject to the notional 50-year extension. In determining the freehold value, the F-tT preferred the investment approach of the council to the comparable-based approach of the appellants, as it considered the comparable evidence to be too diverse to give rise to an acceptable valuation method. It preferred the council’s site apportionment figure of 33% to the appellants’ lower figure of 20% – without providing reasons for this preference. It did not comment upon the appellants’ cleared site evidence.

3. Following a refusal by the F-tT of permission to appeal, the appellants’ application to the Tribunal was granted on 16 November 2015 by the Deputy President, who ordered that the appeal would be determined by the Tribunal as a re-hearing. The Deputy President observed that the applicants arguably had a well-founded complaint that the F-tT did not deal with the evidence adduced on their behalf in respect of cleared sites, and that the F-tT reached a conclusion about the appropriate yield to be employed in determining the entirety value of the appeal property on a basis which did not appear to be supported by the evidence of comparable transactions relied upon by the Council – which was the only explanation given by the F-tT for that element of its decision.

4. The parties subsequently agreed with the Deputy President’s suggestion that the appeal would be by written representations, using the material relied upon by the F-tT, which had itself determined the matter without hearing. This included expert evidence from Mr Andrew Orme BSc(Hons) PgDip (Law) of Orme Associates for the appellants, and Mr Kenneth Kasambara BSc MSc MRICS, a chartered valuation surveyor employed by the Council.

Preliminary Issue

5. The Council questions the Tribunal’s jurisdiction to determine the appeal. It says that at all material times the lease has been vested, and registered at the Land Registry, in the joint names of the tenants. The council submits that for the Tribunal to have jurisdiction to determine the price payable under the Act, both tenants must by a valid notice claim the right to acquire the freehold interest. It says that only Zara El-Gadhy gave notice and that there is no evidence that Sabah El-Gadhy gave notice then or at any other time. Further, there is no evidence that the notice given by Zara El-Gadhy was given on behalf of both Zara and Sabah El-Gadhy, with or without the authority of Sabah El-Gadhy.

6. The Notice of the Tenant's claim to acquire the freehold was dated 12 March 2014. It was signed only by Zara El-Gadhy. A Notice in Reply was served by Jeannette Mcloughlin, the City Solicitor, which referred to the claim notice, and said "I admit your right (subject to any question as to the correctness of the particulars given in your notice of the house and premises)".

7. The F-tT did not comment on the question of its jurisdiction, but neither it nor this Tribunal has jurisdiction to deal with a disputed question of entitlement under the 1967 Act - that lies with the County Court (s.20(2)(a)).

8. In the event that I had jurisdiction to deal with the issue, my view would be that the Council had waived its right to challenge the appellants' entitlement. First, because its Notice in Reply is binding upon it (Schedule 3, paragraph 7(4) to the Act) unless there has been some form of misrepresentation, and it is not said that there has been any. Secondly, to a lesser extent, because there has been no cross-appeal from the Council in respect of the Ft-T's decision on value.

9. I have therefore proceeded to determine the question of value on the assumption that the claim notice was valid, having been given with Sabah El-Gadhy's authority on behalf of both tenants. Should the Council wish to pursue the matter, it must do so in the County Court.

Facts

10. From the evidence I find the following facts.

11. The appeal property is located approximately four miles east of Liverpool City Centre on Larkhill Place, which runs off Queens Drive, a dual carriageway which forms part of the ring-road around the city.

12. It comprises an inner-terrace building of brick construction under a pitched slate roof, with accommodation over three floors. On the ground floor there is a shop used as a newsagent's outlet with rear storage, and with a small rear covered yard accessed by a gated alleyway. The first floor is a two-bedroom flat with kitchen/living room, bathroom, small bedroom and large bedroom. The property has been modified, with an internal staircase leading from the kitchen area up to a large attic lounge/sleeping area with shower facilities.

13. The freehold interest is owned by the Council, and is let to the appellants on a 99-year lease which commenced on 31 August 1922, drawn on fully repairing and insuring terms at a peppercorn rent. The appellants took an assignment of the lease on 30 July 2004.

Statute

14. In so far as material to this appeal, section 9(1) of the Act provides:

“... the price payable for a house and premises... shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not buying or seeking to buy) might be expected to realise on the following assumptions:—

- (a) ...that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

.....”

Common Ground

15. The following matters were agreed and adopted by both parties.

- (a) In the event that the tenants had properly exercised their right to purchase the freehold interest, the price would be determined under section 9(1) of the Act, with a valuation date of 12 March 2014.
- (b) In respect of the valuation exercise to determine the price, it would comprise three elements: a term, a reversion and a “*Haresign*”¹ addition.
- (c) The term would have a value of zero, being a capitalised peppercorn.
- (d) When valuing the reversion, the section 15 rent (i.e. the rent notionally payable under an extended 50-year term) would be 5.5% of the site value, and would be capitalised for 50 years at 5.5%.
- (e) The “*Haresign*” addition would equate to 80% of the unencumbered freehold value of vacant possession deferred at 5.5% for the period of the residue of the unexpired term plus 50 years.
- (f) The appeal property has a site area of 112m² or thereabouts.

Points of dispute

16. The areas of dispute between the parties are:

- (a) The unencumbered freehold value with vacant possession. (For the tenants, Mr Orme’s valuation was £75,000; for the Council, Mr Kasambara’s figures ranged from £122,706 to £128,000).
- (b) The ratio of site value to unencumbered freehold value (Mr Orme being at 20% and Mr Kasambara being at 33%).

¹ From *Haresign v St John’s College, Oxford* (1980) 255 EG 711, as endorsed by the Tribunal in *Clarise Properties Ltd* [2012] UKUT 4 (LC)

- (c) The unexpired term of the lease at the valuation date (Mr Orme calculating this to be 7.41 years and Mr Kasambara at 7.44 years).
- (d) And therefore the price to purchase the freehold interest (Mr Orme's valuation at £12,168 and Mr Kasambara's £31,140)

17. I deal with these in turn.

Unencumbered freehold value with vacant possession

The appellants' case

18. Mr Orme has practised as a surveyor since 2001, acting for tenants of houses and flats in numerous leasehold reform cases, mainly in Liverpool. In arriving at his valuation Mr Orme relied solely on freehold transactions. I outline these below with, for convenience, the Council's comments alongside.

19. In the immediate vicinity of the appeal property:

	Mr Orme	Council's response
3-5 Larkhill Place	Similar to the appeal property but having a loft conversion, comprising a shop and a three-bedroom flat above. Sold in June 2008 for £40,500. Failed to sell at auction in September 2012 at a reserve of £35,000 and in October 2012 at a reserve of £30,000. Described as being in need of repair and modernisation although this is not evident from the street.	The council is the freehold owner. In derelict order, not fit for habitation. Forms part of a larger premises which suppressed value. Not an appropriate comparable without upward adjustment.
8-10 Larkhill Place	Part of the same parade as the appeal property and similar to it. In need of refurbishment, and slightly smaller having no out-house store. Sold at auction in September 2011 for £34,000 on a new 125-year lease with an obligation to put into repair.	The council is the freehold owner. In poor condition. Not an appropriate comparable without upward adjustment.
114-116 Queens Drive	Close to the appeal property, slightly larger with a flat to the first floor. Sold leasehold for £80,000 in April 2010, being held on a ground lease of 125 years from November 1990 at a reviewable ground rent of £300p.a.	Similar in nature to the appeal property but requires adjustment - annual £300 p.a. ground rent, when compared to the peppercorn rent at the appeal property. Significantly longer unexpired term than the subject lease.
106-108 and 110-112 Queens Drive	Offered for sale at auction by administrators in September 2012, leasehold having 14.5 years and 9 years to run at peppercorn rents. 106-108 was	The council is the freehold owner and has detailed knowledge of the properties. Both leases had approximately 9 years to run. A number of factors suppressed the

	advertised as being fire-damaged and 110-112 was let at £7,500 until 2017. The combined properties sold for £30,500. Not offered as a comparable but indicated the low inspirational values of vendors, a lack of investor demand and a high risk attached to the investment despite the tenancy, and potentially the tenant's right to buy the freehold.	sale value: The sale of 106-112 was a forced sale by administrators; 106-108 had been significantly fire damaged and was in poor condition; the flat above 110-112 is not properly separated from the rest of the premises.
10 Larkhill Lane	A mid-terraced two-storey property with a retail shop on the ground floor and a one-bedroom flat above, appearing to be in good order with gas central heating. Offered for public auction in December 2012 at a reserve of £60,000, but failed to sell.	A ground floor retail shop with ground and first floor storage, rather than a flat (as shown by its entry in the rating list, and supported by the auction particulars which stated that 10 Larkhill would be suitable for a number of uses or possible flat conversion subject to the relevant consents).

20. Mr Orme also provided comparable evidence for shops without flats as follows:

	Mr Orme	Council's response
28-30 Larkhill Lane	The ground floor of a two-storey building, in good order extending to 88.7m ² . Sold for £40,000 in April 2014 at public auction	Should be upwardly adjusted to reflect the fact that the sale was a forced sale by LPA receivers.
62 Derby Lane, Old Swan	The ground floor part of a two-storey building extending to 46.3m ² . Sold for £25,000 in July 2012.	Too remote to be comparable and in any event a forced sale by LPA receivers which would affect value.
86 Derby Lane, Stoneycroft	The ground floor shop part of the two-storey building extending to 32.3m ² . Sold for £31,000 at auction on 18 April 2013.	Too remote from the appeal property to be comparable.
199-201 Green Lane, Stoneycroft	A three-storey double fronted end terrace property comprising ground floor retail use extending to 87.4m ² plus basement storage and two upper floors. It appeared to be in good order with gas central heating. Offered for sale at public auction on 18 July 2013 at £70,000, guided at £65,000, and failed to sell.	Too remote from the appeal property to be comparable
156 Mill Lane Old Swan	Ground floor retail unit forming part of a two-storey building with residential accommodation (see below). Previously in A2 use, appears to be in good order, offered for sale by auction with a guide of £25,000 plus but sold prior.	Too remote from the appeal property to be comparable

21. Finally, Mr Orme provided comparable information in respect of flats above shops:

	Mr Orme	Council's response
156 Mill Lane	A two-bedroomed self-contained flat above a retail unit having double glazing and gas central heating. Sold on 9 April 2014 at auction for £32,000.	Too remote from the appeal property to be comparable
75-75A Lisburn Lane	A mid-terrace property converted to two 1-bedroom flats. Fully refurbished including double-glazing and gas central heating. Let, producing a combined rent of £8,640. Sold at auction on 6 September 2012 for £67,000 reflecting a gross initial yield of 12.9%.	Requires adjustment to reflect the two one-bedroom flats rather than a two-bedroom flat which would achieve a higher value.

22. Mr Orme did not provide any particular analysis of the above comparables, but said that having had regard to them his valuation of the unencumbered freehold value was £75,000.

The Council's case

23. The Council relied upon a valuation report of its employee, Mr Kenneth Kasambara - a chartered surveyor with 25 years' experience in the valuation of property in Liverpool.

24. Mr Kasambara's prepared valuation was on alternative bases, and as such he considered comparable evidence in a variety of forms. His first approach was based upon a capitalisation of rental values, for which purpose he calculated a retail space of 36.77m² in terms of Zone A, together with rear storage. These figures were unchallenged by Mr Orme. To arrive at a notional rental value for the ground floor of the appeal property, Mr Kasambara (like Mr Orme) relied upon the letting of 110 Queen's Drive. Mr Kasambara said that the property was let in May 2013 at £7,800 per annum, which equated to £165.96 per sqm zone A.

25. To place a rental value on the flat, he relied upon a letting of a two-bedroomed flat at 24-26 Larkhill Place, in June 2012 at £4,732 pa, or £394 pcm. He also noted that a two-bedroomed flat at 12 Queens Drive, Stonecroft, was available to let in March 2014 at a range of £475 - £550 pcm.

26. His rental value was:

Ground floor:

36.77 sqm itzA @ £166.00/sqm: £6,104

Flat @ £450 pcm: £5,400

Gross rent: £11,504

Less 20% for repairs,	
insurance & management:	(£2,301)
Net rent:	£9,203 pa.

27. In response, Mr Orme commented that the sales particulars of 110 Queens Drive (actually 110-112 Queens Drive) indicated that the retail unit was actually let at £7,500 per annum. He had spoken with the owner who had said that £7,800 was the rent passing for the whole property. As such, Mr Orme said that Mr Kasambara's rental value of £166.00/sqm was not based on a sound footing. He did not, however, give his own view of what the rental value of the appeal property should be.

28. As regards the rental value of the residential element, Mr Orme said that he did not object to the rent of £394 per calendar month, nor to a 20% reduction to arrive at a net rent, but said that Mr Kasambara's adoption of £450.00 per calendar month was not justified on the evidence.

29. Having arrived at his notional rental value, Mr Kasambara's approach was to capitalise this by applying an all risks yield in perpetuity. As yield comparables, Mr Kasambara considered three investment sales. These were (together with Mr Orme's comments):

	Mr Kasambara	Mr Orme's response
64-66 Muirhead Avenue East	Sold on 20 May 2008 at auction as an investment for £215,000 equating to a gross yield of 5.58%. In an adjoining area, in a better location, but with a strong investment covenant. Dated but a useful indication on value trends.	Both comparables derived from sales and leasebacks, in pre-credit crunch market conditions, by Lloyds Pharmacy. The rents payable in Muirhead Avenue were generally lower than that proposed to be paid by Lloyds in the sale and lease transaction. For instance, 84-86 Muirhead Avenue East was let in its entirety at £8,700 and sold at auction for £69,000 reflecting a gross yield of 12.6% in June 2013. Similarly, 92-94 Muirhead Avenue East, a similar property, was let at £2,600 p.a. for the ground floor from five years from January 2009 and £4,200 for the first floor flat from May 2012. Finally, 116 Muirhead Avenue East was available to let as an asking rent of £7,500 p.a. in March 2014 having previously been offered at £7,800
202 Cherry Lane	Sold on 6 December 2007 at auction for £156,000 equating to gross initial yield of 6.41%. Subject to a strong investment covenant, dated but a useful indication on value trends.	
156-158 Walton Breck Road	Sold on 31 January 2008 at auction for £100,000 equating to a gross yield of 5.72%. Again, dated but a useful indication on value trends. (Mr Kasambara did not adduce the sales particulars).	Appeared to be two properties having rateable values of £1,250 and £2,500. It was unclear what the demise of the occupational was and in the absence of a complete picture it was impossible to use the comparable as evidence of yields - if there were any vacant parts then subsequently the yield would change. As £50,000 per shop, broadly, the comparable appeared a true reflection of capital values for similar properties in

		January 2008.
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30. Having regard to these comparable transactions, Mr Kasambara adopted a reversionary yield of 7.5%. His valuation on an investment basis was therefore:

Net rent:	£9,203 pa
yp in perpetuity @ 7.5%	<u>13.3333</u>
	£122,706

31. Mr Kasambara's second approach was to consider the value of the appeal property with vacant possession. He relied upon the following comparable evidence (with Mr Orme's comments also shown).

	Mr Kasambara	Mr Orme's response
76 Larkhill Lane	A two-bedroomed flat, on an adjoining street, sold in July 2013 at £84,000.	This property is not a flat, but is a house (Mr Orme referred to sales particulars)
28-30 Larkhill Lane	Ground floor shop, sold for £40,000 in July 2013 (sic).	Also used by Mr Orme as a comparable. Sale was in April 2013.
132-134 Queens Drive	Ground floor shop, freehold investment sold for £100,000, in December 2007.	Sales particulars describe the property as ground floor retail with first floor residential. The title certificate shows a sale at £115,000 in December 2007, in pre-credit crunch conditions.
170-172 Townsend Lane	Shop and two-bedroomed flat, nearby location. Freehold reversion sale to the tenant, valuation date of 10 June 2013, at £27,000. 8.32 years unexpired. Unencumbered sale price agreed at £126,000, site value at 33%. Transaction completed 1 December 2014.	In a busy location, and a more modern property than the subject. Not a market sale but a negotiated transaction. Refers to other Townsend Lane transactions at 46-50 (sold for £70,000 in July 2013), 3 (failed to sell at auction in September 2014, but purchased for £105,000 in April 2008), 12 (let at £7,800 but failed to sell at auction with a guide of £50,000 in July 2013 – reported to have sold after), and finally 14 (let at £9,972 and sold for £50,000 July 2013).
92-94 Muirhead Avenue East	Shop with two-bedroomed flat, in similar area to appeal property, freehold investment sold for £148,000 on 1 October 2013.	Also used by Mr Orme as rental evidence in respect of 64-66 Muirhead Avenue. The sale at £148,000 was for <i>both</i> 92-94 and 88-90.

32. Based on the above, Mr Kasambara suggested two values for the appeal property. First, he valued the shop and flat separately. Having regard to the sale of 76 Larkhill Lane (at £84,000), he considered the value of the flat to be £80,000, and having regard to those of 28-30 Larkhill Lane (£40,000) and 132-134 Queens Drive (£100,000), he valued the ground floor shop at £45,000. These aggregated to £125,000.

33. Secondly, using his investment comparables referred to earlier, the agreed enfranchisement of 170-172 Townsend Lane, and the investment sale of 92-94 Muirhead Avenue, he considered the freehold value lay in the order of £128,000.

34. His three valuations therefore lay at £122,706, £125,000, and £128,000.

Discussion and conclusions

35. I did not find Mr Orme's first tranche of comparable transactions to be particularly helpful. I accept that 3-5 Larkhill Place and 8-10 Larkhill Place, whilst in close proximity to the appeal property, were in a poor condition and I have not placed weight on them as comparable evidence. I also accept the council's criticism of 106-108 and 110-112 Queens Drive as comparable evidence, although note that Mr Orme offered these as background information only. I deal below with Mr Kasambara's analysis of the rental value of 110-112 Queen's Drive.

36. Mr Orme also offered as comparable evidence the fact that several properties did not sell at auction, but I take limited assistance from this. I accept the fact that a property did not sell might indicate a lack of demand, but I place more weight upon actual transactions. 114-116 Queens Drive is of use and 28-30 Larkhill Lane are of use and I comment on them later.

37. The council rejected some of Mr Orme's comparables as being too remote. This is not necessarily the case. They were all within a two-mile radius of the appeal property and Mr Kasambara himself relied on some transactions which were not in the immediate vicinity - Walton Breck Road is nearly two miles away. I have placed some weight on 62 Derby Lane and 86 Derby Lane, but have not derived any assistance from 199-201 Green Lane or the retail element of 156 Mill Lane. I comment below on the residential element of 156 Mill Lane, and on 75-75A Lisburn Lane.

38. Freehold transactions are of assistance when valuing a freehold property, as they avoid the need to use a capitalised rental value approach, but Mr Orme gave no clear explanation as to how he arrived at his valuation of £75,000 by reference to an analysis of his comparable evidence.

39. I have some general observations about Mr Kasambara's evidence. His report made reference throughout to the RICS "Red Book" (RICS Valuation – Professional Standards) which is not appropriate in expert evidence before the Ft-T or this Tribunal which apply statutory valuation criteria and require expert witnesses to make a specific declaration. Mr Kasambara also indicated that, given market conditions, there was an "abnormal degree of uncertainty" attached to his valuation. That is a term which was included in previous editions of the RICS "Red Book" when advising third parties as regards abnormal market conditions. To give Mr Kasambara the benefit of the doubt, I have not taken his reference to it to mean I should give any less weight to his opinion of value, but again is not appropriate to refer to this in expert evidence. His report did not set out, in full, the declaration required by the Tribunal and the RICS Practice Statement for Surveyors acting as Expert Witnesses as regards his duties and understanding. Finally, Mr Kasambara, despite submitting a range of values of £29,860 to £31,140 as the price payable by the appellants, "urged" me to accept £31,140, which could cast some doubt on his objectivity.

40. Mr Kasambara's rental valuations of the retail and residential elements were each based upon a single transaction. In my judgement his estimate of the rental of the ground floor was not based on sound comparable evidence. He relied upon the letting of 110-112 Queens Drive, and yet in rebuttal the Council indicated that this property was not comparable as it was not properly separated from the rest of 106-108. There was some debate as to whether the rent passing for that property was £7,500 per annum or £7,800 per annum but I am satisfied that in either case this appears to have included (at least the use of) a flat. The council said that the flat was let on a rent-free basis, but even if that is the case I am not persuaded that its presence would not affect the rental paid for the shop element when the flat was also available to the same tenant. I do not consider that the letting can be safely relied upon, especially in isolation.

41. In its submissions to the Tribunal, the Council indicated that Mr Kasambara's devaluation of 110-112 Queens Drive, at £165.96 zone A, was comparable to that of 170-172 Townsend Lane, which the Council said (for the first time in those submissions) was at £170.00 zone A. However, there was no mention of this rental figure in Mr Kasambara's report. The council stressed in those submissions its objection to Mr Orme relying on new evidence, and I have not placed any weight on this devaluation of 170-172 Queens Drive, upon which Mr Orme has not had the chance to comment, and which has not been explained by any devaluation by Mr Kasambara.

42. With only limited evidence of retail rents on a per square metre basis, I have also considered the broad rental evidence available, much of which came out in rebuttal.

43. The sales particulars of 84-86 Muirhead Avenue East, when offered to the market in June 2013, indicated that the tenant had recently signed a lease of the whole property at £8,700 per annum exclusive. This appears to have included a one bedroomed flat.

44. 92-94 Muirhead Avenue East, when offered to the market in August 2013, was subject to a lease of the ground floor shop at £2,600 per annum exclusive with effect from January 2009. The first floor flat, which the agents understood to be two bedroomed, was let on an assured shorthold tenancy at £350 per calendar month with effect from May 2012. The aggregate rent for the property, at the time of sale, was therefore £6,800 per annum exclusive.

45. 88-90 Muirhead Avenue East was, according to the sales particulars, subject to two leases. The ground floor was let for five years from November 2011 at £6,000 per annum exclusive and the first floor flat let on an assured shorthold tenancy at £350 per calendar month from January 2012. The aggregate rent was therefore £10,200 per annum exclusive.

46. Mr Kasambara accepted that Muirhead Avenue East was a better location than Larkhill Place. I note, in passing, that the tone of the rating list appears to confirm this (£135 per sqm zone A for Muirhead Avenue East compared with £120 per sqm for Larkhill Place). Despite this, all of the transactions at Muirhead Avenue East amount to gross total rental values lower than Mr Kasambara's adopted £11,504 per annum for the appeal property. In fact, there was no comparable evidence which showed a combined retail and residential rent at this level.

47. I accept that in the absence of analysed floor areas it may simply be that all of the Muirhead Avenue East properties were smaller than the appeal property, but equally I am not persuaded that the typical tenant for these properties would be likely to base his or her rental bid on a per square foot basis.

48. Doing the best I can with the evidence available, I consider that the rental value of the retail element of the appeal property would be in the order of £5,000 per annum exclusive, equating to just over £135 per sqm zone A.

49. However, I accept Mr Kasambara's estimate of the rental value of the residential element of the appeal property. The evidence of the letting of a very nearby flat at Larkhill Place is compelling, albeit slightly historic. The appeal property has been extended to provide accommodation to the attic. The Ft-T, whose panel members had inspected, described the attic space as a large upstairs living and sleeping area with its own shower facilities. On the limited rental evidence available, I am satisfied that Mr Kasambara's assessment at £450 per calendar month is appropriate,

50. Mr Kasambara's main comparable for the flat on a freehold, or virtual freehold, basis, was 76 Larkhill Lane, but the Council accepted, in its submissions in respect of the appeal, that this was in fact a house. I do not place any weight on the Council's submission that it is not uncommon for a large flat to achieve a similar, or higher, prices than houses in similar locations. There was no expert evidence in support of this.

51. The investment approach is acceptable but the choice of yield is critical to its accuracy. I do not accept the yield evidence that Mr Kasambara primarily relies upon. A yield derived from a sale and leaseback to a prime covenant tenant is of no relevance to a notional vacant possession valuation of a secondary property. The best that might be said of the Muirhead Avenue East and Cherry Lane transactions is that the yield derived from them would be of assistance had the appeal property been let to a tenant having a covenant strength equal or close to that of Lloyds Pharmacy Ltd - described in the auction details submitted by Mr Orme as having over 1,600 pharmacies in the UK. Mr Kasambara's other yield comparable at Walton Breck Road, contained insufficient detail to allow proper analysis and I do not consider it reliable.

52. Other yield evidence also emerged, largely in rebuttal. 75-75a Lisburn Lane was sold in September 2012 at a price reflecting a gross initial yield of 12.9%. I do not accept the Council's criticism of this comparable. The price achieved is a function of the rental value which in itself is a function of the configuration of the property.

53. 84 to 86 Muirhead Avenue East sold at a price reflecting a gross initial yield of 12.6% in June 2013.

54. Mr Kasambara relied upon the sale of 92-94 Muirhead Avenue East at £148,000 on 1 October 2013. However, I accept Mr Orme's contention that the sale included both this property and 88-90 Muirhead Avenue East. These properties had a combined rental value of £17,000 per annum exclusive and accordingly the sale price equated to a gross initial yield of 11.48%.

55. Mr Kasambara relied upon gross initial yields when considering comparable evidence. He applied a yield to a rent that had been reduced by 20% to allow for voids, insurance, etc. He did not explain whether he made a differential to the yield to reflect this.

56. The better method is to value as you devalue, and to apply a yield to gross income having regard to gross initial yields. Doing the best I can with the evidence available, in my judgement an appropriate yield on an investment basis would be 12%. Adopting my notional rental value of £10,400 per annum, a freehold valuation on this basis would be £86,666, say £86,500.

57. I am satisfied that a capital value of this order is in line with the sale of 114-116 Queens Drive, sold at £80,000 on a long leasehold basis in April 2010, subject to a ground rent of £300 per annum. I am also satisfied that it is in line with the sales of 28-30 Larkhill Lane, a ground floor shop, at £40,000 in April 2013, and 156 Mill Lane, a two bedroomed flat, sold at £32,000 in April 2014.

58. I therefore determine that for the purposes of a calculation within s. 9(1) of the Act, the unencumbered freehold value of the appeal property was £86,500 at the valuation date.

Site Value Ratio

59. Mr Orme considered that the appropriate site value for the appeal property lies at 20% of the “built value”. He said that the locality is characterised by lower land values when compared with the market value of completed developments.

60. He referred to various sales of development land in the Liverpool area, and then compared those sale prices with the notional gross development value of each development, which he assumed would be completed in line with the planning consents attached to each plot. These were:

(a) Land adjacent to Osborne Road, Tuebrook

0.75 kilometres from the appeal property, a site of 267 sqm with planning consent for three, two-bedroomed apartments. Sold at £19,000 around December 2013, equating to £6.60 per sq ft. Mr Orme considered each apartment would be worth £65,000, producing a site ratio of 9.75%.

(b) Land at 56-60 Oakfield Road, Anfield

Two kilometres from the appeal property, a site of 218 sqm with planning consent for two retail units and three self-contained apartments. Sold in February 2012 for £25,000, equating to £10.65 per sq ft. Mr Orme estimated a site ratio of 9%, assuming values for two retail units at £50,000 each, and three apartments at £60,000.

(c) Land at 38 Coleridge Street, Kensington

Three kilometres from the appeal property, a cleared site of 240 sqm, with planning consent for two, three-bedroomed semi-detached houses. Sold at auction in December

2013 for £31,000, equating to £12.00 per sq ft. Mr Orme estimated that each house would have a value in the order of £95,000, suggesting a site ratio of 16.33%.

61. He also referred to land at Victoria Road, Tuebrook, which was under offer but not yet sold; land at Conwy Drive, Fairfield which was to be offered at auction, and land at the corner of Kensington and Farnworth Street, although he did not provide a site ratio from it.

62. Mr Orme said that the appeal property was a long thin site, in the middle of a terrace. Consequently, development costs would be higher, owing to the need for two party wall agreements, licences for skips, oversailing agreements for scaffolding and access, and the absence of open land with the completed property occupying approximately 90% of the site. He referred to various passages in *Hague* in support of his case.

63. He referred to his negotiations with the Council in respect of 85 Newsham Drive, Liverpool, where a site value of 28% was agreed.

64. Mr Kasambara responded that site values were commonly agreed at 33%, and relied upon the transaction at 170-172 Townsend Lane referred to above.

65. In reply, the Council (through its solicitors, Hill Dickinson) submitted that Mr Orme's site comparables were inappropriate, and were in any event too remote, being further away from the appeal property than Mr Orme had suggested. The Council criticised Mr Orme's approach, saying that the values cited were entirely speculative. The Council said that the agreement in respect of 85 Newsham Drive at 28% had been agreed with a junior member of staff.

66. The Council explained that it had agreed 33% as the site value ratio in relation to almost all of the s.9(1) valuations it has undertaken in Liverpool in the last two years, including 170-172 Townsend Lane, referred to earlier, and two further cases where Mr Orme acted for the acquiring tenants and had agreed 33%. These were 6 Back Canning Street – a small site of 60 sqm where almost all of the site is built upon – and 19-19A Sandon Street, a very large site of 375 sqm where a low percentage of the site was built on. Mr Orme said that these two properties were large properties in the Georgian quarter, with very much larger values than the appeal property.

Discussion and conclusions

67. In my judgement, some weight can be placed upon comparable settlements when determining site value ratios. It appears that many settlements have taken place at around 33%. The Council's purported explanation that the settlement of Newsham Drive at 28% had been by a junior member of staff was pretty desperate stuff, and in my view highly unlikely as an explanation for the action of a local authority where senior officer level clearance and checking is required – as indeed happened in respect of Mr Kasambara's report. I accept Mr Orme's explanation in respect of the higher value properties in the Georgian Quarter.

68. In terms of the cleared site comparables analysed on a per sq ft basis, I accept the Council's criticism of these as not being exactly comparable to the appeal property, but I cannot completely ignore them. The sales equate to site values in a range from £6.60 to £14.88 per sqft. I accept Mr Orme's submission that the Ft-T's decision, which equated to something in the order of £33 per sqft, looks high in comparison, even for a mixed use property.

69. I accept that individual sites may have characteristics which justify a departure from 33%, and each site must be considered on its merits. Having considered the settlement evidence, the cleared site evidence, and my decision as to the entirety value of the appeal property, in my judgement the appropriate percentage is 30%. However, this should not be taken as the Tribunal's confirmation that all valuations under s.9(1) of the Act in respect of properties in Liverpool must adopt a 30% site ratio.

70. On the basis of the evidence before me, I have therefore adopted 30% as the appropriate site ratio.

Unexpired term at the valuation date

71. This is a small point. Mr Orme considered that the unexpired term was 7.41 years, and Mr Kasambara said 7.44 years.

72. The lease was for 99 years commencing on 31 August 1922. It expires, therefore, on 30 August 2021. The valuation date is 12 March 2014. Allowing for the whole of 12 March, there are 20 days from 12 to 31 March inclusive. From 1 April to 31 July inclusive is 122 days. If the lease ends at midnight on 30 August, there are 30 days in August. The total number of days is therefore 172 days, or 0.47 years, and hence the unexpired term at the valuation date is 7.47 years.

73. The effect on the purchase price is minimal, but I have adopted 7.47 years as the unexpired term at the valuation date.

Conclusions and Disposal

74. Having adopted the parties' method of valuation, an entirety value for the appeal property of £86,500, a site ratio of 30%, and an unexpired term at the valuation date of 7.47 years, I determine that the price payable for the freehold interest under s9(1) of the Leasehold Reform Act 1967 is £19,389. I attach my valuation as an appendix to this decision.

75. The appeal is therefore allowed in part.

76. I have confined my deliberations to the points of dispute between the parties, and have not found it necessary to consider the elements agreed between them.

77. Costs are only awarded in exceptional circumstances in cases determined by way of written representations. Neither party has suggested that there are any such circumstances, and I therefore make no order for costs.

Dated 21 April 2016

A handwritten signature in black ink, appearing to read 'P D McCrea', with a long horizontal flourish extending to the right.

P D McCrea FRICS

Appendix

Tribunal's Valuation

Market Rent

itzA	36.77 sqm	@	£135.98	£5,000
Flat	£450 pcm	x	12	<u>£5,400</u>

£10,400 per annum

Entirety Value

£10,400 pa	x	yp perp @	12 %	
			8.3333333	£86,666.67
			(say)	£86,500

Valuation under s9(1)

Term £0

Reversion

CV of Property			£86,500	
CV of site @	30%		£25,950	
s15 rent@	5.50%		£1,427.25	
x yp 50 years @5.5%				
def	7.47 years		11.3501	
				£16,199

'Haresign' Addition

CV	£86,500
less 20%	£69,200

x PV £1 @ 5.5%			
for	57.47 years	0.0461	<u>£3,190</u>

Price payable £19,389