

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2013] UKUT 056 (LC)  
UTLC Case Number: LRA/75/2011

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LEASEHOLD ENFRANCHISEMENT – house – freehold enfranchisement price – whether LVT double counted a premium to reflect property’s location in value per square foot for the freehold – whether LVT failed to make allowance for development risk, planning risk and planning costs in assessing development value - Leasehold Reform Act 1967 s.9(1)(C) - appeal allowed in part - Enfranchisement price £1,536,000*

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

BETWEEN

MR M A JACKSON  
MRS J W JACKSON

Appellants

and

THE KEEPERS & GOVERNORS OF THE POSSESSIONS REVENUES & GOODS OF  
THE FREE GRAMMAR SCHOOL OF JOHN LYON

Respondent

Re: 101 Hamilton Terrace,  
London  
NW8 9QY

Before: Her Honour Judge Alice Robinson and Paul Francis FRICS

Sitting at: 43-45 Bedford Square, London WC1B 3AS  
on 19-20 November 2012

Tim Jackson for the Appellants

Mark Loveday instructed by Pemberton Greenish LLP for the Respondent

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## DECISION

### Introduction

1. This is an appeal by Mr MA and Mrs J W Jackson (“the Tenants”) against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Committee (“LVT”) dated 4<sup>th</sup> March 2011 whereby the LVT decided the amount of the purchase price in respect of the freehold enfranchisement of 101 Hamilton Terrace, London NW8 9QY (“the Property”) under the terms of the Leasehold Reform Act 1967. The Respondent (“the Landlord”) is the freehold owner of the Property.

2. The LVT initially determined the price payable to be £1,605,220 but after the Appellants application for permission to appeal pointed out errors, a correction certificate was issued dated 3 May 2011 which revised the price payable to £1,589,650. The LVT however refused the application.

3. Although the Tenants had applied to the LVT for permission to appeal on a number of grounds, in a decision dated 2 August 2011 the President of this Tribunal granted permission to appeal on 5 specified grounds only (Grounds 1-4 and 6) and ordered that the appeal be limited to the matters raised in those grounds. He also ordered the appeal to be by way of rehearing. Before us, the Tenants sought an enfranchisement price of £1,328,167.

4. The issues that had been before the LVT related to the unimproved freehold value of the Property at the valuation date, the value of any development potential by way of roof and ground floor extensions and the relativity which should be adopted between the freehold and leasehold values. The permitted grounds of appeal relate to the amount per square foot which should be used to determine the freehold value (ground 6) and whether certain matters had been taken into account in determining development value (grounds 1-4).

5. It was apparent from the documents including the Tenants’ Skeleton Argument and Landlord’s Written Opening that an issue arose between the parties as to the ambit of the appeal. We took the view that this should be determined at the outset because our decision, whatever it was, would have a significant effect on the evidence which would be called. Therefore at the beginning of the hearing we indicated our provisional view and invited the parties to make any further submissions. Both Mr Jackson appearing on behalf of his parents and Mr Mark Loveday, counsel for the Landlord, made oral submissions. Having considered those we re-affirmed our provisional view. Our reasons, and conclusions, are as follows.

6. The LVT’s decision adopted a two stage approach to the ascertainment of a value per square foot (“psf”) for the freehold. First it accepted the evidence of Mr Kevin Ryan FRICS of Carter Jonas, the Tenant’s valuer who also appeared before us, that an analysis of four

comparables located outside Hamilton Terrace produced a value of £1,240 psf. Second, the LVT added a premium of £147 to reflect the Property's location in Hamilton Terrace which it considered was superior to the locations of the four comparables, giving rise to a figure of £1,386 psf. Ground 6 of the appeal asserts that the LVT failed to have regard to the fact that Mr Ryan's figure of £1,240 psf already included a Hamilton Terrace premium. In consequence of this the Landlord argued that the appeal was limited to considering whether this was correct, and if it was not, what level of premium should be added. In other words, it was not open to the Lands Chamber to revisit the base figure of £1,240 psf save to decide whether or not, on the comparables from which it was derived, it included a Hamilton Terrace premium.

7. In our view the difficulty with this argument is that it does not make adequate allowance for the fact that this is a rehearing not a review. At its heart, the Tenants' argument is that a figure of £1,240 properly reflects the Property's location in Hamilton Terrace. Whether this is correct or not is to be determined having regard to the evidence before us and we are not restricted to the evidence which was before the LVT. Indeed, Mr Loveday submitted that the further comparables relied upon by Mr Ryan were not irrelevant. If this is correct their relevance must be as to whether the £1,240 figure fairly reflects the freehold value of the Property. Of course this does not mean that the LVT's decision is immaterial; we must be satisfied that the LVT got it wrong before we can interfere with the decision. We therefore indicated that we were prepared to consider the additional comparables to which Mr Ryan referred as well as his new approach to them.

8. As to development value, the LVT accepted the approach of Mr Philip Hamilton BSc MRICS of Cluttons, the Landlord's valuer who also appeared before us, that the method of determining development value should be a residual valuation. The LVT had regard to the evidence as to what form of extension might be granted planning permission and decided that it was 'not unlikely' that permission could be obtained for a 510 sq ft roof extension. It identified the gross development value ("GDV") of the completed extension by adding an uplift of £260 psf to reflect the improvement to the £1,386 it had determined as the value psf, and applied that to the 510 square feet to arrive at a figure of £839,460. The LVT then deducted various costs from that figure, including building costs, a 25% contingency and 17.5% for fees, before arriving at a net development value of £650,000 which it determined was the additional amount a purchaser would pay to reflect the Property's development potential. The freehold value was thus determined at £5,762,482.

9. Grounds 1, 2 and 4 of the appeal assert that the LVT failed to make a discount from development value respectively for development risk, for the fact that planning permission had not yet been obtained and for the costs of obtaining planning permission. Ground 3 asserts that when judging planning risk, the LVT failed to have regard to a Conservation Area Audit of St John's Wood ("the Audit"). In their evidence before the Lands Chamber the Tenants produced alternative building cost figures and a letter from the local planning authority suggesting planning permission might only be obtained for a lesser development than that found by the LVT. The Tenants also persisted in their argument that the correct approach was not a residual valuation but to deduct a percentage from the GDV to reflect the development and planning risks.

10. In our judgment grounds 1-4 of the appeal are clear. They challenge the failure to include an allowance for certain risks and costs in the calculation of development value. The grounds do not challenge the LVT's use of a residual valuation, the building costs used, the 510 square foot loft extension size or the £260 per square foot uplift to reflect the improvement. Although the Tenants complained that the Landlord's evidence of building costs was produced very late, they did not apply for an adjournment at the LVT despite being represented at that stage by leading counsel. We therefore indicated that we would not hear evidence challenging these matters but would hear evidence as to development risk, planning risk, planning costs and whether the Audit had been taken into account in the LVT's calculation of development value in Annex B of its decision.

## **Facts**

11. From the Statement of Agreed Facts and the evidence we find the following facts. The Property is located on the south west side of Hamilton Terrace between the junctions with Abercorn Place and Hall Road. The whole of Hamilton Terrace and indeed most of St Johns Wood lies in the St John's Wood Conservation Area. The Property is not listed.

12. The Property comprises a detached double fronted house on lower ground, raised ground and first floors, standing on a plot of land with a garden. The Property was built in the 1930's and has an agreed gross internal floor area of 3,686 square feet. There are no tenant's improvements to be disregarded.

13. The Tenants are the lessees of the Property pursuant to a lease dated 11 July 1985 for a term of 65 years from 25 March 1985. The valuation date is 8 March 2010.

## **Ground 6 – freehold value**

14. In its decision, the LVT said:

“33. Mr Ryan approached the valuation of the property through the collections of comparables into property baskets, each with distinct characteristics. He then relied upon the average per square foot value from these baskets to produce a match to the particular features of the subject property. He argued that the average value per square foot from a basket of three improved houses dating from the 1930's, together with a discount for unimproved condition, produced the best match to the subject. The discount was applied by taking the mid-point between the average for the three improved houses and the single unimproved property, No.35 Loudoun Road. This produced a value per square foot of £1,240. The Tribunal viewed the comparable evidence and recognised this method relied upon good comparable data and succeeded in achieving a good match for the subject property in two key property areas; namely:

-condition; and,

-house type

The Tribunal favoured Mr Ryan's approach because it achieved comparison between comparable properties and subject properties without resorting to subjective adjustment for condition. Reliance upon subjective adjustment for condition was adopted by Mr Hamilton and the Tribunal had concerns about the influence of the adjustments on the calculation of the per square foot values. However, the Tribunal recognises the approach adopted by Mr Ryan failed to reflect the value premium afforded any property situated in Hamilton Terrace. A criticism raised at Mr Ryan's valuation by Counsel was it represented "a valuation of an unimproved house in Springfield Road, not Hamilton Terrace".

15. To address the failure sufficiently to reflect the Hamilton Terrace location premium, the Tribunal used the same basket method as adopted by Mr Ryan. The Tribunal used the comparables submitted and agreed by the Experts to create a basket of Hamilton Terrace properties (excluding No.22) and a basket of non-Hamilton Terrace properties. Despite the acknowledged variability within and between these property baskets in type, age and character, with their knowledge and experience the Tribunal considered this method the best approach to determine a crude Hamilton Terrace premium with the available data. Details of the properties in each basket are shown in Table 1 at Annex A. The results of the analysis were an average for the Hamilton Terrace properties of £1,531 psf and an average for those properties located elsewhere of £1,384 psf. The Tribunal inferred from those findings that there is a premium of £147 psf for the Hamilton Terrace properties equivalent to around an 11% uplift on prices for properties beyond Hamilton Terrace. The Tribunal, based upon their experience and knowledge, considered this an appropriate price differential.

16. The Tribunal has added this premium to £1,240 psf, the value arrived at by Mr Ryan, from the property basket of improved houses dated from 1930 but adjusted for condition. This produces a freehold value per square foot of £1,387. When applied to the agreed gross internal area of the house of 3,686 sq ft it equates to £5,112,482 (to which development value of £650,000 would be added)."

17. In his expert witness report to this Tribunal, Mr Ryan produced a new "composite basket of transactions" covering 52 properties located over a wide area within NW8. This included the 24 comparables that he had initially relied upon below. Whilst he accepted that this new list was substantially larger, he said that he had taken on board the criticisms that had been made by the LVT and that it was perfectly in order to carry out an even more thorough analysis and to take account of any new evidence that had become available. He did this, he said, because he "wanted to make sure." There was only one property on the new list where the analysis had not been agreed with Mr Hamilton: 98 Hamilton Terrace where there was a discrepancy in terms of floor areas between the agents particulars and detailed floor plans. Mr Ryan said that although he was not particularly acquainted with "the law of large numbers" that Mr Jackson had referred to, it stood to reason that the more comparables that were considered, the more accurate would be the averaging exercise that he had carried out.

18. The properties were all located in high-class residential streets in the area (including Hamilton Terrace) and comprised 13 modern and 38 older or period detached, semi-detached

and terraced houses, some unmodernised and some comprehensively refurbished. In the light of the wide variation in house types, age and condition, Mr Ryan said he had not made subjective adjustments which would be complex and likely to cause prolonged debate. He instead undertook several averaging/grouping exercises.

19. Firstly, he simply calculated an average rate psf of all 52 properties and arrived at a figure of £1,314 psf. He said that his schedule included four properties where the values could be said to be at the extreme margins (including 22 Hamilton Terrace that had been excluded from his original list because the sale price was 43% of the average), but had decided to include them all as to exclude them was, in his view, subjective. For instance, whilst there were several sales at below the average, 15 Cavendish Avenue had sold for £2,827 psf and that would skew the figures the other way. However, on the basis that the subject property was built in the 1930s, that it was unmodernised by the prevailing standards of the market in that area and that it was in Hamilton Terrace, he then went on to allocate the properties into separate baskets. Mr Ryan said that the 13 non-period properties had an average value of £1,259 psf with the remaining period properties producing an average of £1,333 psf indicating a non-period discount of £74 psf. The 10 unmodernised houses produce an average of £1,097 psf with the average of the remainder being £1,366 psf indicating a discount for being unmodernised of £269 psf. Finally, the average for the 11 Hamilton Terrace houses was £1,421 with the remainder producing an average of £1,286 psf. This, he said, implied a premium for Hamilton Terrace of £135 psf. The resulting calculation became:

Starting average for all properties (psf)	£1,314	
Non period adjustment	£74	
Unmodernised adjustment	-£269	
Hamilton Terrace adjustment	+£135	
Average of these 3 adjustments to apply to subject		<u>-£ 69</u>
Adjusted base value		£1,245

That was within 0.4% of the £1,240 he had put before the LVT and, as it was the result of a far more detailed analysis that was the figure he said he was now adopting. This analysis, he said, clearly demonstrated that the Hamilton Terrace premium was included in his calculations and the LVT's suggestion that it was not was therefore manifestly wrong.

20. At the commencement of the hearing it was pointed out that there had been an error in that one of the properties in his new schedule of comparables had been entered twice, and so the actual list comprised 51 sales. Although a fully revised schedule and breakdown of the calculations upon which he had based his assessments of average prices per sq ft was not produced to us, Mr Ryan said that the overall effect was not great. However, it did result in the Hamilton Terrace premium becoming £141 which he accepted was not far away from the LVT's figure of £147. According to his initial calculations, Mr Ryan said that based upon the subject property's existing square footage of 3,686, the valuation (to which development value was to be added) became £4,589,070.

21. In examination in chief, Mr Jackson asked Mr Ryan to comment on Mr Hamilton's criticisms of the way in which the averages had been calculated. Mr Hamilton had produced an appendix to his report which demonstrated the difference between Mr Ryan's simple method of taking an arithmetical mean to produce an average, and adopting a median basis that smoothes out the highs and lows. Mr Jackson worked through the individual examples which produced a psf figure for the subject property of £1,143 rather than the £1,245 that Mr Ryan had come to. Mr Ryan pointed out that the difference, which he thought was not great in any event, produced a figure that was even less in the Tenants' favour and showed the fairness of his approach.

22. In cross-examination, Mr Ryan accepted that there was no question but that there was a Hamilton Terrace premium, and insisted that his LVT valuation did include it. When reminded that the £1,240 psf sought before the LVT was derived specifically from 4 of the 24 comparables he had considered, none of which were in Hamilton Terrace, so could not include the premium, Mr Ryan said that his report was "badly stated" and that the premium was included. In the paragraph of his expert report to the LVT that Mr Loveday was referring to, Mr Ryan said:

"4.13 In the circumstances I have averaged the adjusted rates derived from the other three modern detached houses, 42 Springfield Road, £1,586, 55 Springfield Road, £1,133 and 15 Marlborough Place £1,424, which is £1,381 per sq ft. The average of this rate and the £1,098 derived from the unmodernised Loudon Road comparable [35 Loudon Road referred to in the previous paragraph] is £1,239.50, say £1,240 per sq ft. Standing back and considering this rate, I believe it is appropriate to the subject property as it is around £250 per sq ft less than the £1,506 rate derived as the average of both refurbished houses and the Hamilton Terrace average, excluding No 22. This is a fairly modest sum when considering the costs of refurbishment and the value added by it, which is quite clear from the evidence and as such I am happy that it does not understate the value of the subject property."

He said that in arriving at his figure, it was necessary to stand back and take a view, and he regretted that he had not included more detail. In his review of 24 properties, there were 7 in Hamilton Terrace, and 5 of those fell into more than one "basket".

23. Asked about Mr Hamilton's use of 143 Hamilton Terrace as support for the LVT's decision (which he did not wish to disturb), Mr Ryan said that he thought it was unsafe to rely upon a single comparable as "every transaction has its own story". Also, the property was very different in a number of respects, and thus a significant number of adjustments had had to be made. In his view, due to the much better layout of 143 and the need for extensive modernisation, Mr Hamilton should have made a further discount of 12.5% from the £1,809 psf which would bring it down to £1,283 psf which was very much closer to his own assessment for the subject property at £1,245 psf.

24. Picking up on that basis of analysis, where adjustments were made to individual properties, Mr Loveday put to Mr Ryan that that was precisely the way valuers normally work and asked why he had not adopted this approach in his own valuation. Although he insisted that his basket approach was commonly used, Mr Ryan admitted that he had not previously adopted

the approach of averaging across a basket of properties instead of individually adjusting each and then producing an average. He said that St Johns Wood is an unique location having so many similar properties (although none were directly similar to the subject), and he could not understand why Mr Hamilton had homed in on just one property as a cross-check on the veracity of the LVT's decision, whereas he could have done the same exercise on all 51 comparables. Mr Ryan pointed out that the LVT had said they favoured his approach.

25. In submissions, Mr Jackson pointed out that at paragraph 7 of the Landlord's Statement of Case, it was said that "there is no appeal against the LVT's finding that a roof extension would be worth some £839,460." This statement was, he said, incorrect. That figure had been derived from the value per sq ft for the main accommodation of £1,387 adopted by the LVT to which the £260 uplift for the 510 sq ft new accommodation was to be added. Whilst it was accepted that the uplift was not subject to appeal, the other figure was. If the Lands Chamber finds in the appellants' favour in respect of ground 6, then it follows that the GDV of the extension must be less than the £839,460 referred to. Mr Jackson also drew to our attention some factual errors in the LVT's recording of the evidence of both Mr Ryan and Mr Hamilton that had been before them.

26. He said that Mr Hamilton had had an opportunity to produce a new valuation for this Tribunal, but had chosen not to do so. Mr Jackson said that in his view, the choice of 143 Hamilton Terrace for use as a "cross-check" was a curious one as it would have been more appropriate to pick a house of the same age and condition from elsewhere in the agreed list of comparables, and simply add his £147 Hamilton Terrace premium. It would be perilous to rely upon that comparable alone as neither valuer had seen it and there was no tangible evidence in respect of costs of refurbishment.

27. Mr Hamilton acknowledged in his report that the LVT had preferred Mr Ryan's averaging exercise to the more detailed analysis of a selection of comparables that he had used. However, in his view the approach he had taken was more appropriate and was the traditional basis upon which valuers analyse comparables. He had used only the properties where the fewest adjustments were required (11 of the 24 in the Agreed Statement of Facts) and had reached a figure before the LVT (which included the Hamilton Terrace premium) of £1,425 psf which was just under 2.5% above the figure they determined. This was well within an acceptable error of margin, and the Landlord accepted it particularly in the knowledge that based upon the grounds of appeal, the Upper Tribunal could not increase the LVT's figure.

28. He said that Mr Ryan's specific analysis of four comparables at paragraph 4.13 of his revised report to the LVT (see paragraph 22 above) in assessing a figure of £1,240 psf took the average of two Springfield Road sales and one Marlborough Hill sale and then averaged those against one in Loudon Road. The calculation was:

42 Springfield Road	£1,586
55 Springfield Road	£1,133
15 Marlborough Hill	<u>£1,424</u>



Total		£4,143
	<u>        </u>	/3
Average		£1,381
35 Loudon Road		<u>£1,098</u>
	<u>        </u>	/2
Average		£1,239.50 – say £1,240

This makes it, Mr Hamilton said, abundantly clear that the rate he adopted did not include any premium for Hamilton Terrace as there were no Hamilton Terrace properties in the list from which the figure was derived.

29. Furthermore, it was clear from the appellant’s summary of Mr Ryan’s evidence in their application to the LVT for permission to appeal (at paragraphs 3.2.3 and 3.2.4) that they had misunderstood what Mr Ryan actually did. They had also referred to his original calculations which had in fact been amended before the LVT.

30. Turning to Mr Ryan’s new evidence to this Tribunal, Mr Hamilton pointed out in his supplemental report that all but one of the further comparables related to sales that took place after the valuation date, and all but one of the “new” comparables (143 Hamilton Terrace) were not in that street. Further, they were all period houses and, as such, little weight could be attributed to this evidence. He also produced worked examples to demonstrate the dangers inherent in Mr Ryan’s approach of averaging across baskets of properties, and provided at Appendix 12 the baskets of properties that Mr Ryan had referred to and in each case, the balance of sales not included within that basket. Putting Mr Ryan’s rates psf into order from lowest to highest, he set out the arithmetic mean, range and median mode. The result proved a number of mathematical inaccuracies and showed how misleading simple averages across a very wide range of values could be. Whilst it gave an indication of what could be described as a crude average for NW8, with there being no adjustment for anything other than the three points Mr Ryan had used (age, condition and modernisation), without the sort of detailed analysis that valuers normally undertake, the figures could be shown to be meaningless.

31. Explaining his own approach, Mr Hamilton said he had not produced a new valuation as the LVT’s adopted figure was accepted by the respondents. However, he had carried out a cross-check based on 143 Hamilton Terrace. It is one of three houses built after the second world-war, has been recently refurbished and has better off-street parking. Mr Ryan’s date adjusted analysis of the November 2011 sale price of £7.75 million was £6,444,655 or £1,809 psf and Mr Hamilton said that in his view that figure should be reduced by £300 psf to reflect these differences producing £1,509 psf which is some 6% higher than the £1,425 psf he had been arguing for the subject property before the LVT. He said that the sale of No 143 suggests that the LVT’s rate of £1,387 psf for the subject property (prior to the development potential addition) and a freehold value of £5,112,482 was certainly not too high and did not double-count the Hamilton Terrace premium.

32. Asked why he had only analysed one comparable this time, Mr Hamilton said it was the closest on in terms of location and type and thus fewer adjustments had to be made. The properties in Springfield Road, Marlborough Place and other streets in the vicinity all needed much more adjustment and did not have the Hamilton Terrace premium built in.

33. Mr Loveday submitted that in determining the issue of which was the correct valuation approach, the Tribunal should recognise that Mr Hamilton's cross-check of 143 Hamilton Terrace, and indeed his wider analysis and evidence before the LVT, followed convention and, in comparison with Mr Ryan's complex and inappropriate basis of analysis, was simple and straightforward. Mr Ryan's suggestion that the analysis of No 143 should be reduced by a further 12.5% to reflect the need for refurbishment was unrealistic, as that would mean another £2.1 million of expenditure was anticipated over and above the allowance which Mr Hamilton had already made.

34. It was suggested that the Tribunal would need to consider the credibility of the witnesses, and should attach little weight to the novel and unconventional approach relied upon by Mr Ryan. It was worth noting, Mr Loveday submitted, that in reaching its conclusion the LVT did not rely upon the whole basket of properties put forward by Mr Ryan, but the four specifically referred to in his paragraph 4.13.

35. A few days after the hearing, we carried out an accompanied inspection of the subject property and viewed externally a selection of the comparables that had been referred to by the experts. The properties varied in location, age, style and apparent condition to a considerable degree and we agree with the reasons promulgated by Mr Hamilton that the argument that the more properties that are averaged, the more accurate will be the resulting figure just does not bear scrutiny. For instance, the property at 22 Marlborough Hill amongst others bears no similarity to the subject property whatsoever. If adjustments were made to cover the whole range of differences, the result would be so subjective as to be worthless. However, for properties closer in type, style and condition we agree that the conventional adjustment approach preferred by Mr Hamilton is what valuers normally do. Indeed, Mr Ryan admitted that he had never before used the basket averaging approach and we are satisfied from the evidence that it was neither appropriate nor accurate.

36. We found the averaging exercise of the four properties homed in on by Mr Ryan at paragraph 4.13 of his report confusing and self-serving. The specific exercise he used of averaging three properties and then adding a fourth and averaging that result seems odd, and is certainly a methodology strange to this Tribunal. We therefore attach no weight to it. However, what the exercise does show, as Mr Hamilton rightly in our view pointed out, is that on that analysis a Hamilton Terrace premium cannot possibly have been included.

37. Although we are of the view that Mr Hamilton should perhaps have carried out an exercise of making his subjective adjustments to three of the four properties referred to in Mr Ryan's paragraph 4.13 (excluding Marlborough Hill for the reasons we have given) to give more weight to his opinion, we accept what he says about then having to find a Hamilton

Terrace premium. That is, of course, already included in his analysis of 143 Hamilton Terrace. We do not accept Mr Ryan’s arbitrary further reduction of 12.5% on this property – the result of which again seems to again be somewhat self serving to get to a figure close to the one he seeks. Although it is acknowledged that neither of the valuers had seen inside 143 Hamilton Terrace, we agree with the submission that such a deduction would equate to additional expenditure on modernisation of over £2 million on top of what Mr Hamilton had already allowed for, which we find very unlikely.

38. In our view, from the evidence, it is clear that the figure of £1,240 (or £1,245 psf) is far too low and, as we have said, we accept that on the basis of Mr Ryan’s evidence, the LVT was correct to conclude that the Hamilton Premium was not included. Given Mr Ryan’s current view that the uplift for Hamilton Terrace is in the region of £141psf – which is very close to the LVT’s figure of £147psf, we consider that it would be wrong to disturb the LVT’s decision. Despite the Tenants’ efforts through Mr Ryan’s evidence to have a “second bite at the cherry”, the LVT has not been shown to be wrong on its conclusion and the appeal is therefore dismissed on this ground. Having come to this conclusion, it follows that there is no need for an adjustment to be made to the development value of £839,460 as argued by Mr Jackson (para 25 above).

**Grounds 1-4 – development value**

39. The LVT rejected the Landlord’s argument that there was potential for a ground floor extension. As to a loft extension it said, at paragraph 36:

“36. The Tribunal took the view that the 510 sq ft project with no change to the roof line was not unlikely to obtain planning permission with 3 dormers at the front and 3 on the back.”

The LVT made various findings as to building costs and set out the following calculation in Table 2 to Annex B of its decision:

**Table 2 – Potential development value**

Roof space conversion	
Useable floor space from conversion (GIA)	510
<u>Estimated value psf:</u>	
Freehold value psf	£ 1,386
Uplift psf	£ 260
Total	£ 1,646
Total additional capital value	£ 839,460
<i>Less</i>	
Cost of works	£ 88,000
Additional fitting out	£ 15,000

Contingencies at 25%	£ 25,750
Fees at 17.5%	£ 22,531
VAT at 20%	<u>£ 30,256</u>
Total cost of works plus contingencies and risk	£ 181,538
Additional value to purchaser from roof space conversion	£657,923
<b>Say</b>	<b>£650,000</b>

40. The Tenants argue that this calculation makes no allowance for development risk, planning risk or the costs of obtaining planning permission. Mr Ryan's evidence is that a purchaser would adjust the price he was prepared to pay to reflect the risk that he might not get planning permission and would also expect to be rewarded for the time, effort and inconvenience of undertaking the extension works. He said the Audit identifies the Property on a map as lying in an area where roof extensions "would not normally be acceptable". In the light of that he considered that there was only a 30-40% chance of successfully obtaining planning permission.

41. That was reinforced, he said, by the recent receipt of a letter from Westminster City Council ("the Council") dated 31 October 2012 in response to a request that Mr Jackson had made for pre-application advice. Although the letter states that the Council would ordinarily require detailed plans, it expressed the view that "the creation of a 45 degree mansard roof extension with three dormer windows to the front and to the rear... would be likely to be viewed as unacceptable in principle having regard to the content of UDP policies DES1 and DES6(A) 2, 3, 4." The letter went on to say that there might be scope for discreet dormer windows on the rear elevation subject to consideration of detailed plans. In cross examination Mr Ryan agreed that a roof extension with 6 windows that did not alter the existing roofline would not contravene DES6(A) 3 or 4 but that the Property could be regarded as a 'completed composition' and therefore any front extension would be contrary to DES6(A) 2. However, when pressed as to this and the effect of the Audit he said 'I'm not saying you would not get planning permission, just that there would be doubt about it.' As to the fees for obtaining planning permission, he agreed that he had not made any specific allowance for them but considered the LVT's overall allowance for fees of 17.5% was inadequate.

42. Mr Ryan further considered that buyers, whether owner-occupiers or developers, are rarely willing to pay the full as-built value for development potential even when planning permission has been granted and would make an adjustment for development risk. In his opinion this would be 50% of the developed value but he also looked at a more optimistic scenario where the buyer would be willing to pay 70% of developed value. To this should be added the planning risk and he produced various calculations. He concluded by adopting a figure which lay at a mid point between assuming a 30-40% chance of obtaining planning permission and a buyer willing to pay 70% of the developed value namely £188,050 as the net development value. His alternative residual valuation of development value used different building costs to the LVT, did not make any deduction for development risk, but made a 70-60% reduction to reflect the risk that there was only a 30-40% chance of obtaining planning permission. In cross examination he conceded that it was implicit in the LVT's approach to development value that development risk was taken into account, but they thought the risk was

low. He said that if you were adopting the residual valuation approach you should deduct 10-15% of the GDV to reflect development risk.

43. Mr Hamilton's evidence was that a roof extension with 6 windows would not offend any of the Council's planning policies. The buildings on either side of the Property are taller and such an extension would not look out of place. The building was not listed and many extensions had been permitted at properties in St John's Wood, most of which were covered by the same notation in the Audit as the Property. The planning officer who wrote the letter dated 31 October 2012 had nothing in front of him and Mr Hamilton considered that if the officer had detailed architect's drawings he could be persuaded to come to a different conclusion. He considered that the 17.5% for fees shown in the development costs included the professional fees of obtaining planning permission.

44. Mr Hamilton further said that the LVT accepted his figure of £650,000 for development value in which he had not made any specific deduction for development risk, planning risk or the cost of planning consent. He considered that while a developer would make a deduction for development risk a residential owner occupier, the type of buyer who would be interested in the Property, would not. There was a risk that planning permission might not be granted but his figure, which the LVT accepted, took that into account because it was at the lower end of a range of values. In effect, in terms of value, the prospect that permission might be obtained for more than 510 square feet cancelled out the risk of not obtaining planning permission for the 510 sq ft extension.

45. In our judgment a purchaser of the Property would certainly have regard to its development potential. The houses either side are considerably taller and there are many 1930's houses similar to the Property in St John's Wood which have a mansard type roof with dormer windows - no. 91 being a typical example. We accept the Landlord's argument that this would be an obvious form of development to consider. However, we also accept Mr Ryan's evidence that a purchaser would not be willing to pay the full amount of any uplift or profit i.e. net development value. While the risks involved in site development that a developer would be willing to undertake are no doubt greater than those that an owner-occupier, contemplating the construction of what would be a relatively modest extension adding about 13% floorspace to a house, would be willing to undertake, we think it is unrealistic to suggest no allowance would be made. In addition to the inevitable time, effort and inconvenience of constructing an extension there may well be borrowing costs and delays. In our judgment an allowance should be made for what Mr Ryan described as development risk.

46. We note Mr Ryan's acceptance that the LVT had made some allowance for development risk and the description of the extension costs in their decision as being "Total cost of works plus contingencies and risk." However, Mr Hamilton did not suggest that the LVT had included a figure for development risk or that, more specifically, the 25% contingency figure reflected development risk. We do not consider that the LVT made any proper allowance for development risk. As there is no appeal against the LVT's residual method of valuing development potential it is not possible for us to adopt Mr Ryan's approach of simply deducting a global figure from the GDV. We accept his evidence that if doing a residual valuation a

specific allowance for development risk would fall to be an additional deduction from GDV along with construction and other costs. Adopting this approach Mr Ryan considered that 10-15% would be an appropriate deduction from GDV. Mr Hamilton did not put forward a figure for development risk in the event that we considered one should be allowed. We return to the figures after assessing planning risk.

47. As to planning risk, the evidence as to what might be permitted is set out in the UDP policies, the Audit policies and the letter dated 31 October 2012. The key policy is DES6 of the UDP:

**“POLICY DES 6: ROOF LEVEL ALTERATIONS AND EXTENSIONS**

- (A) Permission may be refused for roof level alterations and extensions to existing buildings (which may include the installation of conservatories, roof terraces, telecommunications equipment or solar collectors) in the following circumstances:
- 1) where any additional floors, installations or enclosures would adversely affect either the architectural character or unity of a building or group of buildings
  - 2) where buildings are completed compositions or include mansard or other existing forms of roof extension
  - 3) where the existing building’s form or profile makes a contribution to the local skyline or was originally designed to be seen in silhouette
  - 4) where the extension would be visually intrusive or unsightly when seen in longer public or private views from ground or upper levels
  - 5) where unusual or historically significant or distinctive roof forms, coverings, constructions or features would be lost by such extensions.
- (B) Permission may be granted for new roof structures or additional storeys on existing buildings in the following circumstances:
- 1) where the proposed development or form of alteration is in sympathy with the existing building’s architectural character, storey heights and general elevational proportions
  - 2) where the form of detailing to the extension either repeats or reflects the form, detailing or use of materials found in an existing building
  - 3) where the proposed design accords with (or establishes an acceptable precedent for) similar extensions within the same group of buildings
  - 4) where the design of extension avoids any infringement of the amenity or reasonable visual privacy enjoyed by the occupants of adjacent or nearby buildings.”

48. Although Mr Ryan at one stage suggested that DES6(A) 5 might apply, the Property could not be said to have an unusual or historically significant roof, being very similar to many other 1930’s houses. He focused on DES6(A) 2 and the issue of whether the Property is a

‘completed composition’, a phrase also used in the Council’s letter. He agreed there is no mansard or existing roof extension. We note that the explanatory text adds this in paragraph 10.69: “Buildings that are completed compositions, with an existing architectural climax at roof level, are not suitable for extension.” The phrase ‘completed compositions’ is picked up in the Audit paragraph 4.81 which deals with “Category 1 – Properties with existing roof extensions, or where extensions would not normally be acceptable” and states:

“This includes all listed buildings and groups of buildings that remain largely unaltered. It applies to many of the villas in St John’s Wood which are completed compositions, often with distinctive roof forms, and overhanging eaves, making extensions difficult to achieve and highly visible. It also applies to semi-detached houses and groups of houses, where an extension would imbalance or damage the integrity of a pair or group. Included here are 20<sup>th</sup> century developments where prominent mansard and pitched roofs are important elements of the original design.”

49. It is difficult to see how the property could be regarded as a ‘completed composition’ in the sense being used in the UDP and Audit; there is nothing architecturally distinctive about it that the anticipated roof extension would disrupt. Further, it is not part of a group but sandwiched between two very different houses which date from much earlier, are taller and stuccoed. It does not have a mansard nor is there any suggestion that the roof is an important element of its design. In our view, less weight would be given to the Property’s inclusion in the Audit than the UDP for these reasons as well as others. The blanket designation of most of St John’s Wood as Category 1 including the Property is questionable and gives rise to doubt as to whether sufficient consideration was given to the Property’s architectural character, particularly in the light of the fact that the Property is wrongly identified on another Audit plan as dating from 1850 to 1879. Further, the Audit is supplementary planning guidance rather than a development plan and in deciding whether or not to grant planning permission the development plan must be accorded the weight required by s.38(6) of the Planning and Compulsory Purchase Act 2004.

50. As to the letter from the Council dated 31 October 2012, we consider that the planning officer was understandably adopting a cautious approach in the light of the fact that he was not provided with any detailed drawings. Although the officer appears to have a clear idea of the current appearance of the Property and its neighbours, it is not clear to what extent he thought the roof was going to be altered. It is difficult to see what proper objection there could be to a roof extension similar in appearance to the 1930’s houses shown in figure 51 of the Audit and described there favourably as being “characterised by the use of higher pitches and neatly detailed dormers.” We accept Mr Hamilton’s evidence that, with the benefit of detailed drawings, the planning officer could be persuaded to adopt a favourable approach. In our view, giving proper consideration to policy DES6 and the Audit, planning permission would be likely to be granted especially when taking into account the statements in DES 6(B) (1), (2) and (4).

51. Notwithstanding our view as to the likelihood of planning permission being granted, as Mr Hamilton said that he made an allowance for planning risk it appears to be common ground that some allowance should be made for the fact that planning permission has not been obtained. We agree. However optimistic s/he was, a purchaser would naturally take into account the risk that

for some unforeseen reason planning permission could not be obtained in deciding what to bid for the freehold. We accept Mr Ryan's evidence that no specific allowance has been made for planning risk by the LVT. Mr Hamilton's evidence is that his figure of £650,000 which the LVT accepted made an allowance for planning risk because it took into account the possibility that planning permission might be granted for a larger roof extension. However, the LVT do not appear to have accepted that and indeed that was Mr Hamilton's view because he said he thought they were wrong on that point. Therefore the LVT's decision has made no allowance for planning risk. Mr Hamilton did not put forward a figure for planning risk in the event that we considered one should be included though we note that the figure of £650,000 which he put forward at the LVT was about 8% less than the value he put on the larger roof extension (£704,088) which he thought would get planning permission, paragraph 8.10 of Mr Hamilton's report to the LVT. Mr Ryan did not put forward a figure for planning risk in the context of a residual valuation. We consider the arbitrary 60-70% reduction he proposed to GDV to reflect planning risk to be wholly excessive.

52. In the light of the fact that the risk of not obtaining planning permission would be modest, we do not consider a significant allowance should be made for this. Having regard to the evidence and in particular the range of figures proposed by Mr Ryan for development risk, namely 10-15%, we consider that a deduction of 20% from GDV would adequately reflect both development and planning risks in the sum that a purchaser would be prepared to bid for the Property.

53. As to planning fees, although Mr Ryan considered that the fees allowed of 17.5% were inadequate he produced no calculations nor did he put forward any alternative figure. In those circumstances we do not consider the Tenants have made out their case that the LVT was wrong not to allow any more.

54. Our calculation based on these conclusions, which is set out in the Tribunal's valuation at Appendix A, results in a revised development value of £500,000 and an enfranchisement price of £1,536,000 and to that extent the appeal is allowed.

55. This determines the matter in issue in this appeal, and we determine the enfranchisement price at £1,536,000.



DATED 18 February 2013

Her Honour Judge Alice Robinson

Paul R Francis FRICS

## UPPER TRIBUNAL (LANDS CHAMBER) VALUATION

101 HAMILTON TERRACE, LONDON NW8 9QY

## APPENDIX A Table 1

<b>Lease Data</b>		<b>Valuation data</b>	
Lease Term	66 years	Deferment rate	4.75%
Lease Expiry date	25 March 2050	Capitalisation Rate	5.5%
Unexpired term as at valuation date	40.04	Landlords share of marriage value	50%
Annual Rent receivable by landlord:		Relativity	
Payable from 25 March 1985 for 30 years	£ 6,000	Term of 40.04 years	64.5%
Payable from 25 March 2015 for 15 years with reviews at 2030 and 2045	£ 12,619	Term of 65 years	81.5%
		Existing GIA of property (R2)	3686
		Freehold value per ft <sup>2</sup>	£ 1,387
		Assessed development potential Value (see table 2)	£ 500,000
		Unencumbered Unimproved Freehold value with vacant possession (FHVP)	£ 5,612,482
		Value of 55 year term for Calculation of existing ground rent at 81.5% relativity	£ 4,574,173
		Current lease value after adjustment for onerous ground rent	£ 3,550,323
Valuation date		8 March 2010	
Value of Freeholders present interest			
<u>Term 1</u>			
Ground rent payable		£ 6,000	
YP @ 5.05 yrs @ 5.5%		4,304	£ 25,624
<u>Term 2</u>			
Ground rent payable		11,435	
YP @ 35 years @ 5.5%		15,39	
PV of £1 in 5.04 years @ 5.5%		0.7634	£ 134,347
<u>Reversion</u>			
Freehold in vacant possession		5,612,482	

40.04 years @ 4.75%	0.156	£ 875,547
Freeholder's interest		£ 1,009,894

Calculation of Marriage Value

Freehold Possession Value (FPV)		£ 5,612,482
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Less

Freeholders present interest	£	1,009,894
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Leaseholder's interest	£	3,550,323
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£ 4,560,217

£ 1,052,265

£ 526,132

Marriage Value

Take share of marriage value at 50%

Enfranchisement price

Total

£1,536,026

**Say £1,536,000**

**Onerous Ground Rent Adjustment**

Freehold Value (FHVP)	£5,612,482	
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25 year lease value with palatable ground rent	81.5%	£4,574,173
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Existing Lease Value with palatable ground rent

Relativity	64.5%	£3,620,050
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Ground Rent

Current receivable	£	6,000
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Less

Payable rent at 0.1% of freehold value	£	5,612
		388

Years purchase 5.65 years at 5.5%	£	4,304	1,670
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Rent receivable at review	£	11,435
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25 March 2015 @ 0.25% of 54 years term

Less

Payable rent at 1% of freehold value	£	5,612
	£	5,823

Years purchase 35 years at 5.5%		15.31
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Deferred at 5.04 at 5.5%	0.7634	£ 68,057
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£69,727

Existing Lease Value with onerous ground rent terms

£3,550,323

## APPENDIX A Table 2

### Potential development value

Roof space extension			
Usable additional floor space	510 sq ft		
Total additional capital value			£839,460
<i>Less</i>			
Discount for development and planning risk @ 20%		£167,892	
Cost of works	£ 88,000		
Additional fit out	£ 15,000		
Contingencies @ 25%	£ 25,750		
Fees at 17.5%	£ 22,531		
VAT @ 20%	<u>£ 30,356</u>		
Total build costs		<u>£181,538</u>	
Total deductions			<u>£349,430</u>
Net development value			£490,030
		<b>Say</b>	<b>£500,000</b>