



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

**Case Reference** : **CAM/34UF/OLR/2019/00010**

**Properties** : **8 Birkdale Close, Links View, Northampton  
NN2 7PD**

**Applicants** : **Paul John Hedges & Natalie Ursula Green**

**Respondent** : **Sidewalk Properties Ltd**

**Date of Applications** : **15<sup>th</sup> January 2019 (Rec'd 17<sup>th</sup>)**

**Type of Application** : **To determine the premium to be paid, the  
terms of acquisition and costs of the  
lease extension of the Property**

**Tribunal** : **Judge JR Morris  
Mrs M Wilcox BSc MRICS  
Miss M Krisko BSc (Est Man) BA FRICS**

**Date of Hearing** : **8<sup>th</sup> April 2019**

**Date of Decision** : **26<sup>th</sup> April 2019**

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**DECISION**

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**Decision**

1. The Tribunal determines a premium for the Lease Extension under the Leasehold Reform and Urban Development Act 1993 to be £15,927.
2. The Tribunal determines that the reasonable valuation costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 are for each valuation £540.00 including VAT (£450.00 plus VAT @ 20% £90.00).

## **Reasons**

### **Application**

3. The Applicants applied to the Tribunal on 15<sup>th</sup> January 2019 for a determination of the premium to be paid for the lease under section 48(1) and the costs section 60 of the Leasehold Reform and Urban Development Act 1993. Directions were issued on 18<sup>th</sup> January 2019.
4. The Tenant's Notice of Claim under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) dated 12<sup>th</sup> July 2018, which is the valuation date, proposed a premium of £7,940.00 for a new lease of the unexpired term of the current lease together with a further 90 years, at a peppercorn rent of 8 Birkdale Close, Links View, Northampton NN2 7PD (the Property).
5. The Notice also stated that the Applicants were registered as proprietors at the Land Registry on 5<sup>th</sup> October 1987 and therefore owned the Property for the qualifying period in excess of two years pursuant to section 130 and 131 Commonhold and Leasehold Reform Act 2002.
6. The Landlord's Counter Notice dated 17<sup>th</sup> September 2018 counter proposed a premium of £26,750.00 for a new lease.
7. Copies of the Notices were provided.
8. A copy of the Lease dated 15<sup>th</sup> September 1972 between Deeley Homes Ltd (1) and Alan Peter Horsley and Alison Brook (2) for a term of 99 years from 29<sup>th</sup> September 1977 was provided, together with a copy of the Official Copy of the Freehold Absolute Title for the Property at the Land Registry, Title Number HN12818 which recorded the Leasehold Title of the Property in the Schedule of Leases as Title Number NN25918.BD136083.
9. The matters in issue are the premium for the extended lease and the valuation costs for the present claim and for a previous claim in 2016.
10. It was confirmed that the terms of acquisition other than the premium and the legal costs under section 60 of the 1993 Act are agreed.

### **The Law**

11. The method of calculation of the premium under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 is by reference to Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993.
12. Under section 60 (1) of the Leasehold Reform Housing and Urban Development Act 1993 in relation to lease extension a tenant pays the costs of:
  - (a) ... *[not relevant to this application]*

(b) *Any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56*

(c) *... [not relevant to this application]*

13. Under section 60 (5) of the Leasehold Reform Housing and Urban Development Act 1993 in relation to lease extension:  
*A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.*

### **Inspection**

14. The Tribunal inspected the Property in the presence of Ms Green one of the Applicants and their Surveyor, Mr Geraint Evans.
15. The Property is a self-contained first floor maisonette in a purpose built two storey semidetached block (the Block). The Block is constructed of brick with tiles hung to the first-floor elevation, under a pitched tile roof. It is in fair condition with upvc rainwater goods and upvc door and double-glazed windows. There is a garden to the rear and a garage.
16. The entrance door is to the side into an entrance lobby from which stairs rise to the first-floor landing off which there is a kitchen, living room, bathroom and two bedrooms.
17. The exterior of the Block is in fair condition. The upvc windows frames would benefit from cleaning but otherwise appeared sound and no misting due to failure of the double-glazing seals was evident.
18. There is a fairly modern fitted kitchen. The bathroom is dated in that it has a turquoise coloured suite, although it is serviceable. Space and water heating are provided by a gas central heating system. The interior of the Property appeared to be in fair condition.

### **Hearing**

19. The Hearing was attended by the Applicants' Surveyor, Mr Geraint Evans and by the Respondent's Surveyor, Mr Alastair Mason.

### **Premium Valuation**

#### ***Matters Agreed***

20. The following matters were agreed:
- |             |                                               |
|-------------|-----------------------------------------------|
| Lease Date: | 15 <sup>th</sup> September 1971               |
| Term:       | 99 years from 29 <sup>th</sup> September 1971 |

Valuation Date:	12 <sup>th</sup> July 2018
Unexpired Term:	52.22 years
Ground Rent :	£20 x 33 years; £40 x 33 years £60 x 33 years
Capitalisation Rate:	7%
Deferment Rate:	5%
Freehold Differential:	1%

### ***Preliminary Issue***

21. Mr Evans stated that in his report dated 7<sup>th</sup> February 2019 he had assessed the unextended lease value as £107,000 and Mr Mason in his report of 6<sup>th</sup> February 2019 had also assessed that the unextended Lease value is £107,000. Therefore, on 8<sup>th</sup> February 2019 they had complied with Direction 8. It appeared to Mr Evans that they had agreed the extended lease value as being £107,000 together with all other elements of the calculation except that of the extended lease value. Mr Evans had assessed that value as being £124,542 having taken into account the tenant's improvements which he had valued at £7,500. Mr Mason had assessed the extended lease value as £136,950. Based on their reports Mr Evans had calculated the premium as being £13,950, and Mr Mason had calculated the premium as £20,700. Both surveyors provided the workings upon which their calculations were based.
22. Mr Evans then stated in a written statement dated 26<sup>th</sup> February 2019 that, contrary to Directions, Mr Mason had changed his position in an 'open' email dated 12<sup>th</sup> February 2019, stating that he had not taken the tenants' improvements into account in assessing the extended lease value and that a value of £125,800 should have been assessed.
23. Mr Evans believed from this that both he and Mr Mason had agreed the extended lease value and a settlement had been reached. However, Mr Mason had additionally changed his unextended value which Mr Evans considered had been agreed. Mr Evans considered this change to be contrary to Directions and should not be permitted.
24. Mr Mason said that he had not taken the tenants' improvements into account in assessing the extended lease value. The difference between the two properties became clear to him on reading Mr Evans's report. He agreed with Mr Evans's figure of £7,500 as the difference between the value of the unimproved Property and the improved 21 Birkdale Close. This therefore gave an extended lease value for the Property of £125,800. Mr Mason provided an amended report on 22<sup>nd</sup> February 2019 in which he confirmed the extended value as £125,800 but added that therefore in his assessment the unextended value was reduced from £107,000 to £97,356.
25. The reason for the reduction to the unextended value was that he was not aware of any market evidence to indicate the current lease value and therefore, as he had

said in his original report, he had assessed the unextended value by using relativity. By reducing the extended value of the lease to £125,800, he had inevitably reduced the unextended value to £97,356, as he had applied a relativity of 77.39% in both his original and amended reports. In applying the new figures to his calculations, the premium was reduced to £18,828.

26. Mr Evans submitted that, in accordance with Directions, Mr Mason should be bound by his first report in which he assessed the unextended lease as £107,000. When Mr Mason subsequently conceded that he had not taken account of improvements in relation to the extended value Mr Evans said he was entitled to treat the extended and unextended values as agreed. Schedule 13 paragraph 3(2)(c) requires any improvement carried out at his own expense by the tenant or any predecessor in title to be disregarded. Mr Mason should have therefore provided a calculation of existing lease value in accordance with the legislation and should not now be able to change his mind.
27. Mr Evans referred to the Tribunal's Directions which stated that they were intended to deal with all potential issues and in this instance, if followed to the letter, could have led to a settlement. He referred to the case of *30 Milton Close, Brynteg Park, Beddau, Pontypridd CF38 2TN* (LVT/0008/06/180) 11<sup>th</sup> September 2018, where the Tribunal had applied the Directions strictly. He submitted the same principle should be applied in this case.
28. Mr Mason said that there had been no statement of agreed facts produced by the surveyors. The fact that a relativity of 77.39% between £136,950 and £107,000 was coincidental and that if he changed the figure for which he had evidence this would change the figure for which he said there was no evidence and so was assessed by means of relativity.

### ***Determination of Preliminary Issue***

29. The Tribunal examined the first report of Mr Mason which had been submitted on 6<sup>th</sup> February 2019.
30. At Section 7 of his report he stated that he assessed the extended lease value for the Property as being £136,950 based upon the market evidence of 11(sic, corrected to 21) Birkdale Close. At Section 8 he said that because there was no market evidence, he assessed the unextended lease value for the Property as being £107,000 based upon a relativity of 77.39% which was an average of four graphs of relativity.
31. The Tribunal found that there was no statement of agreed facts at the time the reports were submitted in accordance with the Directions. The Tribunal also found from his original report that Mr Mason had calculated the unextended lease value on the basis of relativity with the extended value, because he believed there was no market evidence.

32. Therefore, on the basis of his original report in which he applied relativity to arrive at the unextended value, when Mr Mason revised his extended value, this effected the unextended lease value. The Tribunal found that Mr Mason had not altered his basic reasoning for arriving at these figures. The effect of applying relativity meant that the parties either agreed the unextended lease, as resulted from Mr Mason's original report, or the extended lease which was the result from Mr Mason's amended report. The Tribunal preferred the latter result as from its own investigations and contrary to Mr Mason's belief, there was some market evidence for the unextended lease value.
33. The Tribunal did not find that Mr Mason had acted unreasonably in so far that he had informed Mr Evans at the earliest opportunity and given the time before the hearing which gave Mr Evans an opportunity to take account of this amendment.
34. The Tribunal agreed with Mr Evans that Directions must be complied with. However, where a party discovers an omission such as the difference between the improved and unimproved then it must be declared as soon as possible, which in this case it was. The omission here does illustrate the importance of inspecting the property in question so that differences between it and comparables, which often cannot be inspected, can be identified. Those difference can then be reflected in the calculations.
35. The Tribunal found that the outstanding issue between the parties was therefore the unextended lease value.

### ***The Unextended Lease Value***

36. The Tribunal referred the parties to the relatively recent sale of 3 Birkdale Close, which appeared from the sale details, which were still available on the Internet at Rightmove and Zoopla, to be a virtually identical flat in size and layout to the Property. The main differences were that it was on the ground floor and had a parking space as well as a garage and that there was a modern shower room. It had been sold with an unextended lease on the 28<sup>th</sup> June 2016.
37. Mr Evans said that his unextended value of the Property had been based on this comparable flat. However, because he had believed that the unextended value had been agreed at £107,000, he had not included a detailed analysis in his report taking account of the difference between the date of sale and Valuation Date and improvements.
38. The Tribunal adjourned the hearing in order for Mr Evans and Mr Mason to consider this comparable and see if they could agree an unextended lease value.
39. The Surveyors returned having agreed a value, as at the Valuation Date, for 3 Birkdale Close of £110,457, with an unextended lease and in the condition it was at the date of its sale.

40. They did not agree what adjustments should be made to take account of condition or the 'no Act world'.
41. Mr Evans took the view that having inspected the Property, essentially the only difference between it and 3 Birkdale Close was the modernisation of the bathroom to a shower room for which he said was a difference of about £1,000.
42. He took the view that most purchasers did not take account of the length of the unexpired lease and therefore little or no reduction to the purchase price was justified. He accepted that if the purchasers were aware that an extended lease might need to be negotiated there might be a differential of 1%, in this case £1,099.57.
43. Taking these deductions into account plus a further £1,300 or so for condition and the parking space, Mr Evans said that he considered his original valuation of £107,000 for the unextended lease value for the Property was correct and based on market evidence.
44. Mr Mason said that he had seen the photographs of the Property and the sale details of 3 Birkdale Close and submitted that 3 Birkdale was in better condition than the Property and the modernisation of the bathroom and parking space justified a deduction of £5,000.
45. With regard to the 'no Act world' Mr Mason submitted that a deduction of 10% should be made. He said that with a lease of only 52 years unexpired the sale could only be to a cash purchaser as mortgagees would not lend on such a short lease. He added that at the Valuation Date there was exceptional uncertainty in the property market due to the anticipated exit of the United Kingdom from the European Union ("Brexit") and this would have affected the sale price.
46. The Tribunal referred to *Sinclair Gardens Investments (Kensington) Ltd v Flats 9 & 11 George Court, 37 George Street, Chelmsford* [2017] UKUT 494 (LC) and *Judith Reiss v Ironhawk Ltd* [2018] UKUT 311 (LC). Both surveyors were well acquainted with the cases and said that if the unenfranchiseable graph compiled by Savill's were applied then a figure of 6.2% would be adopted.
47. Mr Mason supported the Savill's figure and said that the 'Brexit effect' would increase this to the 10% he suggested. He said that the market would not look kindly on the Property which with such a short lease would be a distinctly unattractive proposition. If the agreed £110,457 were reduced by £5,000 for improvements giving £105,457 with a further reduction for a 'no act world' of 6.24% (£6,580) would give the unextended value of £98,877 and a reduction of 10% (£10,545) would give a value of £94,905.
48. Mr Evans agreed that the current market is considerably uncertain but this was not the case in July 2018 (the Valuation Date) and at no time would justify a reduction of 10%. The 6.2 % reduction to reflect the price in a 'no Act world' from

Savill's Unenfranchiseable Graph is based on Prime Central London which is a much more sophisticated market than Northamptonshire. Investors would find the Property attractive in that in the rental market it would give a return of £695 per calendar month which is a return of 7.79% on £107,000 per annum which even after tax and expenses would be an attractive return.

49. Reference was made to the rate of relativity. Mr Evans's view was that following the Upper Tribunal's decision in *Re Coolrace Ltd & Others* [2012] UKUT 69 (LC) market evidence should be applied. In the absence of market evidence then reference could be made to the graphs. In the present case there was market evidence in the form of the sale of 3 Birkdale Close.
50. Mr Mason said that if the agreed £110,457 were reduced by £5,000 for improvements giving £105,457 with a further reduction for a 'no act world' of 6.24% (£6,580) this would give the unextended value of £98,870. The relativity of 77.39% from the extended lease value of £125,800, gave an unextended value to £97,356. He submitted that the value achieved on relativity corresponded to the market value.
51. Mr Evans submitted that market evidence was more reliable than relativity and questioned the relativity of 77.39%. He said that in *Re Coolrace Ltd & Others* [2012] UKUT 69 (LC) at least 5 graphs should be averaged whereas Mr Mason had only selected 4. He conceded that they had agreed that Savill's should not be included, but if it had, this would have resulted in a relativity which would have given an unextended value closer to £107,000.

### ***Determination on Unextended Lease Value***

52. The Tribunal considered all the evidence with regard to the differences between the Property and 3 Birkdale Close. Both flats or maisonettes had unextended leases had the same layout, except that 3 Birkdale was a ground floor flat, and had the same room dimensions. The main differences were that 3 Birkdale Close had a parking space as well as a garage and that there was a modern shower room. The condition of each appeared much the same bearing in mind that 3 Birkdale was photographed with a view to sale whereas the Property was inspected as a lived-in home.
53. Whereas the cost of replacing the dated bathroom would have some bearing on the valuation for sale of the Property, the Tribunal needs to take into account what a purchaser would pay a) for number 3 with its modern shower room and b) assess what a purchaser would pay for the Property with its dated but serviceable bathroom. The Tribunal considered that the differential would be more than £1,000 but not as much as £5,000. It determined that £2,000 was appropriate.
54. The Tribunal then considered what adjustment should be made for the 'no Act world'. Schedule 13 of the 1993 Act requires the premium for an extended lease to be calculated as if the Act had not been passed, i.e. a 'no Act world'. If there were



no 1993 Act giving Lessees the right to extend their leases this would be likely to have an effect on the purchase price of a short un-extended lease where the purchaser would have to negotiate with a lessor who had no obligation to grant an extension.

55. The Tribunal is only considering the probable discount on the market price of the Lease if there were no right to extend. It is not considering other factors that might affect the price. These will already have been taken into account when the market price is assessed. The market price was agreed as being £110,457 less an allowance for improvements. The Tribunal determined the allowance for improvements to be £2,000, making the market price £108,457.
56. The Tribunal then had to consider what percentage reduction might be made if the purchaser would have to negotiate with a lessor who had no obligation to grant an extension. Of particular importance is the number of years unexpired on the lease as this would influence the purchaser as to how long there was to negotiate a new lease and the lessor as to how long to wait for the reversion.
57. The Tribunal referred to *Sinclair Gardens Investments (Kensington) Ltd v Flats 9 & 11 George Court, 37 George Street, Chelmsford* [2017] UKUT 494 (LC) where the Upper Tribunal set out a table based on past cases as follows:

Unexpired term	Adjustment for "Act rights"	Decision	Reference
41.32	10%	<i>Mundy</i>	[2016] UKUT 223 (LC)
45	7.50%	<i>Nailrile</i>	[2009] RVR 95
57.68	5.50%	<i>Orchidbase</i>	[2016] UKUT 468 (LC)
67.49	3.50%	<i>Contactreal</i>	[2017] UKUT 1078 (LC)
68.62/68.67	3.50%	<i>Elmbirch</i>	[2017] UKUT 314 (LC)
77.7	2.50%	<i>Sarum Props</i>	[2009] UKUT 188 (LC)

58. The Tribunal also noted the case of *Judith Reiss v Ironhawk Ltd* [2018] UKUT 311 (LC) where the unenfranchisable graph compiled by Savill's was favoured and in respect of which both surveyors agreed that if it were applied a figure of 6.2% would be adopted.
59. The Tribunal was of the opinion that 6.2% was too high a deduction for Northamptonshire and was more appropriate for Prime Central London. It also considered that the table produced in *Sinclair Gardens Investments (Kensington) Ltd v Flats 9 & 11 George Court, 37 George Street, Chelmsford* was only a guide. The Tribunal determined that the appropriate 'no Act world' adjustment to the unextended value in this case for an unexpired term of 52 years is 5%.
60. Applying these figures, the Tribunal determined the unextended value to be as follows: the agreed market value of the improved 3 Birkdale Close of £110,457 less

£2,000 being £108,457 for improvements less 5% for the 'no Act world' of £5,422.85 being £103,034.

61. With regard to relativity the Tribunal preferred the market evidence which in this case was very sound being for an almost identical property and relatively recent. However, for the sake of completeness it calculated the relativity and found it to be 81.90% which it considered to be within the parameters of the relativity graphs for outside London.
62. The Tribunal therefore determined a premium for a Lease Extension under the 1993 Act as £15,927. Its calculations are at Annex 1 of this Decision and Reasons.

## **Valuation Costs**

### ***Discussion***

63. The Tribunal was asked to determine the reasonableness of two valuations. The reason for the two valuation was that in 2016 the Applicants had served a Notice of Claim for a lease extension under section 42 of the 1993 Act and the Respondent had in turn served a Counter Notice under section 45 for which it had obtained a valuation.
64. The application was not pursued and the costs of this first valuation had not been paid as they were considered unreasonable.
65. In July 2018 the present application was made and the requisite Notice and Counter Notice served for which the Respondent obtained a further valuation
66. The Applicants raised three issues. Firstly, they objected to paying for two valuations. Secondly, the valuation costs were excessive because a) either the first valuation should not have been charged or it should have informed the second, the charge for which should have therefore been reduced and b) the Directions regarding the provision of details of the valuation costs were not complied with and c) the charges for each are excessive.
67. The first valuation was undertaken by Mr Nick Plotnek. His invoice dated 24<sup>th</sup> November 2016 stated:

To receiving inductions to provide a valuation pursuant to a notice received under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993

Inspecting the property on 22<sup>nd</sup> November 2016 and thereafter examining the lease and making local enquiries as to property values. Preparing valuation based on the above and local Leasehold Valuation Tribunal Decisions and responding accordingly

£550.00 plus VAT @ 20% £110.00, Total £660.00

68. In an email dated 27<sup>th</sup> February 2019 stating that he was a Bachelor of Laws although he had no formal valuation qualifications, he had 37 years' experience in leasehold work, particularly ground rents. He said that since 1993 he had been a sole practitioner as Nick Plotnek Associates, a valuation practice in Harborne Birmingham acting for both tenants and landlords appearing many times as a witness at tribunals.

69. The breakdown of the work in this instance was 3 hours travelling; 50 minutes internal and external inspection, together with seeking comparables in the vicinity; 1 hour 15 minutes valuation and researching comparables in the office.

70. The second valuation was undertaken by Mr Alastair Mason FRICS. His invoice dated 20<sup>th</sup> August 2018 stated:

Fees and charges for providing a valuation of the premium payable for a lease extension in accordance with the provisions of the Leasehold Reform, Housing and Urban development Act 1993

£450.00 plus VAT @ 20% £90.00, Total £540.00

71. In an email dated 27<sup>th</sup> February 2019 he said that he had been in practice for 45 years and is a Senior Partner of Bunch and Duke, Chartered Surveyors and a Royal Institute of Chartered Surveyors Registered Valuer, undertaking a range of valuation matters and frequently acting as an independent expert.

72. The breakdown of the work undertaken was:

Senior Partner Charge £245.00 per hour plus VAT

Time engaged:

Receiving instructions to provide desk top valuation of the premium payable for a lease extension, studying the lease and Section 42 Notice 0.75 hours

Internet research to identify the property, property details and transaction details, and identifying comparable sales evidence 1.00 hours

Considering valuation criteria and preparing valuation calculations, and incorporating premium calculation into formal report for submission to client 0.75 hours

Total time cost charge: 2.5 hours @ £245 = £490.00 but charged an agreed fee of £450 plus VAT

73. Firstly, with regard to the instructing of two valuers, Mr Evans said that having employed Mr Plotneck to undertake the first valuation for the claim, with which the Applicant did not proceed, to employ Mr Masons to undertake a second

valuation was unnecessary. The first valuation could have been used for the Counter Notice or Mr Plotneck could have been instructed to update his valuation at little cost. To employ another valuer meant that work was duplicated.

74. Secondly, Mr Evans said that the Directions clearly stated that the Respondent must set out (a) the qualifications and experience of the fee earner and (b) a breakdown of the number of hours spent or estimated to be spent. In the event the Directions were not followed and he said he had to press to receive the e mail versions which were included in the bundle. He suggested in written representations that nominal fees of £100.00 and £75.00 plus VAT respectively, were appropriate taking into account the failure to comply with Directions.
75. Thirdly with regard to the cost, Mr Evans commented that Mr Plotnek was not qualified as a chartered surveyor and that certain Tribunals had required that the expert report should be by a person with that qualification. He acknowledged that the 1993 Act merely referred to the cost of valuation and not that it should be assessed by a person with a particular qualification. He referred to the case of *30 Milton Close, Brynteg Park, Beddau, Pontypridd CF38 2TN* (LVT/0008/06/180) 11<sup>th</sup> September 2018
76. The Tribunal noted that the Tribunal in that case had issued Directions which required the expert in relation to a valuation under the Leasehold Reform Act 1967 to be a qualified chartered surveyor and had specified a period within which any application to vary the Directions should be made. An application was made outside this period and a Decision was made as to whether the application should be allowed. The Tribunal applied the time table strictly and did not allow an application out of time for reasons which were clearly stated and supported.
77. Mr Evans said that the reason for specifying a chartered surveyor, although not referred to in the reasons for the decision, was that the valuation was particularly difficult. However, it did raise the general point as to what fee differential if any should there be between the fees charged by a qualified expert and one who is unqualified. Mr Evans submitted that Mr Plotneck's fees should be £450.00 plus VAT.
78. With regard to Mr Mason's fees he said that Mr Mason had not inspected the Property and that a desk top valuation would only take three quarters of an hour at a cost of £240.00. Overall, he submitted Mr Mason's fee for the second valuation should be £300.00 plus VAT
79. In response Mr Mason said that two valuations were required because the second valuation was 2 years later and the market had changed.
80. In addition, he said that it was not unreasonable to appoint a valuer other than Mr Plotnek following the *30 Milton Close, Brynteg Park, Beddau, Pontypridd CF38 2TN* Case. The Respondent was concerned that if the matter came before a tribunal its Directions may require a Chartered Surveyor to provide a report. In

which case if Mr Plotnek had revised his first report for the Counter Notice another valuer who was a Chartered Surveyor would have to provide a report for the tribunal proceedings. As it was the Respondent instructed a Chartered Surveyor to provide a valuation for the Counter Notice who could then go on to provide a valuation report for the tribunal if required, which it has been.

81. He said that both Mr Plotnek and he had provided their qualifications and experience and had itemised the time spent.
82. Thirdly he said that he could not speak for Mr Plotnek but he had itemised and costed the time spent on the valuation but had charged an agreed fee which was £40.00 less than the cost of the time spent.

### ***Determination on Valuation Costs***

83. The Tribunal found that there were potentially two valuations for a Respondent landlord in these circumstances. Firstly, there is the valuation undertaken for the landlord, for which, under section 60, the tenant may be required to pay a reasonable fee. Secondly there is the expert or valuer's opinion expressed in a report which the parties may rely on at a hearing and to which the Directions refer.
84. The two valuations may be the same in that a valuer may provide a valuation for the Counter Notice in the form of a full reasoned report which may subsequently be relied upon at a tribunal hearing. Alternatively, a premium may be entered in the counter notice as being what the landlord would like or what a valuer may informally suggest. Subsequently for the purposes of negotiations a reasoned valuation is carried out and this too may be relied upon in tribunal proceedings. In these circumstances the valuation would come within s 60(1) and its reasonable cost would be chargeable to the Applicant tenant.
85. However, a valuation report prepared solely for the purposes of tribunal proceedings would under section 60(5) not be chargeable to the tenant.
86. The Tribunal took the view that, as a general principle, whether a valuation was prepared for the landlord and fell within section 60(1), or specifically for tribunal proceedings and fell within section 60(5), it would not specify a valuer with particular qualifications in Directions in respect of 1993 Act valuations, as the Act did not require it. The quality and thoroughness of the report and the manner in which it addressed the relevant issues, and whether it was delivered by the valuer as a representative or an independent expert, were as important as the qualifications and experience of the valuer, when determining what weight should be given to the submissions within the report.
87. With regard to the reasonableness of the cost of a valuation within section 60(1) the Tribunal was of the opinion that it would deal with each case on its merits. In assessing whether the charge for the valuation is reasonable a tribunal takes into account the qualifications and experience of the valuer, the amount of work and

time taken, as set out in an invoice and any accompanying supporting document, and whether, overall, the charge appears reasonable. It also considers whether the Respondent landlord would consider the fee payable reasonable if liable to pay it.

88. In the present case the Tribunal had no reason to doubt the competence of the valuers or the quality of their valuation. The Tribunal noted that Mr Mason's valuation was, in accordance with his instructions, a desk top assessment (taking 2 hours 30 minutes). Taking this into account it determined that the agreed fee of £450.00 plus VAT was reasonable. Mr Plotnek's hourly rate was not provided. The time spent in undertaking his valuation (2 hours 10 minutes) was less than Mr Mason's and he had inspected the Property. However, the item of 3 hours travelling time for which he appeared to charge was considered too much. Taking this into account the Tribunal determined that the fee of £450.00 plus VAT was reasonable.
89. Therefore, the Tribunal determines that the reasonable valuation costs of the Respondent payable by the Applicant pursuant to section 60 of the Leasehold Reform and Urban Development Act 1993 are for each valuation £540.00 including VAT (£450.00 plus VAT @ 20% £90.00).

**Judge JR Morris**

## Annex 1 - Lease Extension Premium

### 8 Birkdale Close, Northampton, NN2 7PD

Lease Term	99 years
Lease commencement date	29/09/1971
Valuation date	12/07/2018
Unexpired term	52.22
Capitalisation rate	7.0%
Deferment rate	5.00%
Freehold value	£125,800
Extended lease value	£124,542
Existing lease value	£103,034
Relativity	81.90%

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#### Diminution in the value of the landlord's reversion

Ground rent			
Term 1		£40	
YP	19.22 years @ 7.0%	10.3940	£416
Term 2		£60	
YP	33 years @ 7.0%	12.7538	
PV of £1	19.22 years @ 7.0%	0.2724	£208
Reversion to			
Freehold value of flat		£125,800	
PV of £1	52.22 years @ 5.00%	0.078252	£9,844
Less reversion to			
Retained interest		£125,800	
PV of £1	142.22 years @ 5.00%	0.000969	£122
Diminution in the value of the landlord's reversion			<b>£10,346</b>

B

#### Landlords share of Marriage Value

Extended Lease value	£124,542	
Less		
Existing Lease Value	£103,034	
Landlords current interest	£10,346	
Marriage value	£11,162	
Marriage value 50% share		<b>£5,581</b>
Premium payable		<b>£15,927</b>

## **Annex 2 – Right of Appeal**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office, which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.