UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2013] UKUT 013 (LC)
LT Case Number: LRA/51/2011

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – house – price – freehold value – whether comparable to be analysed as an existing house or development site – effect on value of school development site and proximity of ambassador's residence – leasehold value – relativity – valuation method – graphs or deduction for benefit of Act from single comparable market transaction – LVT valuation upheld – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LONDON RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

BETWEEN **SOPHIA MARIA VOYAZIDES** **Appellant**

and

(1) CHARLES GEORGE SAMUEL EYRE
(2) JAMES HENRY ROBERT EYRE
(3) PETER LOMAS
(4) HUGH JOHN LOMAS
(in their capacity as Trustees of the Eyre Estate) **Respondents**

Re: 60 Avenue Road, St John's Wood, London NW8 6HT

Before: Her Honour Judge Alice Robinson and Mr A J Trott FRICS

Sitting at: 45 Bedford Square, London WC1B 3DN
on 8 and 9 November 2012

Edwin Johnson QC instructed by David Conway & Co
Michael Buckpitt instructed by Pemberton Greenish LLP

The following cases are referred to in this decision:

Earl Cadogan v Cadogan Square Limited [2011] UKUT 154 (LC)
Arrowdell Limited v Coniston Court (North) Hove Limited [2007] RVR 39
Nailrile and Others v Earl Cadogan and Others [2009] RVR 95

The following further cases were referred to in argument:

Wellcome Trust Ltd v Romines [1993] 3 EGLR 229, LT
31 Cadogan Square Freehold Limited and Anr v The Earl Cadogan [2010] UKUT 321 (LC)

DECISION

Introduction

1. This is an appeal against a decision of the London Rent Assessment Panel of the Leasehold Valuation Tribunal ("LVT") dated 23rd February 2011 in which it determined that the price to be paid for the freehold interest in 60 Avenue Road, St John's Wood, London NW8 6HT ("the Property" or "No.60") pursuant to section 9(1C) of the Leasehold Reform Act 1967 ("the 1967 Act") should be £7,430,000. In its decision the LVT found the freehold value to be £15,000,000, the leasehold value to be £6,300,000 and the deferment rate to be 4.75%. The deferment rate is now agreed but the appellant ("the Tenant") appeals against the LVT's decision as to the freehold and leasehold values.

2. As to the freehold value, the LVT concluded that two sales of 64 Avenue Road were the most relevant and helpful comparables. No adjustment was made for planning blight said by the Tenant to have been caused by proposals to redevelop an adjoining school on the grounds that purchasers would have appreciated the school site was ripe for development. The LVT did not consider it was necessary to make any other adjustments including for size, No.64 being a larger site, or for the proximity of the private residence of the Israeli ambassador at No.58. The LVT analysed these two sales to give an average value for No.60 of £14,703,494. The LVT accepted the evidence of the valuer for the respondents ("the Landlords"), Mr Martin, who also appeared before us, that more weight should be given to the later of the two sales of No.64 and it accepted Mr Martin's valuation of £15,000,000.

3. As to the leasehold value, the LVT considered that in the light of the paucity of market evidence it was appropriate to have regard to graphs of relativity. Mr Martin's analysis of the graphs was accepted as fair giving rise to a relativity of 42% of leasehold to freehold value, the unexpired term of the lease being 19.16 years. The LVT was not persuaded by the Tenant's valuer, Mr Buchanan, who also appeared before us, that the market sale of the leasehold interest of No.62 was the best starting point when valuing the leasehold interest in the Property, subject to adjustments for the benefit of the Act and for the proximity of the school development. The LVT rejected Mr Buchanan's cross-check based upon the capitalisation of rental income at a gross yield, stating that a lease of this length would not be valued in this way.

4. When granting the Tenant permission to appeal The President observed that: "It is arguable that the LVT erred in its consideration of the graphs of relativity and the evidence relating to 62 Avenue Road". He ordered the appeal to be dealt with by way of rehearing.

5. The Tenant's case is that the LVT should have had greater regard to the evidence of the sale of the lease of 62 Avenue Road and the freehold and leasehold values assessed by the LVT when determining the price to be paid for the freehold of that property on an enfranchisement claim pursuant to the 1967 Act. Further, the Tenant considers that when adjusting the values of Nos. 62 and 64 an allowance should be made for planning blight, as the school proposals had progressed by the valuation date, as well as for the difficulties caused by the location of the

Israeli ambassador's residence next door to the Property. The Tenant's husband gave evidence in this appeal about the problems which he said was caused by the latter.

6. The Landlords support the LVT's decision. They argue that the two sales of 64 Avenue Road were open market transactions of a comparable property and are the best evidence of value. No.64 was not redeveloped but was altered and extended by the second purchaser and the second transaction should not be treated as though it was the sale of a development site. The evidence relating to 62 Avenue Road would require adjustment to reflect the smaller site size, poorer accommodation and layout and an element of overlooking. Further it was not a straightforward sale as the vendor effectively loaned half of the purchase price to the purchaser. For these reasons it is not a good comparable. The Property is no worse affected by the school redevelopment than the comparables and no adjustment should be made. Nor should any allowance be made for any problems caused by the proximity of the Israeli ambassador's residence since these have been exaggerated and would not be known to a purchaser.

7. Mr Edwin Johnson QC appeared for the appellant and called Mr Leonidas Voyazides as a witness of fact and Mr Kenneth Gavin Buchanan BSc MRICS, a partner of Knight Frank, as an expert valuation witness.

8. Mr Michael Buckpitt of counsel appeared for the respondents and called Mr Julian Briant as a witness of fact and Mr John Martin BSc MRICS, a partner in Cluttons, as an expert valuation witness.

9. We made an accompanied site inspection of the Property and the relevant comparables on 16 November 2012.

Facts

10. From the statement of agreed facts and the evidence we find the following facts. The Property is located on the east side of Avenue Road just north of its junction with Elsworthy Road. It is a substantial 1930's double fronted house on four floors with a carriageway driveway providing parking for several cars. The Property has a site area of 14,130 sq ft (1,313 sq m) with a GIA (gross internal area) of 9,300 sq ft (854 sq m) comprising 7,600 sq ft (706 sq m) of original floorspace in the house and 1,700 sq ft (158 sq m) of additional accommodation provided by virtue of various licences for alteration together with a 695 sq ft garage block (64.6 sq m).

11. The Property is subject to two leases; one dated 12 January 1932 for the main house and the other dated 25 March 1934 for a piece of adjoining land. Both expire on 24 June 2029 and have a combined rent of £200 per annum.

12. The valuation date is 27 April 2010 at which time the leases had 19.16 years left to run.

13. The parties have agreed a deferment rate of 4.75% and a capitalisation rate of 5%. They also agreed that any adjustment of comparable sales for time should be made by using the Savills Research Prime London Residential Capital Value Index (St John's Wood and Regents Park Houses). The terms of the freehold draft transfer are not in dispute. Details of the comparables relied upon by the parties were also agreed, although during the hearing there was a difference between the experts about the indexation of the value of 62 Avenue Road. We consider this point at paragraph 49 below.

Statutory provisions

14. It is agreed that the price payable for the Property is to be determined under section 9(1C) of the 1967 Act. Where that section applies the price payable shall be determined in accordance with section 9(1A); but in any such case -

> "(b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section;
>
> and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A(1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection."

In this appeal there is no claim for any additional amount of compensation under section 9A and subsection 9(1A)(b) is to be omitted. The provisions of section 9(1A) as they apply in this appeal state:

> "…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, might be expected to realise on the following assumptions:-
>
> (a) on the assumption 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 or an extended lease;
>
> (b) …
>
> (c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part 1 of the Landlord and Tenant Act 1954;
>
> (d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;
>
> (e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser

would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below."

15. Section 9(1D) provides for the treatment of marriage value:

"Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it."

Issues

16. The parties agreed that there are two issues to be determined in respect of the enfranchisement price:

(i) the unimproved freehold vacant possession value; and

(ii) the unimproved leasehold vacant possession value and the relativity.

Freehold value: the case for the appellant

17. Mr Buchanan's preferred evidence of freehold value was derived from the sale of houses at the northern end of Avenue Road, to the north of the crossroads with Elsworthy Road and Queens Grove. He identified four such sales; two freehold development site sales at 64 and 85 Avenue Road, a combined leasehold and freehold sale of a development site at 73-75 Avenue Road and a combined leasehold and freehold sale of an existing house at 62 Avenue Road.

18. Before the LVT Mr Buchanan had valued No.64 as a house sale and not a development site sale. He explained that he now thought that this was an incorrect approach. There was no new evidence about the sale; he had just got it wrong before the LVT.

19. In July 2007 planning permission was obtained for the redevelopment of No.64. It was then sold in December 2007 for £15.5m. Contracts for a further sale for £16m to a developer were exchanged in June 2008 with completion taking place in June 2009. Mr Buchanan did not rely upon the first sale since it was further away from the valuation date for the Property. He considered that the purchaser did not proceed with the redevelopment of No.64 because of the

"drastically reduced" availability of development funding after the collapse of Lehman Brothers in September 2008. The purchaser obtained planning permission for a smaller development comprising the alteration and extension of the existing building in March 2009. This was subsequently implemented.

20. Mr Buchanan said that the second sale of No.64 should be treated as a development site sale since it was marketed as such at a time before the Lehman Brothers episode. The sale price should be analysed by reference to the maximum development potential that existed at the date of sale, which he took as the date of exchange of contracts in June 2008. He therefore adjusted the sale price of £16m for time to give a value of £16.208m at the valuation date for the Property and then divided that figure by 16,300 sq ft, which was the amount of floorspace for which planning permission was obtained in July 2007. This gave a rate of £994 per sq ft.

21. 85 Avenue Road was sold twice in 2009; firstly in May for £12m and then in December for £11.7m. Both sales were with the benefit of planning permission for a redevelopment of 14,246 sq ft. Mr Buchanan relied upon the second sale since it was closer to the valuation date in this appeal. Adjusting for time gave a value of £12,193,740 or £845 per sq ft.

22. The third development site comparable was that of a double plot at 73-75 Avenue Road. The leasehold interest in this property was sold in August 2009 with the benefit of a notice to enfranchise for £10.1m. A figure of £7.5m was subsequently agreed as the freehold enfranchisement price giving a combined total of £17.6m. Adjusting for time gave a figure of £18.876m. At the date of sale there was no planning permission for redevelopment, although permission was obtained in 2011 for a house in excess of 20,000 sq ft. Mr Buchanan adopted this figure and derived a rate of £944 per sq ft.

23. The average of the three comparables was £927 per sq ft. Mr Buchanan took £1,000 per sq ft as being the appropriate figure to value the development potential of the Property.

24. Mr Buchanan said that the best evidence of the value of the unimproved floorspace of the Property was derived from the combined leasehold and freehold sale of the existing house at 62 Avenue Road. The leasehold interest was sold in July 2009 for £8m with the benefit of a notice to enfranchise. The freehold enfranchisement price was determined by the LVT at £4.95m with a valuation date in March 2009. The total value was therefore £12.95m which Mr Buchanan adjusted for time from July 2009 to give £13,821,535. He divided this by the existing GIA of No.62 (9,245 sq ft) to give a rate of £1,495 per sq ft for the unimproved floorspace.

25. Applying the rate of £1,495 per sq ft to the unimproved area of the Property (7,600 sq ft) gave a value of £11.362m. Mr Buchanan then allowed for the potential to undertake the tenant's improvements. He took the area of house improvements (1,700 sq ft) at the rate of £1,000 per sq ft derived from the comparable development site sales to give a figure of £1.7m. He then took the area of the garage block (695 sq ft) at half of this rate to give a value of £347,500. This gave a total unimproved freehold vacant possession value for the Property of £13,409,500. The value of the improvements represented 15.27% of this figure.

26. Mr Buchanan then made two further adjustments. The first adjustment was in respect of the new Swiss Cottage School to the north of 64 Avenue Road. He said that although this proposal had been known for some time, by the valuation date it was clear that the school redevelopment was actually going to happen. At the time of the sale of the comparable properties the proposals were much less certain and it was necessary to make an adjustment to reflect the market's earlier view that the school development might not proceed. Mr Buchanan also relied upon the collapse of the sale of 56 Avenue Road in 2010 as evidence of the deleterious effect of the proposed school development. He produced a recent letter from Mr James Simpson of Knight Frank, the selling agent of that property, in which Mr Simpson said that he had been informed that, after contracts had been exchanged, the purchaser learned about the school and decided that it would have a severely adverse effect upon the value of No.56. The purchaser declined to complete the sale. Mr Buchanan made a 10% deduction from the freehold value to allow for the impact of the school.

27. The second adjustment was in respect of the proximity of the property to the Israeli ambassador's house at 58 Avenue Road. Mr Voyazides gave evidence about the problems caused by living next door to the ambassador. These included intrusive scrutiny of the appellant's movements by Special Branch; questioning of visitors (for instance the appellant's daughter's tutor); Special Branch's insistence that there should be no access to a balcony overlooking the ambassador's garden; having to close the gates to the Property whenever the ambassador held a function at his house; armed policemen patrolling outside; being prevented from using an intercom system at the Property in case it interfered with communications at No.58 and interference with the appellant's television reception. Mr Buchanan concluded that these were serious problems and represented a material disadvantage to the Property that should be reflected in its price. He therefore made a 5% discount in value to allow for the proximity of the ambassador's residence.

28. Deducting a total of 15% from the freehold value gave a final figure for the unimproved vacant possession value of the Property of £11,398,075.

Freehold value: the case for the respondents

29. Mr Martin maintained that the best comparable to value the freehold interest in the Property was the sale of 64 Avenue Road. Unlike Mr Buchanan, Mr Martin considered that the two sales of No.64 in January 2007 and June 2008 should be treated as house sales rather than development site sales. In support of this view he explained that although No.64 had planning permission for redevelopment, the second purchaser, a developer called Mr Kevin Cash, had not implemented that permission but instead had obtained planning permission in March 2009 for a smaller development involving the retention of the house with alterations and extensions. Mr Martin said that some two to three years ago he had contacted Mr Max Dealey of the Blue Star Group to try and arrange an inspection of No.64. Mr Dealey acted for Mr Cash and he told Mr Martin that Mr Cash had not intended to demolish No.64 at the time of his purchase but instead had planned to retain and refurbish it as indeed he had done subsequently.

30. The original GIA of No.64 was 8,880 sq ft. A further 1,045 sq ft could be developed under the March 2009 planning permission, making a total of 9,925 sq ft. Mr Martin took this additional floorspace at a rate of 50% which gave an effective GIA of some 9,405 sq ft. He divided the time adjusted prices of the two freehold sales of No.64 by this effective area to give rates of £1,780 per sq ft and £1,720 per sq ft for the January 2007 and June 2008 sales respectively.

31. Mr Martin adjusted the GIA of the Property to reflect the improvements that had been made during the term of the leases. He took 50% of the additional floorspace of 1,700 sq ft and 25% of the area of the garage block of 695 sq ft. This gave an adjusted GIA for improvements of 1,024 sq ft and a total adjusted GIA of 8,624 sq ft. Applying the rates derived from the two sales of No.64 gave an unimproved freehold value for the Property of £15.35m based on the January 2007 sale and £14.83m based on the June 2008 sale. Giving more weight to the later sale which was closer to the valuation date, Mr Martin valued the freehold interest in the Property at £15m.

32. Mr Martin analysed the comparable at 62 Avenue Road in two ways. He emphasised that it was the combined price of the leasehold sale (£8m) and the freehold enfranchisement price as determined by the LVT (£4.95m), and "not the individual valuation components", that had some evidential value for determining the freehold value of the Property. In his first analysis Mr Martin took the combined figure of £12.95m and adjusted it for time to the valuation date. He adjusted the two elements of the combined price separately; indexing the enfranchisement price from the valuation date for No.62 in March 2009 and the leasehold value from the date of the sale in July 2009. The time adjusted value so calculated was £14,058,640. He then divided this figure by what he described as the "equivalent GIA" of No.62. The total GIA of No.62 was 9,245 sq ft but some of the space was not fully usable. Mr Martin made two adjustments; he reduced the value of the second floor accommodation at the front by 10% (as it was built into the roof, had no front window and was effectively loft space) and reduced the value of the basement "remainder" area by 50% (as it comprised a warren of unlit rooms with no natural light and was effectively a cellar used for storage). Making these adjustments gave a GIA of 8,315 sq ft and produced a rate of £1,691 per sq ft. Applying this to the improvement adjusted GIA of the Property (8,624 sq ft) gave a freehold value of £14,580,691. Before the LVT Mr Martin had conducted a similar analysis but had used the total GIA of No.62 of 9,245 sq ft. This resulted in a freehold valuation of the Property of £13.1m.

33. In his second analysis Mr Martin referred to his agreement of the unimproved value of No.62 in the sum of £11.25m with the tenant's valuer, Mr Beckett, at the time of the LVT hearing into the enfranchisement of that property. Mr Martin adjusted that figure to the valuation date for the Property which gave £12.546m. He explained that No.62 was inferior to the Property in a number of respects: its layout was very poor and provided badly arranged accommodation; it was overlooked by No.64 at the rear; the plot of No.62 was narrower and smaller than that of the Property (11,800 sq ft compared to 14,130 sq ft). Taking these factors into account Mr Martin considered that this analysis also supported his freehold valuation of the Property at £15m.

34. Mr Martin said that he considered the building at No.62 to be so unattractive and poorly laid out that its true value lay in the site for redevelopment rather than as an existing house (which was the basis upon which he had analysed the combined leasehold sale price and enfranchisement price). In this regard it was similar to 85 Avenue Road which had been sold in December 2009 for £11.7m. Adjusting for time and dividing by the GIA of the existing house at No.85 gave a rate of £2,150 per sq ft. Applying this rate to the Property resulted in a value of £18.54m. Mr Martin also analysed an earlier sale of No.85 in May 2009 which resulted in a value for the Property of £19.695m; the average of the two analyses being £19.1m, a figure which Mr Martin said was "clearly too high". The reason for this was the fact that No.85 had been sold as a redevelopment site with planning permission and not as a house. Analysed as a site and not as an existing house gave an average site value for No.85 of £12.575m, time adjusted to the valuation date. Its site area (14,745 sq ft) was similar to that of the Property (14,130 sq ft) and was therefore directly comparable in terms of size. However No.85 was in a worse location than the Property, being heavily overlooked at the rear by the Queensmead flats and other nearby properties. Mr Martin concluded that the market was willing to pay at least £12.2m (the adjusted value of the second sale) for a site of comparable size but in a far less desirable location.

35. Mr Martin made no discount for either the new school or the proximity of the ambassador's residence to the Property. He said that the proposal to build a new school had been known about for several years with outline planning permission being granted in November 2008 and full planning permission in September 2010. The proposals had been the subject of public consultation since May 2007. The possibility of the redevelopment of the school site had been recognised well before then and Mr Buchanan had acknowledged "a risk of [its] potential redevelopment by a high rise residential scheme" in his evidence to the LVT in 2002 regarding 64 Avenue Road. The sale price of the comparables at 62, 64 and 85 Avenue Road all reflected the impact of the proposed school development and the Property was further away from the school site than any of these properties. While Mr Martin accepted that the ostensible reason for the collapse of the sale of 56 Avenue Road had been the failure to disclose the proposed redevelopment of the school site he considered that there may have been other undisclosed reasons for the purchasers' action.

36. Mr Briant, a partner in Cluttons and since 2000 the Estate Surveyor of the Trustees of the Eyre Estate's St Johns Wood properties, said that the appellant had not complained about the Israeli ambassador's residence to the Eyre Estate. He explained that he had come into contact with the Voyazides family at the time their respective daughters had attended the same school. Mr Briant's connection with the Eyre Estate had become known to the appellant in July 2001 but she had not raised any problems about the ambassador's residence with him at any time. Mr Briant's daughter had attended birthday parties at the Property but the security at No.58 had not been noticeable on those occasions. Mr Briant had always found the police stationed at No.58 to be courteous and accommodating and he thought it unlikely that anyone visiting the Property would be aggressively challenged unless they gave cause. No planning application had been made for a balcony at the Property nor any application made to the Eyre Estate for permission to build one. Mr Briant noted that the Property had two vehicular entrances and if one had to be closed at the request of the police the other could still be used. He also described his own experience of living close to the home of a former prime minister whose block of flats had been

protected by the police. His perception was that the police presence discouraged burglaries and gave neighbouring residents additional security.

37. Mr Martin said that Mr Buchanan had not raised the proximity of the ambassador's residence as an issue at the LVT hearing in the case of 56 Avenue Road, the property which adjoined the ambassador's residence to the south. Mr Martin thought that the presence of the ambassador next door had no impact on value and he made no allowance for it in his valuation. He therefore maintained that the unimproved freehold value of the Property was £15m as determined by the LVT.

Freehold value: conclusions

38. The parties agree that the Property should be valued as a house and not as a development site. They also agree that the comparables at 73/75 and 85 Avenue Road should be analysed as development site sales. But there is no longer agreement about the appropriate way to analyse the sale(s) of 64 Avenue Road; Mr Buchanan having now decided to treat No.64 as a development site contrary to the view that he expressed before the LVT, shared by Mr Martin, that it should be valued as a house. Mr Buchanan gave no reason for this change of mind other than to say that his previous approach was wrong. There appears to be no new evidence to support his revised opinion.

39. Mr Buchanan's treatment of No.64 as a development site means that he now relies upon the combined price of 62 Avenue Road (the leasehold sale value plus the enfranchisement price as determined by the LVT) as being the best (rather than good) evidence of the freehold value of the Property. Mr Martin disputes this and prefers the evidence of the sale(s) of No.64, which is the approach favoured by the LVT. We consider firstly therefore whether No.64 should be valued as a house or a development site.

40. Mr Martin produced a copy of the property particulars of No.64 in respect of the June 2008 sale. These referred to:

> "An outstanding opportunity to purchase a substantial (902 sq m/ 9742 sq ft) residence set back from the road on an exceptional 0.75 acre plot with full planning consent to construct a truly spectacular lateral 1,514 sq m/ 16,300 sq ft iconic mansion arranged over four floors."

The planning permission referred to was that granted in July 2007. There were several computer generated images of what the redevelopment would look like together with floor plans of the proposed development. In our opinion the emphasis of the particulars was on the redevelopment potential of No.64, although they do refer to the existing building and contain photographs of it.

41. The first sale of No.64 was completed in December 2007 although contracts were exchanged the previous January, the date from which Mr Martin adjusted the transaction for

time. Planning permission for the redevelopment of the house had not been granted at the date of exchange.

42. Mr Martin relies on hearsay evidence about the purchaser's intentions at the time of the second sale in June 2008. There is no witness statement from Mr Cash or Mr Dealey to corroborate Mr Martin's assertion on this point. But it is known that Mr Cash did not implement the 2007 planning permission; instead he obtained and implemented planning permission for a more limited refurbishment and extension of the existing building. Mr Buchanan says that Mr Cash did this because of the increased difficulty of obtaining development finance following the collapse of Lehman Brothers in September 2008, but he adduced no evidence about Mr Cash's access to finance and his opinion was based upon a generalisation about market behaviour.

43. In our opinion the evidence of the sales of No.64 and the subsequent actions of the purchaser suggest that the value of the Property is very similar whether viewed as a redevelopment site or as an existing house suitable for refurbishment and improvement. There is not necessarily a significant difference between these two values.

44. Mr Martin analyses the second sale of No.64 as a house with the potential for improvement at a value of £1,720 per sq ft (or £1,825 per sq ft if one only uses the GIA of the existing floorspace). That figure contrasts with the rate he obtained by dividing the sale price of No.85 by the GIA of the existing accommodation. This showed a time adjusted value of £2,284 per sq ft for the May 2009 sale and £2,150 per sq ft for the December 2009 sale. The parties agree that No.85 was a site sale and the high figures produced by Mr Martin's analysis reflect the present underdevelopment of the site and the ability to redevelop at a greater density. The same is true of the combined leasehold sale price and negotiated enfranchisement price for 73/75 Avenue Road. The time adjusted combined price when divided by the GIA of the existing house showed a rate of £3,189 per sq ft which again reflected the redevelopment potential of the site as agreed by the valuers.

45. We do not accept Mr Johnson's submission that Mr Martin, by using the rate he derived from No.64 as a house to value the Property, committed a "valuation nonsense". It was a legitimate analysis of the sale of No.64 and indeed was a method used by Mr Buchanan before the LVT. Mr Buchanan did not give any reason for his change of approach in this appeal other than that he was previously mistaken. We do not agree and in our opinion the sale of No.64 is the best market evidence of the freehold value of the Property as an existing house with the potential for improvement. We prefer to rely upon the second sale of No.64 which was closer to the valuation date.

46. The valuers agree that the time adjusted price of the second sale of No.64 in June 2008 was £16.208m. The GIA of the existing building was 8,880 sq ft and planning permission was granted in March 2009 for extensions comprising a further GIA of 1,045 sq ft. Mr Martin said that this prospective floorspace should be valued at 50% of the rate for the existing accommodation. The effective area of the improvements at No.64 was therefore 525 sq ft

(rounded) and the total area 9,405 sq ft. Dividing this into the time adjusted purchase price of £16.208m gives £1,723 per sq ft which Mr Martin rounded down to £1,720 per sq ft. He therefore adopted a rate of £860 per sq ft to value the improvements. This compares with the rate derived by Mr Buchanan for No.64 as a development site of £994 per sq ft. Applying Mr Martin's figures to the existing and improved areas of the Property gives a freehold value of £14.83m. Substituting Mr Buchanan's figure of £994 per sq ft for the new floorspace and £497 per sq ft for the garage block at the Property gives a freehold value of approximately £15.165m. In our opinion this analysis supports a value of £15m for the Property.

47. Mr Buchanan now relies upon the combined price of the leasehold sale of No.62 and its enfranchisement price as being the best (rather than good) evidence of the freehold value of the Property. In our opinion such a "combined" approach gives an indication of the minimum value of the freehold interest; the logic of the approach being that a purchaser will not pay an amount for the leasehold interest plus the enfranchisement price that is more than the value of the unencumbered freehold interest. So £12.95m is, in our opinion, an indication of the minimum value of the freehold value of No.62; it may have been worth more. The use of this figure as a proxy for the unencumbered freehold value involves a circularity; it is necessary to know the unencumbered freehold value of No.62 in order to calculate the enfranchisement price but it is necessary to know the enfranchisement price before the unencumbered freehold value can be determined. The LVT adopted the freehold value of £11.25m that the valuers had agreed in the case of No.62 but which is now said by Mr Martin, and accepted by Mr Buchanan, to be too low. The method as applied to No.62 also assumes that the leasehold sale price will accurately reflect not only the benefits of a prior valuation date in a rising market (although the market fell again in the quarter ending September 2009) but also the 50% of the marriage value that is not included in the enfranchisement price. But at the time the leasehold of No.62 was sold in July 2009 the enfranchisement price had not been determined by the LVT and so there must inevitably have been uncertainty about the figures.

48. Subject to these reservations, which lead us to agree with Mr Martin that the use of the combined value approach at No.62 is a secondary valuation method and that the use of a direct comparable freehold transaction such as that at No.64 is to be preferred, we proceed to analyse in more detail the combined value approach relied on by Mr Buchanan.

49. There is a small difference in the valuers' respective adjustments for time. Mr Buchanan increased the combined figure of £12.95m from July 2009 until the valuation date, giving a total of approximately £13.82m, while Mr Martin increased the enfranchisement price of £4.95m from March 2009 and the leasehold price of £8m from July 2009 until the valuation date, giving a total of approximately £14.06m. Mr Buchanan said that the sale of a leasehold interest where the vendor has served a notice to enfranchise was a benefit to the purchaser that would be reflected in the leasehold price; such a notice fixed the valuation date and the purchaser would therefore benefit from any subsequent rise in house prices. Prices rose by 5% between March and June 2009 (but then fell by 1.4% in the next quarter, before rising again thereafter). We accept that at least some of this benefit was likely to have been reflected in the purchase price and we prefer Mr Buchanan's approach to time adjustment and accept his figure.

50. The other significant difference between the experts when analysing No.62 was in the GIA which each expert adopted. Mr Buchanan took the figure of 9,245 sq ft that Mr Martin had used at the LVT hearing, while Mr Martin now reduced this figure to 8,315 sq ft (a reduction of 10%) to reflect the disadvantages of some of the floorspace (see paragraph 32 above). In cross-examination Mr Buchanan accepted in principle that such an adjustment was warranted but he did not think it should be as large as Mr Martin's figure. We do not accept Mr Johnson's description of Mr Martin's adjustment of the GIA as being a "savage cut". It is a figure which is based upon Mr Martin's inspection of the property and which gives a result which is considerably larger than the figure of 6,735 sq ft adopted by the lessee's expert, Mr Beckett, before the LVT hearing in No.62. When using the total GIA of 9,245 sq ft before the LVT in No.60 Mr Martin said that it was not "truly reflective" and that some of the space was "not particularly usable". We consider Mr Martin's adjustment to the GIA of No.62 to be reasonable and we adopt it for the purpose of our analysis.

51. Taking Mr Buchanan's time adjusted combined value for No.62 of £13,821,535 and dividing it by Mr Martin's adjusted GIA of 8,315 sq ft gives a rate of £1,662 per sq ft. Applying this to the existing floorspace of the Property of 7,600 sq ft gives a value of £12,631,200. Mr Buchanan values the potential additional floorspace of 1,700 sq ft at £1,000 per sq ft and the garage space of 695 sq ft at £500 per sq ft. This gives a total additional value of £2,047,500, making an overall freehold value of approximately £14.68m. Mr Martin takes the additional floorspace at 50% of the existing value (£831 per sq ft) and the garage space at 25% (£415 per sq ft). This gives a total additional value of £1,701,125, making an overall freehold value of approximately £14.33m. The average of the two figures is £14.5m.

52. We accept Mr Johnson's submissions that the value of No.62 is not diminished by overlooking from No.64. However we accept Mr Martin's opinion that the size (and frontage) of the plot at the Property, the area of which is 20% larger than that of No.62, goes to value. We also accept Mr Martin's view that No.62 is a less attractive house than the Property. Although we did not inspect the interior of No.62 we are of the opinion that its appearance, shape, design and general layout make it less valuable as an existing house than the Property. That being so we are satisfied that a freehold value of £15m for the Property is supported by the evidence of the combined price of No.62.

53. Although both experts agree that the Property should be valued as an existing house with potential for improvement we note that No.62 received planning permission in June 2012 for the development of a new house with a GIA of 16,170 sq ft. Based on the planning permission obtained for No.85 Mr Buchanan said that the maximum size of a new house at the Property would be 14,000 sq ft. But the subsequent evidence of the planning permission at No.62 suggests that Mr Buchanan might have underestimated the development potential of the Property. We acknowledge that neither No.62 nor the Property had planning permission for redevelopment at the valuation date but we consider that a redevelopment of at least 15,000 sq ft would have been viable at that time. The absence of planning permission would have reduced the value of the Property for redevelopment but at Mr Buchanan's figure of £1,000 per sq ft for the value as a site we consider that a site value approach would support Mr Martin's valuation of the freehold interest of £15m.

54. Mr Buchanan deducted a total of 15% from the freehold value rate per sq ft derived from the combined price of No.62 to reflect the relative disadvantage of the Property with regard to the new school (10%) and the proximity of the Israeli ambassador's residence (5%). Mr Buchanan was unable to identify any specific event that occurred between March/July 2009 and the valuation date that would justify such a reduction due to the new school. He said that as time went on the market came to realise that the school was actually going to be built which had an adverse impact upon value. We do not agree. The proposal to redevelop the school had been in the public domain for a long time. Outline planning permission had been granted in November 2008 for an 1150 pupil academy, a replacement special educational needs school, together with 3,400 sq m of residential accommodation. By the time the details of the proposal were considered by the Greater London Authority in July 2010 the residential element of the scheme had been dropped. There is no evidence that the evolution of the scheme over the year between March 2009 and April 2010 had a detrimental impact on house values in the area. We consider that any impact that the school might have had would have affected the value of Nos.62 and 64 more than that of the Property since they are closer to the school site. We agree with Mr Martin that the effect of the proposed development was already reflected in the comparables. We have also had regard to the correspondence submitted by the appellant regarding the collapse of the sale of No.56 in 2010, the ostensible reason for which was the non-disclosure of the proposed school development. But we do not accept the purchaser's comment, as reported by the selling agent, that "the scale of the new school would have a severely adverse effect on the value of the property", given that No.56 is more than 75m from the school site at its nearest point and there are four substantial houses between it and the school boundary. We therefore see no justification for Mr Buchanan's 10% adjustment and we make no such allowance.

55. Mr Buchanan said in his evidence to the LVT that the proximity of the Israeli ambassador's house would be regarded as a disadvantage by some purchasers of the Property, but he did not reduce his valuation as a consequence. His adoption of a 5% discount in the value of the Property in his evidence to this Tribunal was based upon Mr Voyazides' evidence about the practical problems of living next door to the ambassador. Mr Buchanan described these as "serious problems" involving a significant level of security interference and intrusion. Mr and Mrs Voyazides have lived at the Property since 1994 and Mr Voyazides said that they had been unaware of the problems with their neighbour when they bought No.60. He described their purchase of the Property as "messy" and said that they did not have time to consider the matter. They had not written to the ambassador about their problems because they did not believe that their convenience would be put before the ambassador's security; but the matter has not been tested. Mr Voyazides accepted that the security surrounding No.58 probably helped deter burglaries.

56. We were not assisted on this issue by Mr Briant whose evidence was based upon isolated observations and which occasionally strayed into opinion.

57. We accept that at times the problems identified by Mr Voyazides are likely to be a nuisance but we do not agree with Mr Buchanan's assessment of the seriousness that they represent. It is uncertain whether these problems would be disclosed to a purchaser but even if they were we are not persuaded that they are such as would sound in value in a rising market at

the valuation date, particularly given the compensating factor, acknowledged by Mr Voyazides, that a visible police/security presence would probably help deter burglaries. We therefore make no adjustment for the proximity of the Israeli ambassador's house.

58. We conclude that the unimproved freehold vacant possession value of the Property is £15m.

Leasehold value: the case for the appellant

59. Mr Buchanan relied upon market sales as being the best evidence of leasehold value, making a percentage adjustment to allow for the benefit of the 1967 Act. Such an adjustment was based upon what his "experience suggests is appropriate" and reflected the likely element of anticipated marriage value in the purchase price. He preferred this method of valuation to the use of graphs of relativity.

60. In the subject case, with a lease with an unexpired term of 19.16 years, Mr Buchanan said that the appropriate deduction for Act rights was between 20 to 25%. He adopted a figure of 25% which he said was supported by the recent LVT decision in respect of No.62 which also determined a discount of 25% for a similar unexpired term.

61. Mr Buchanan relied primarily upon the leasehold sale of No.62 to determine the leasehold value of No.60. He adjusted the leasehold price of No.62 for time to give £8,538,400. He then divided this by the total GIA of 9,245 sq ft to give a rate of £923 per sq ft. He applied this rate to the unimproved GIA of the Property (7,600 sq ft) to produce a value of £7,014,800. Mr Buchanan then made an adjustment to reflect the potential to increase the floorspace of the Property to 9,300 sq ft. He did this by calculating the percentage of the total freehold value of No.62 that was represented by the value of the improvements (15.27%) and increasing the unimproved leasehold value of No.60 by the same percentage. This gave a figure of £8,085,960. He allowed for the benefit of the Act by making a deduction of 25% and then deducted a further 15% to allow for the adverse effects on the Property of the new school and the proximity to the Israeli ambassador's residence. He made no allowance for the small difference in lease length between No.62 (20.3 years) and No.60 (19.16 years). Mr Buchanan's final figure for the leasehold value of the Property was £5,154,400 which represented a relativity of approximately 45% of his adopted freehold value.

62. Mr Buchanan undertook a similar analysis in respect of the sale of the leasehold interest in No.73/75 for £10.1m in August 2009. This produced a leasehold value for No.60 of £5,788,483 before adjusting for the new school and the proximity of the ambassador's residence. However Mr Buchanan did not rely on this comparable because it involved two extra stages of analysis; firstly, it had to be adjusted for lease length (the lease of Nos.73/75 had an unexpired term of 24 years) and, secondly, it was sold as a development site which led Mr Buchanan to make an additional discount of 25% "to reflect the larger site and greater development potential".

63. Although he did not rely upon graphs to obtain the relativity Mr Buchanan noted that the graph of graphs showed a relativity for an unexpired term of approximately 19 years of between 42 and 48%. The relativity graph produced by Knight Frank in June 2011 (which excluded LVT decisions) showed a relativity for an unexpired term of just under 20 years of some 44.6%. He also noted that in its decision on No.62 the LVT had adopted a relativity of 51% for a lease with an unexpired term of 20 years. He considered that such evidence supported his adopted relativity of 45%.

64. Mr Buchanan considered a third approach to calculating the relativity, based upon the capitalisation of rental value, and which he adopted as a cross-check. He said that 83 Avenue Road had been let in 2010 for £10,000 per week and 46 Avenue Road had been let in 2011 for £11,000 per week. He said that No.60 could have been let at the valuation date at a gross rent of £10,000 per week or £520,000 per annum. He capitalised this at a gross yield of 6% for 19.16 years to give a leasehold capital value of approximately £5.8m. No adjustment was necessary for the benefit of the Act. He considered that this cross-check supported his adopted leasehold value.

Leasehold value: the case for the respondents

65. Mr Martin relied upon graphs of relativity and, in particular, upon the graph entitled "Eyre Estate and John Lyon's Charity Settlements (Houses)" produced by Cluttons in November 2010. The graph excluded all tribunal decisions and cases involving onerous ground rents. Mr Martin considered this to be the most reliable graph to use in this appeal because it included settlement evidence of houses for St John's Wood and Maida Vale. It was therefore geographically and property type specific. For an unexpired term of 19.16 years the Cluttons graph showed a relativity of 41%.

66. Mr Martin also referred to two other graphs; the RICS Research Report version of Cluttons graph (42.81%) and the Gerald Eve 1996 graph (41.66%). He took the mean of these three graphs (41.82%) and rounded it to 42%.

67. In response to the appellant's criticism of the Gerald Eve graph Mr Martin said that it continued to be used by many valuers including valuers acting for tenants. He referred to, but did not rely upon, the Knight Frank graph and he dismissed the graph of graphs as historic and irrelevant.

68. As a check on his figure Mr Martin referred to a method of calculation of relativity that had been used by the Lands Chamber in its decision in *Earl Cadogan v Cadogan Square Limited* [2011] UKUT 154 (LC). In that appeal the Tribunal compared the relativity from two graphs for equivalent unexpired terms over a range from 5 to 50 years. One graph showed the relativity including Act rights (Savills 2002 enfranchisable graph); the other showed the relativity excluding Act rights (the Gerald Eve 1996 graph). The difference in the relativities for equal unexpired terms shown in those two graphs should (theoretically) represent the value of

the Act rights. Applying the method to No.60 gave a relativity of 42.27% for an unexpired term of 19.16 years which Mr Martin said supported his figure (and that of the LVT) of 42%.

69. Mr Martin did not agree with Mr Buchanan's view that the best comparable for the leasehold value of the Property was the leasehold sale of No.62. Mr Martin said that there were a number of factors surrounding that sale which led him to think that it might not have been an arm's length transaction: No.62 had not been advertised in the market; no sales particulars were prepared; no for sale sign was erected; the purchaser had known and liked the property for many years; contracts were initially exchanged at a price of £9.2m in July 2008 but this was subsequently reduced to £8m in July 2009 and only half of this amount was paid on completion with the balance effectively being loaned to the purchaser by the vendor who took a legal charge against the property for the remaining £4m. Mr Martin agreed with Mr Buchanan that the leasehold sale of 73/75 Avenue Road was not a useful comparable. Because of the problems with the sale of No.62 Mr Martin preferred to use graphs to calculate the relativity to be applied to the freehold value.

70. Mr Martin said that the market did not use a rental capitalisation approach to value a lease with an unexpired term of 19.16 years. He said that the rental value adopted by Mr Buchanan reflected an improved house and failed to allow for void periods which he anticipated would be likely to occur after 3 to 4 years. He considered that an adjustment of 40 to 50% would be required to obtain a rent net of outgoings such as management, letting costs and void periods. Data from the Investment Property Databank suggested a deduction of 33% of gross income should be allowed for voids and irrecoverable operating costs. Even if one made a deduction for outgoings as low as 25% and applied it to Mr Buchanan's annual rent of £520,000 it would produce a capital value for No.60, using a gross yield of 6%, of £4.37m. This represented a relativity of 29.13% against Mr Martin's freehold value of £15m and of 37.47% against Mr Buchanan's equivalent figure of £11.664m. Mr Martin said that these relativities were too low and demonstrated that the use of a rental capitalisation approach was wrong in this instance.

Leasehold value: conclusions

71. In *Arrowdell Limited v Coniston Court (North) Hove Limited* [2007] RVR 39, which was followed in *Nailrile and Others v Earl Cadogan and Others* [2009] RVR 95, the Tribunal said:

> "In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity…"

Mr Buchanan prefers the evidence of the single market transaction at No.62 while Mr Martin prefers the use of graphs of relativity. Both methods have been accepted by the Tribunal in other appeals.

72. An initial examination of the figures suggests that there is little between the parties on the point. Given that we have found that there should be no deduction for either the new school or

the proximity of the ambassador's residence, Mr Buchanan's approach produces a leasehold value of £6,064,470 compared with Mr Martin's figure of £6,300,000. Mr Buchanan's valuation represents a relativity of 40.4% of the freehold value, as determined by us, of £15m.

73. But in our opinion Mr Buchanan's valuation requires two further adjustments. Firstly, Mr Buchanan's analysis of the leasehold sale of No.62 was based on a GIA of 9,245 sq ft. We have adopted Mr Martin's GIA of 8,315 sq ft for the reasons given in paragraph 50 above. To be consistent the analysis of the leasehold sale of No.62 should also be made by reference to the smaller GIA. This produces an unimproved rate of £1,027 per sq ft (compared with Mr Buchanan's figure, based on the larger area, of £923 per sq ft). Applying this rate to the unimproved GIA of No.60 of 7,600 sq ft gives a base leasehold value of £7,805,200.

74. Secondly, Mr Buchanan has added 15.27% to the unimproved leasehold value to reflect the potential for improvements. He says that this "is derived from the same percentage derived for the value of improvements in my assessment of the freehold value…" That is not the case. In Mr Buchanan's freehold valuation he expresses the value of improvements as 15.27% of the *total* freehold value, ie a figure which includes the value of the improvements. The improvements represent 18.02% of the base freehold value, ie the value of the unimproved floorspace. It is the latter percentage that, in our opinion, Mr Buchanan should have added to his base leasehold value. Adding this percentage to the base leasehold value of £7,805,200 produces a figure of £9,211,697. Applying Mr Buchanan's adjustment of 25% for the benefit of the Act gives an adjusted leasehold value of £6,908,772, which is a relativity of 46.1% compared to our freehold value of £15m.

75. We make two further observations on this point. Firstly, there is a small difference in the lease length between No.62 (20.3 years) and No.60 (19.16 years). The lower the unexpired term of the lease the lower the leasehold value will be. Mr Buchanan adjusted for lease length (in the case of 73/75 Avenue Road) by reference to the Savills 1992 unenfranchisable graph and although he made no such adjustment in respect of No.62 he acknowledged that there would be "a very small difference" between the leases on that property and No.60. Making a similar adjustment between Nos.62 and 60 suggests a reduction of some 1.3% in the relativity to reflect the shorter unexpired term at the Property. This would give an adjusted relativity of 44.8%. Mr Martin adjusts for lease length by reference to the Gerald Eve 1996 graph. Adjusting the relativity of 46.1% using this graph gives a relativity for an unexpired term of 19.16 years of 44.2%. The average of the two figures is 44.5%.

76. Secondly, the LVT in No.62 determined that the benefit of a notice of claim having been served was of additional value ("at least" 7.5%) to any allowance for the benefit of the Act (17.5%). There are two benefits to such a notice; firstly, (in all instances) it enables the purchaser to avoid the two year qualifying period as a tenant before he can serve such a notice himself; and, secondly, (in a rising market) it allows the purchaser to enjoy any increase in value since the date of service of the notice (the valuation date). (Conversely in a falling market there may be no benefit in a notice having been served by the vendor.) Both of these benefits apply to the sale of the leasehold interest in No.62. Mr Martin said in cross-examination that the deduction for the benefit of the Act should be "a bit more" than 25% to reflect the benefit of a

notice to enfranchise having been served in this case. He did not specify the amount of any such increase. Mr Buchanan said that he had made a single adjustment to reflect all of the benefits of the Act and had not distinguished the particular benefits of a notice having been served.

77. In our opinion a deduction of 25% to reflect all of the benefits of the Act, including the service of a notice to enfranchise by the vendor, is appropriate in this instance. Neither party identified, or attributed different percentages to, the component parts of those benefits. Mr Martin's check reference to the comparison of the Savills (2002) enfranchisable graph and the Gerald Eve (1996) graph also showed a deduction for Act rights in the region of 25%.

78. Our analysis of the sale of the leasehold of No.62 gives a relativity for No.60 of 44.5% which is in line with Mr Buchanan's adopted figure of 45%.

79. Mr Martin relied mainly upon the graph entitled "Eyre Estate and John Lyon's Charity Settlements (Houses)" produced by Cluttons in November 2010. This graph was presented as a scatter diagram of points with, for each transaction, relativity plotted against the unexpired term. (The source information for some of the points is given in appendices to Mr Martin's report to the LVT.) The graph does not show a best fit line between the points. There is only one data point (just over 20 years) recorded close to the unexpired term of the lease at No.60 (19.16 years). That point shows a relativity of 42%. The nearest other data points either side of this point are at unexpired terms of 18 years (40%) and 22 years (46%). There are a total of two data points between unexpired terms of 15 to 20 years and five data points between unexpired terms of between 20 to 25 years. While this is a small sample size upon which to base conclusions about the relativity of the leasehold interest at No.60 the data does have the benefit of being geographically proximate to the Property and is comprised only of house sales. But it represents the subjective analysis of settlements by Cluttons which is, we understand, from the landlord's perspective.

80. Mr Martin also referred to the earlier (November 2008) version of the Cluttons graph for settlements in respect of houses in the St John's Wood and Maida Vale areas that forms part of the RICS Research Report published in October 2009 and which shows a relativity (by interpolation) of 42.81% for an unexpired term of 19.16 years. The same observations that we made above in respect of Cluttons' more recent graph also apply to this graph.

81. The third graph upon which Mr Martin relies is the Gerald Eve (1996) graph. This is strongly criticised by Mr Johnson as having been disowned for several years by one of its authors (John D Wood) and as being out of date and of no relevance today. The graph shows a relativity (by interpolation) of 41.66% for an unexpired term of 19.16 years. Over 90% of the data relates to houses and is taken from prime central London postcode areas (W1, SW1 and SW3). We accept Mr Martin's observation that this graph is still used by practitioners - it is often referred to before this Tribunal. The reason for its continued use is explained in the notes to the graph in the RICS Research Report at page 19:

> "The Graph has been tested continuously by challenges in negotiations and in evidence given to the Leasehold Valuation Tribunal and the Lands Tribunal. The Graph has been reviewed in the light of those challenges. It has not been amended, because it is believed that the evidence that was available then [between 1974 and 1996] is stronger than that which has emerged since 1996. The underlying reason for this is that since 1993, and more so since 2002, there has been a drastic contraction in the supply of non-enfranchisable leases, following the fundamental extension of rights to enfranchise permitted by the LRHUDA 1993 and latterly by the Commonhold and Leasehold Reform Act 2002. It is considered that there is no reason for relativity to have changed over time." (These notes were apparently produced by Gerald Eve and not the RICS.)

The graph represents settlements based upon sales of non-enfranchisable leases and is therefore, at least to some extent, representative of direct market evidence that does not require an adjustment for the benefit of the Act. In our opinion the graph is not redundant and we give it weight when considering the relativity of the leasehold interest in the Property.

82. Although Mr Martin referred to a graph of relativity produced by Knight Frank he does rely upon it. Knight Frank revised this graph in 2011 and it now shows a relativity for an unexpired term of 19.16 years of 44.8% (based mainly on settlement evidence, excluding LVT decisions, of flats and houses in prime central London). This graph is not as geographically specific as the Cluttons graph and it includes flats as well as houses. (We note that the Cluttons RICS graph indicates that, at all lengths of unexpired term, the relativity of flats is shown as higher than that of houses). But the graph does represent a mixture of landlord and tenant clients.

83. The evidence from the graphs, with the exception of the Knight Frank graph, suggests a lower relativity (approximately 42%) than that obtained from the leasehold transaction at No.62 (44.5%).

84. The difficulty that we face is that both methods can be validly criticised. Mr Buchanan's approach depends upon a single transaction which, as Mr Martin points out, has features which suggest that it may not have been at arm's length (see paragraph 69 above). Graphs can be criticised for being historic or based upon one parties' analysis of settlements, which in the case of Cluttons is from a landlord's viewpoint (and therefore likely to produce lower relativities than an analysis from the point of view of a tenant). Nor do we gain assistance from Mr Buchanan's third method of approach which involves rental capitalisation. There was no evidence that this method is used in the market for leases with unexpired terms of approximately 20 years. We also accept Mr Martin's point that the rents referred to by Mr Buchanan are those attributable to fully modernised accommodation whereas the Property is assumed to be unimproved.

85. We must determine whether, in the light of the evidence that we have heard, the LVT was wrong in its decision to take the relativity of the leasehold interest of the Property at 42%. The LVT said in its conclusions on this point:

> "We are satisfied that the relativity of 42% to the freehold value of the 19.16 year lease, without Act rights, which Mr Martin proposed is certainly not too low. While we accept that first recourse should be had to market evidence, the market evidence of the value of the short lease is sparse and, as is usual, requires many adjustments, and in these circumstances we consider that it is appropriate to have regard primarily to graphs, and in our view Mr Martin's analysis from the graphs is fair."

In our opinion the LVT were entitled to take that approach to the determination of the relativity and we have not been persuaded by the evidence in this appeal that Mr Buchanan's primary approach of relying upon a single transaction and adjusting for the benefit of the Act is to be preferred. We have rejected his alternative approach based upon the capitalisation of rental value. The use of graphs is a recognised method of assessing the relativity and is one which we prefer in this instance, given that there is only one piece of usable transactional evidence to support Mr Buchanan's preferred approach. We consider that the majority of the graphs referred to in evidence support Mr Martin's relativity of 42% and we adopt that figure. This gives a leasehold value for the unexpired lease at No.60 of £6.3m, which is the figure determined by the LVT.

Determination

86. We have upheld both the freehold value (£15m) and the leasehold value (£6.3m) of the Property as determined by the LVT. The appeal is therefore dismissed and the price to be paid for the freehold interest in the Property is determined at £7,430,000.

Dated 22 January 2013

Her Honour Judge Alice Robinson

A J Trott FRICS