1571

REF: LON/OOAW/LAR/2007/904 (Flat 4)
LON/OOAW/LAR/2007/886 (Flat10)
LON/OOAW/LAR/2007/916 (Flat 12)

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION AND REASONS OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Premises : Flats 4, 10 and 12
Park Court
115A Clarendon Road
London W11 4JG

Applicant : Nora Doogan (Flat 4)
Rowan Bamford (Flat 10)
Alastair Anthony Latham Beck (Flat 12) (Tenants)

Respondent : Camden Development Company Limited (Landlord)

Date of hearing : 4th and 5th December 2007

Appearances
For the Applicants : Mr James Flynn, FRICS
For the Respondent : Mr Mark Wilson BSc MRICS

Members of the Leasehold Valuation Tribunal :

Miss S.J. Dowell BA (Hons)
Mr R. Humphrys FRICS
Dr A.M. Fox BSc PhD MCIArb

Date of Decision: 18th December 2007

Flats 4, 10 and 12, Park Court, 115A Clarendon Road, London W11 4JG

Background

1. (a) Property address:
Flats 4, 10 and 12,
Park Court,
115A Clarendon Road,
London W11 4JG.

(b) Date of the tenant's notice:
Flat 4 – 11th April 2007
Flat 10 – 20th March 2007
Flat 12 – 21st March 2007

(c) Date of the landlord's counternotice:
Flat 4 – 29th May 2007
Flat 10 – 29th May 2007
Flat 12 – 29th May 2007

(d) Date of the application to the leasehold valuation tribunal:
Flat 4 – 3rd August 2007
Flat 10 – 2nd August 2007
Flat 12 – 3rd August 2007

(e) Date of valuation:
Flat 4 – 11th April 2007
Flat 10 – 20th March 2007
Flat 12 – 21st March 2007

(f) Details of tenant's leasehold interest:
Flat 4: (i) Date of lease: 18th December 1970.
(ii) Term of lease: 99 years from 24th June 1970

(iii) Parties:Camden Development Company Limited (1) and Peter Gardiner Roberts (2)
(iv) Ground rent: £50 per year payable on 25th December.
(v) The unexpired term at valuation date: 62.20 years

Flat 10:
(i) Date of lease: 14th October 1971.
(ii) Term of lease: 99 years from 24th June 1970.
(iii) Parties:Camden Development Company Limited (1) and Arthur Sherman (2)
(iv) Ground rent: £50 per year payable on 25th December.
(v) The unexpired term at valuation date: 62.26 years

Flat 12:
(i) Date of lease: 19th February 1971.
(ii) Term of lease: 99 years from 24th June 1970.
(iii) Parties:Camden Development Company Limited (1) and Angela Frances Rice (2)
(iv) Ground rent: £50 per year payable on 25th December.
(v) The unexpired term at valuation date: 62.26 years

(f) Tenant's proposed premium:
Flat 4 - £24,900
Flat 10 - £24,900
Flat 12 - £24,000

(g) Landlord's proposed premiums:
Flat 4 - £35,516
Flat 10 - £35,490
Flat 12 - £33,171

Preliminary application

2. At the beginning of the hearing Mr Wilson made an application for Mr Flynn's report to be excluded because Mr Wilson had only seen his report at 9am on the morning of the hearing. Mr Wilson submitted that Mr Flynn was in flagrant breach of the

directions and that Mr Flynn's behaviour had compromised Mr Wilson's client. Mr Wilson said he had held back in delivering his own report because of negotiations but because of Mr Flynn's lateness he was not in a position now to rebut the applicants' case. Mr Flynn had had the benefit of his report for a week whereas he had only seen Mr Flynn's report that morning. However, Mr Wilson admitted that he had had time to consider the report (the hearing did not commence until midday) and that he was not taken by surprise by the contents of the report.

3. Mr Flynn relied in the first instance on a letter dated 30th November 2007 received by the tribunal on 4th December 2007 explaining the delay in delivering his valuation report. This was delivered to the tribunal offices at 9am on the morning of the hearing. Mr Flynn pointed out that Mr Wilson had also not complied with the directions and that he had not received the report until 28th November by e-mail and even then it was without the appendices. He explained he had been ill and that he had only seen the complete report including Mr Wilson's valuations on the morning of the hearing.

4. The tribunal made it clear to both valuers that it considered the manner in which the expert evidence had been handled to be wholly unsatisfactory. There had been no exchange of expert evidence in accordance with the directions and no correspondence sent to the tribunal explaining the breach of the directions or making complaints that one party or the other had not complied with the directions. In the tribunal's view there was no prejudice to either party in respect of the valuations or evidence upon which the valuers were relying. The parties had been given two hours to consider the report and to negotiate on the morning of the hearing and the tribunal concluded that the hearing should proceed on the basis of the written reports of Mr Wilson and Mr Flynn.

Inspection

5. The tribunal inspected the property on 5th December 2007 including the front and rear of the exterior of the property, the interior common parts and the interior of Flats 4, 10 and 12 in the presence of Mr Beck. The property is located on the west side of Clarendon Road north of the junction with Blenheim Crescent and south of the

junction with Elgin Crescent. Park Court is a 1970s block behind and above commercial ground floor premises. The entrance door to the residential parts of the building is at the front of the building on Clarendon Road. There are twelve flats in all, three on the ground floor and three on each of the three upper floors. Externally the property is in reasonable condition. Similarly the communal halls and staircases appeared to be in reasonable decorative condition. The floors were carpeted. The building does not have a lift and each flat has its own entry phone, door bell and door release.

6. Flat 4 is located on the first floor comprising hallway, two bedrooms (one double, one single), bathroom and open plan kitchen/reception room. The flat is unmodernised and has the original warm air central heating. The agreed gross internal area is 513 sq. feet.

7. Flat 10 is located on the third floor comprising hallway, two bedrooms (one double, one single), bathroom, and open plan kitchen/reception room. The flat had been modernised with a newly fitted kitchen and shower room and gas central heating with radiators. The agreed gross internal area is 513 sq. feet.

8. Flat 12 is also located on the third floor comprising hallway, two bedrooms (one double, one single), bathroom and open plan kitchen/reception room. The flat is unmodernised and has the original warm air central heating. The agreed gross internal area is 446 sq. feet.

9. The tribunal also inspected the immediate neighbourhood including the exterior of Allom House and Nottingwood House, local authority blocks of flats close to Clarendon Road and also 65 Ladbroke Grove.

Matters agreed

10. (a) Deferment rate – 5%

(b) Capitalisation rate – 6%.

Matters in dispute

11. (a) Relativity.
    (b) Extended lease values.
    (c) Existing lease values.

The law - Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

12. Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

13. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's right or to acquire any new lease.

14. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Evidence

15. Mr James Flynn FRICS provided a written report on behalf of the three lessees and Mr Mark Wilson BSc MRICS provided a written report on behalf of the landlord. The tribunal was also provided with a bundle of documents prepared by Terence St. J. Millett solicitors for the applicants. This bundle included the three notices of claim, the three counternotices, the three applications, official entries and title plans for the

three flats and copies of the existing leases for the three flats together with the official freehold entries and title plan.

The applicants' case

Long lease value

16. Mr Flynn attached to his report 32 pages printed from the "OurProperty" website listing Land Registry information on sales in the immediate area. He drew from this that sale prices for flats in 2007 varied between £200,000 and £1,700,000. He submitted that the subject flats were towards the bottom of this range.

17. He then listed sales of comparable flats in the area on which he relied:

(a) Flat 23, Allom House, Clarendon Road.
A local authority flat with two bedrooms. This property sold for £226,000 on 16th July 2007.

(b) Flat 96, Nottingwood House, Clarendon Road.
This property is a local authority flat with three bedrooms which sold for £365,000 on 16th March 2007. Mr Flynn pointed out that this was very close to the valuation date, it was a nicer flat and not over a shop.

(c) Flat 9, Nottingwood House, Clarendon Road.
This property is a local authority flat with two bedrooms. The property sold for £291,000 on 22nd February 2007.

(d) Flat 75, Nottingwood House, Clarendon Road.
This property is similar to Flat 9 Nottingwood in this house and sold for £282,000 on 17th November 2007.

(e) Flat 19, Nottingwood House, Clarendon Road.
This property is similar to Flats 9 and 75 and sold for £250,000 on 4th October 2006.

(f) Flat 3, 111 Clarendon Road.

This property sold on 22nd November 2004 for £265,000. This building is located between shops and the flat is above residential rather than commercial property.

(g) Flat 10, Park Court, 115A Clarendon Road.

Sold for £245,000 on 12th October 2004. This was more than two years prior to the valuation date but was included by Mr Flynn because it is one of the subject properties. Mr Flynn, at the request of the tribunal, considered overnight his indexing of the October 2004 sale price of £245,000 for Flat 10 and produced the following table.

	Short Lease	Extended Lease/Freehold	
Valued October 2004	245,000	250,000	255,000
March 2007 (LR)	329,711	336,440	343,169
March 2007 (Nat)	296,827	302,885	308,942
April 2007 (LR)	341,890	348,867	355,844
April 2007 (Nat)	302,716	308,894	315,072

LR = Land Registry

Nat = Nationwide

(Tribunal's note: the above indexing is not adjusted for the shorter lease or the 'no act world').

18. Mr Flynn submitted that this evidence of value increases over the period using sales data from comparable property in Clarendon Road was superior to any of the indices which are published as they are not specific to the area in question and are compiled using data over a much wider geographical area and using a much wider range of properties. Having looked at all the comparable sales of property this information led

Mr Flynn to the conclusion that all the flats had a long lease value of approximately £325,000 at the date of valuation. He submitted that all the comparables represented properties in improved condition and that it was necessary to make an adjustment to allow for this since the subject properties would require replacement kitchens, replacement heating systems, replacement bathrooms and improvements to the electrical wiring to bring them up to the standard of the comparable properties. Potential purchasers would view the flats as requiring refurbishment and would allow approximately £25000 for the cost of this work. A purchaser who is offered one flat for £325,000 in an improved condition would not offer the same price for one which required refurbishment. For these reasons his assessment was that the properties had a maximum long lease value of approximately £300,000 (Flat 12) and £310,000 (Flats 4 and 10) in an unimproved condition.

19. Mr Flynn pointed out that Flat 10 Park Court had an unexpired lease of 64.75 years in October 2004. He submitted that the sale did not take place in the 'no act world'. In his experience purchasers of leasehold properties do not consider the 'no act world'. They simply make a judgement as to the value of a long lease and deducted the cost of extending it to arrive at a value to them. To properly assess long lease value at the time of the transaction it is necessary to calculate the premium that would have been paid at that time, being prior to the Lands Tribunal decision in *Sportelli*. The property was sold at the time when £250,000 was the stamp duty threshold. His experience was that properties in the band to £250,000 would sell for that sum or less because potential purchasers would not offer more than that sum because of the increased cost of stamp duty. This led Mr Flynn to conclude the long lease value of the flats to be £250,000 or £255,000 if he is wrong about the stamp duty point.

20. Mr Flynn said he had made an approximate calculation to adjust the relativity percentage for an unexpired term of 62.25 years to a term of 62.75 years which is 2.5 years greater. His analysis of tribunal decisions produced a relativity percentage of 89.36% and a pro rata adjustment resulted in a relativity percentage for a term of 62.75 years of 92.95%. He rounded this up to 93% which he considered to be a reasonable approximation to make. He then considered the Nationwide and the Land Registry index values and noted that the difference between the Land Registry index values for March and April 2007 showed an increase of 3.7% in one month which

equates to 44.32% per annum. In his opinion this showed an inaccuracy in the index for this period and he submitted that it would be wrong to adopt it for present purposes. He therefore relied on the Nationwide index value which produced a value in March 2007 of £296,827 and in April 2007 of £302,716.

Short lease value

21. Mr Flynn submitted that the best way of valuing a short lease value in the 'no act world' was to compare it with other transactions which had been settled following testing of the arguments put forward by experienced valuers. He appended the Beckett and Kaye "Graph of Graphs" to his report. He explained that the graph showed a number of assessments of relativity value produced mainly by interested parties. The data used varied between the different parties. He submitted that a number of relativity graphs produced by valuers are limited to specific types of property, specific locations and also can contain data from negotiated settlements.

22. Mr Flynn's preference was for the graph produced by LEASE because it was produced from leasehold valuation tribunal determinations. His opinion was that this was the best statistical evidence because the determinations would have been arrived at following examination and cross-examination of evidence of valuers experienced in enfranchisement valuations. In his experience the majority of negotiated settlements resulted in a relative value which was too low. This was because freeholders are experienced investors who have purchased freehold ground rents with a specific purpose of obtaining premiums and they are well versed in the enfranchisement process. In contrast many leaseholders are unaware of the process and have no experience of this type of negotiation. In his opinion leaseholders often felt pressurised to settle rather than incur the cost of a tribunal hearing with an uncertain outcome. Given an uncompromising freeholder many leaseholders pay between £2,000 to £3,000 more than their valuers advise that could be obtained at the tribunal. In Mr Flynn's opinion this effect causes the graphs put together by many of surveyors who largely work for landlords rather than tenants to be inaccurate, providing low relative values. For these reasons Mr Flynn relied on the LEASE graph which produced a relativity percentage for an unexpired term of 62.20 years of approximately 89%.

23. Mr Flynn then went on to look a recent tribunal decisions in cases where unexpired terms were similar and carried out a statistical analysis to arrive at an average relativity percentage. He relied on a table which produced a relativity percentage from an unexpired term of 62.25 years of 89.36%. In his opinion this approach was preferable because it provided a statistically more accurate result than reading from a graph. He accepted that a relative percentage of 1% either side of his figure represented a "reasonable band" i.e. a band of approximately 88.4% to 90.4%. He adopted the band and leant towards the LEASE graph reading, rounded down to 89% for valuation purposes.

The Respondent's case

24. Mr Wilson adopted a different valuation methodology from Mr Flynn.

Relativity

25. He adopted a relativity of 85.22% of the freehold value based on his analysis and comparison of negotiated freehold settlements and his experience. He relied on two settlements which he had negotiated by way of comparison:

(a) November 2007: 171 Grove Hall Court, London NW8, a remaining term of 69.50 years and a relativity of 88.36%.

(b) March 2007: Flat 4, 40 St. James's Gardens, London W11, a remaining term 67.40 years and a relativity of 87.98 %.

26. Mr Wilson explained that in order to consider the appropriate relativity in a 'no act world' he had also given regard to the Beckett and Kaye graph which demonstrated from different sources the wasting averaging asset line of a lease. In his opinion a lease with just over 62 years remaining in the 'no act world' would negatively impinge on values. He submitted that buyers of such leases would find finance difficult to obtain and that only limited types of buyer would be interested in purchasing such a lease which could not be extended. In his opinion leases in secondary locations, such

as Clarendon Road, would be more difficult to sell than leases of the same length in prime central London. Landlords of prime central London property, have a negotiation advantage over their tenants due to their financial power. Accordingly Mr Wilson made an adjustment of 3.02% over and above the Gerald Eve graph rate in prime central London to allow for this.

Vacant possession values

27. In Mr Wilson's opinion the subject building was at a "crossroads of housing quality". In order to determine the vacant possession value of the subject flats he considered a number of transactions within the vicinity of the subject property.

(a) Flat 10, 115A Clarendon Road.
Mr Wilson relied on this comparable as it was the most recent sale in the building which could be analysed. This sold on the 12th of October of 2004 for £245,000, the lease being acquired by one of the applicants, Mr Rowan Bamford. He indexed the sale of the existing lease to the valuation date using Savills central London residential supplement Quarter 3 2007, the All PCL Index and the West Flats Index. This gave a figure of £342,600. Making a further adjustment to take account of the lease being 2.54 years shorter at the valuation date and making a deduction for the value of the statutory rights Mr Wilson made an all encompassing deduction of 6%. From there he applied a relativity of 85.22% and calculated the freehold value to be £378,000. This gave a rate of £736 per sq. foot.

(b) Flat 2, 111 Clarendon Road.
This sold on 28th July 2006 for £320,000. Making similar adjustments including a 10% uplift for better quality arrangement and demand Mr Wilson calculated the value of this flat to be £735 per sq. foot.

(c) Flat 4, 111 Clarendon Road.
This sold on 30th April 2004 for £395,000. Making similar adjustments Mr Wilson calculated the value of this flat to be £708 per sq. foot.

(d) First Floor Flat, 111 Clarendon Road.
This sold on 22nd November 2004 for £265,000. Making similar adjustments and then a downwards allowance of 20% to reflect the quality and style of the accommodation and adjusted comparable value to the subject flats is £763 per sq. foot.

(e) First, second and third floor flat maisonette, 121 Clarendon Road.
This sold on 19th June 2007 for £695,000. Making the same adjustments and a quantum adjustment of an additional 25% to reflect the subject flats are less than half the size lead to a revised value of £735 per sq. feet.

(f) Flat 96, Nottingwood House, Clarendon Road.
This sold on 12th March 2007 for £350,000. The lease was for a term of 125 years from 29th September 1987. Mr Wilson assumed this to be a three-bedroom unit and was of the opinion that the value of a three-bedroom council flat is similar to a two-bedroom flat in a private block.

(g) Flat 8, 65 Ladbroke Grove.
This is a two-bedroom flat which sold on 20th April 2007 for £461,000. Making the same adjustments Mr Wilson calculated the freehold value to be £791 per sq. foot. This property, although a short distance from Clarendon Road, set the tone of "local" values not in a period property. This property, although private looked like an ex-local authority block, was in a better location than the subject flats but was on a busy road. He made an adjustment of 6% (£745 per sq. foot) to the subject flats noting that the floor areas are 20% larger than the comparable.

28. Mr Wilson concluded that the freehold values for the flats are :
Flat 4 - £379,000 – 513 sq. feet. £740 per sq. foot.
Flat 10 - £379,000 – 513 sq. feet. £740 per sq. foot.
Flat 12 - £350,000 – 446 sq. feet. £785 per sq. foot.

29. In his opinion the extended lease values are 99% of the freehold value, whereas the existing lease value is 85.22% of the freehold value.

Decision

30. In the tribunal's opinion the starting point for the valuation of the premium for these lease extensions must be the sale of Flat 10, 115A Clarendon Road, one of the subject properties. The Land Registry official entry shows the price stated to have been paid on 12th October 2004 to be £245,000. Mr Flynn, using the Nationwide and Land Registry Indices adjusted this to £296,827 and £329,711 respectively in March 2007. Mr Wilson using the Savills All PCL and West Flats Index adjusted the value to £342,600 in March 2007. Neither of the valuers had the benefit of seeing this flat at the time of sale. In the tribunal's opinion the Nationwide Index is out on a limb, appears unreliable and should be disregarded. The tribunal therefore considered the Savills Index and the Land Registry Index both of which it considered to be helpful in this case. Using the Savills Index the value of the existing lease would be approximately £342,000 and using the Land Registry Index the value would be approximately £330,000. The tribunal therefore took the midpoint of £336,000.

The tribunal accepted a 6% reduction being 5% for Act rights and 1% for the adjustment for the two years difference in the length of the lease as a result of which we reach a conclusion of a value of £315,000 for the existing lease in the 'no act world'.

31. The tribunal then looked at relativity and in particular the Beckett and Kaye 'Graph of Graphs' appended to Mr Flynn's report. We reject the LEASE graph because this is based on leasehold valuation tribunal decisions and not on market evidence. The Lands Tribunal has indicated that market evidence, agreements and actual analysis are always preferable.

32. Mr Wilson relied on two settlements that he had negotiated. Mr Flynn challenged these agreements and said that Mr Wilson must have chosen then because they suited him but this was denied by Mr Wilson. For his part Mr Flynn did not present any evidence of agreements he had experienced in the market. In those circumstances the

tribunal concluded that the relativity of 85.22% is correct and supported by the 'Graph of Graphs'.

33. Using the relativity of 85.22% the tribunal calculated the long leasehold/freehold value to be £370,617 rounded down to £370,600. We have not added an extra 1% for the value of the freehold in view of the nature of these properties and the poor nature of this block of flats. We observed that several shops were empty and in a block of flats such as this there must be concerns over collection of service charges and management generally.

34. This calculation breaks down to £722.45 per sq. foot for Flats 4 and 10, both of which measure 513 sq. foot making a total figure of £370,061.85 say £370,000.

35. Flat 12 is smaller and we therefore added £30 per sq. foot and calculated this flat to be worth £752.45 per sq. foot making a total figure of £335,392 say £335,400.

36. The tribunal then tested these valuations against the comparables which were presented to us. Flat 2 at 111 Clarendon Road, is 554 sq. feet. This is made up of two bedsits and would sell to the buy to let market rather than an owner occupier. The most helpful comparable is Flat 4, 111 Clarendon Road. This flat is on the second and third floors but its disadvantage is that it requires indexing from April 2004 from which time there was a big jump in the index.

37. The maisonette at 121 Clarendon Road is large in size, double the size of the subject flats. However this is a better looking property and was sold in June 2007 for £695,000. This does not persuade us that we are wrong and in fact supports the valuation we have reached.

38. The tribunal considered Mr Flynn's comparable sales in two council blocks adjacent to the terrace in Clarendon Road in which Park Court is situated. Mr Flynn relied on three sales in Nottingwood House, one a three-bedroom flat and two two-bedroom flats. None of the details of these sales were made available to us which was disappointing. However we noted that Flat 96 Nottingwood House, apparently a three-bedroom flat, sold for £365,000 in March 2007. This persuaded us that if this

price can be achieved on a large council estate then our valuations appear to be correct.

39. Standing back the tribunal also took comfort in the April 2007 sale for £461,000 of 65 Ladbroke Grove, a poor block with a better address.

40. Mr Flynn submitted that there should be a reduction of £25,000 for improvements. We saw from our inspections that Flats 4 and 12 had not been improved and that Flat 10 had been improved since the purchase in October 2004. It was clear that Mr Bamford had purchased the property and carried out improvements to the kitchen, bathroom (which he had turned into a shower room) and the flat generally including gas central heating with radiators. The tribunal is unable to agree that there should be any deduction for modernisation or improvements in these valuations. No convincing evidence has been produced to show that the comparables had to be adjusted in this respect. No comparables have been inspected internally by either of the valuers.

41. For the sake of completeness we explain why we do not agree with Mr Flynn's methodology and his valuation. To arrive at his value of the extended leasehold/ freehold value, Mr Flynn submits that purchasers in the market assess the long lease value and deduct the cost of extending the lease to arrive at the existing lease price. In his opinion it follows that if he adjusts the October 2004 sale price of £245,000 by his assessment of the cost of extending the leases of £10,000, the extended lease value is £255,000. He then concludes that with the stamp duty threshold at £250,000 no-one would pay this and so he adjusts at £250,000 (but includes £255,000 in case he fails on this point) (see 17(g) above).

42. The tribunal notes that £245,000 is 98% of £250,000 and 96% of £255,000 whereas £275,900 is 89% of £310,000. The 89% is based on Mr Flynn's analysis of the LEASE graph and leasehold valuation tribunal decisions. These differences show the lack of consistency produced by Mr Flynn's approach.

43. The tribunal also notes that the existing lease value adopted of £275,900 by Mr Flynn is over £20,000 less than Mr Flynn's lowest adjusted price of £296,827 which must

reflect the actual condition before the new owner carried out works. Accordingly it would appear to be incorrect.

44. The tribunal also notes that if Mr Flynn had applied his relativity of 89% to his starting point of £245,000 for the existing lease then the extended lease would have been worth £275,280 in 2004 (above the stamp duty threshold) before adjusting for time and the 'no act world'.

45. Similarly he could have provided evidence of his experience in the form of agreements to demonstrate 98%, 96% or 89% which he variously adopts but he did not do so.

46. Finally Mr Flynn also deducted £25,000 because in his opinion the comparables are all modernised and improved. He produced no evidence to this effect, had not inspected internally any of the comparables, and in fact the analysis of Flat 10 must, in our view, deal with this point. Whilst Mr Wilson's comparables require adjustment for some matters, the photographs he has produced did not suggest they require adjustment to reflect a high standard of recent refurbishment and modernisation.

Premium payable by tenants for the grant of the new leases

47. The leasehold valuation tribunal determines that the premium to be paid by the tenants on the grant of new leases in accordance with Section 48 Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 are:

- Flat 4 - £35,516
- Flat 10 - £35,490
- Flat 12 - £33,124

48. Copies of the tribunal's valuations are attached at Appendices 1, 2 and 3. In two cases the tribunal has accepted the landlord's valuation which is marginally lower and well within accepted valuation tolerancies.

Costs

49. Mr Wilson on behalf of the landlord made an application that the applicants should pay costs incurred by his client in connection with the proceedings on the grounds that Mr Flynn had acted unreasonably in connection with the proceedings. He submitted that negotiations were doomed from the start because Mr Flynn had used an incorrect valuation methodology.

50. Mr Flynn responded that there had been considerable difficulties regarding exchange of reports and that as far as the criticism of his methodology was concerned, Mr Wilson's objection was that his methodology was different from Mr Flynn's. Mr Flynn was of the clear view that his methodology was sound. He acknowledged that there were different methods used by valuers but he had not succeeded in finding any decision of the leasehold valuation tribunal where his methodology had been rejected and been found to be invalid.

<u>The law</u>

51. The Commonhold and Leasehold Reform Act 2002 Schedule 12 paragraph 10
Costs

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings of any circumstances falling within subparagraph (2).

(2) The circumstances are where

(a) ....

(b) he has, in the opinion of the leasehold valuation tribunal acted frivolously vexatiously abusively disruptively or otherwise unreasonably in connection with the proceedings.

(3) the amount which a party to proceedings may be ordered to pay in the proceedings by determination under this paragraph shall not exceed £500.

Decision

52. The tribunal does not consider it is appropriate to make an award of costs against the applicants in this case. A valuer is entitled to use the methodology and approach to valuation which he considers is appropriate and best represents his impartial opinion having regard to all the evidence and his duty to the tribunal.

Jane Dowell

Chairman

Dated 18th December 2007

Appendix 1

Leasehold Valuation Tribunal's Valuation
in accordance with the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

Flat 4, 115A Clarendon Road, W11 4JG

Valuation Date:	11 April 2007
Unexpired Term:	62.2 years
Relativity existing lease/extended lease:	85.22%
Capitalisation Rate:	6%
Deferment Rate:	5%
Value of the extended lease:	£370,600
Therefore, value of existing lease:	£315,825

A. DIMINUTION IN LANDLORD'S INTEREST			
Landlord's current interest			
Term ground rent	50		
YP @ 6% for 62.2 years	16.2222	811	
Reversion to	370,600		
Defer 62.2 yrs @ 5%	0.0481	17,826	
		18,637	
Less			
Landlord's proposed interest			
Term	Nil		
Reversion to	370,600		
Defer 152.20 yrs @ 5%	0.0006	222	
Diminution in landlord's interest			18,415
B. LANDLORD'S SHARE OF MARRIAGE VALUE			
Landlord's proposed interest	222		
Tenant's proposed interest	370,600		
		370,822	
Less			
Landlord's existing interest	18,637		
Tenant's existing interest	315,825	334,462	
Marriage value		36,360	
Landlord's share @ 50%			18,180
			36,595
C. OTHER LOSSES			Nil
Premium for New Lease			**£36,595**

Premium payable is the Landlord's lower valuation of £35,516.

Appendix 2

Leasehold Valuation Tribunal's Valuation
in accordance with the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

Flat 10, 115A Clarendon Road, W11 4JG

Valuation Date:	20 March 2007
Unexpired Term:	62.26 years
Relativity existing lease/extended lease:	85.22%
Capitalisation Rate:	6%
Deferment Rate:	5%
Value of the extended lease:	£370,600
Therefore, value of existing lease:	£315,825

A. DIMINUTION IN LANDLORD'S INTEREST			
Landlord's current interest			
Term ground rent	50		
YP @ 6% for 62.26 years	16.2238	811	
Reversion to	370,600		
Defer 62.26 yrs @ 5%	0.0479	17,751	
		18,562	
Less			
Landlord's proposed interest			
Term	Nil		
Reversion to	370,600		
Defer 152.26 yrs @ 5%	0.0006	222	
Diminution in landlord's interest			18,340
B. LANDLORD'S SHARE OF MARRIAGE VALUE			
Landlord's proposed interest	222		
Tenant's proposed interest	370,600		
		370,822	
Less			
Landlord's existing interest	18,562		
Tenant's existing interest	315,825	334,387	
Marriage value		36,435	
Landlord's share @ 50%			18,218
			36,558
C. OTHER LOSSES			Nil
Premium for New Lease			**£36,558**

Premium payable is the Landlord's lower valuation of £35,490.

Appendix 3

Leasehold Valuation Tribunal's Valuation
in accordance with the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

Flat 12, 115A Clarendon Road, W11 4JG

Valuation Date:	21 March 2007
Unexpired Term:	62.26 years
Relativity existing lease/extended lease:	85.22%
Capitalisation Rate:	6%
Deferment Rate:	5%
Value of the extended lease:	£335,400
Therefore, value of existing lease:	£285,828

A. DIMINUTION IN LANDLORD'S INTEREST			
Landlord's current interest			
Term ground rent	50		
YP @ 6% for 62.26 years	16.2238	811	
Reversion to	335,400		
Defer 62.26 yrs @ 5%	0.0479	16,066	
		16,877	
Less			
Landlord's proposed interest			
Term	Nil		
Reversion to	335,400		
Defer 152.26 yrs @ 5%	0.0006	201	
Diminution in landlord's interest			16,676
B. LANDLORD'S SHARE OF MARRIAGE VALUE			
Landlord's proposed interest	201		
Tenant's proposed interest	335,400		
		335,601	
Less			
Landlord's existing interest	16,877		
Tenant's existing interest	285,828	302,705	
Marriage value		32,896	
Landlord's share @ 50%			16,448
			33,124
C. OTHER LOSSES			Nil
Premium for New Lease			**£33,124**