



A Spring in our step

Leasehold Reform Newsletter

May 2010

The leasehold reform department at Knight Frank have sent you this newsletter to keep you up to date with the recent developments.

A welcome addition

Despite already having the largest and what we believe to be the strongest Leasehold Reform department across Central London, we are delighted to welcome Jeremy Dharmasena as a Partner to our team. Jeremy has a wealth of experience in advising several of the Central London Estates and is a leading figure in the enfranchisement field. Jeremy has joined Knight Frank after 15 years with Gerald Eve and will add to our depth and breadth of knowledge and experience.

Kelton Court

Zuckerman v Trustees of Calthorpe

The decision of the Lands Tribunal in *Kelton Court (Zuckerman and others v Trustees of the Calthorpe Estates [2009] LRA/97/2008)* is clearly of importance to those acting for tenants outside PCL (Prime Central London).

Just as we thought that Sportelli was fixed irrespective of location, the lands tribunal determined the deferment rate at 6% in a case concerning Kelton Court, Edgbaston, West Midlands.

In Sportelli the deferment rate was laid down as follows:

- Risk free rate: 2.25%
- Minus
- Real growth rate: 2%
- Plus
- Risk Premium: 4.5%
- Plus
- 0.25% risk for flats

In the Kelton Court or Zuckerman decision, the tribunal added 0.25% to the risk premium for obsolescence in the properties at Kelton Court because “it is likely to remain economically viable to repair high value



properties in PCL for considerably longer than it will for similar flats in Edgbaston” and they go on to say that “there is a greater risk of deterioration than in PCL”.

Based on the evidence before the tribunal they accepted that the long term growth prospects in Edgbaston were “significantly slower” than in PCL. The tribunal increased the risk premium by a further 0.5%.

The Tribunal also concluded that the it would be appropriate to increase the percentage allowed for this in the Sportelli decision from 0.25% to 0.5% to reflect the complexity and management risks associated with flats.

The 6% deferment rate was therefore laid down as follows:

- Risk free rate: 2.25%
- Minus
- Real growth rate: 2%
- Plus
- Risk Premium: 5.25%
- Plus
- 0.5% risk for flats

8 Chester Street

Grosvenor Estate Belgravia -v- Klaasmeyer

The decision of the Lands Tribunal in *8 Chester Street (Grosvenor Estate Belgravia -v- Klaasmeyer) [2010] LRA/187/2007* has important ramifications for tenants pursuing claims against the Grosvenor Estate throughout Belgravia.

The Tribunal was invited to determine the correct approach to adopt in valuing the compensation payable to Grosvenor Estate Belgravia in their capacity of headleaseholder of the Belgravia Estate. For tax planning reasons, the Estate chose to create a headlease demising the entirety of their Belgravia Estate on terms which provided that, from 25th March 2026 onwards, a proportion of all the income from ground rents or proceeds from claims or voluntary extensions and enfranchisements would be transferred to the freeholder. From 2026 5% of all income and proceeds has to be transferred, rising incrementally by 5% per annum until by 2043 90% of all income and other proceeds is transferred. The provision in the headlease setting out the arrangement is commonly referred to as the "escalator clause".



The tenant claimed that a hypothetical purchaser of the headlease interest in his house would factor into his bid the prospect of having to hand over an increasingly large amount of the income from the ground rent from 2026, and would also be conscious that from 2026 any receipts he receives from an extension or enfranchisement would be subject to the escalator clause. Accordingly he would apply a discount to his bid.

The tribunal determined that an investor would factor the risk into his bid, and accordingly determined that the headlessee's interest should be valued in the normal way and then subject to a 30% discount. As a result of this decision, all lessees on the Belgravia Estate with leases expiring post-2026 can expect to pay a lower premium for their lease extensions or freeholds than would have previously been the case.

48 Queen Anne's Street

Lexgorge Ltd -v- Howard De Walden Estates Ltd (County Court Judgement)

This was a case before the Central London County Court over a definition of a house within the meaning of the 1967 Act and relates to 48 Queen Anne's Street, London W1. The issue was over whether the building could reasonably be called a house for the purposes of a claim under the 1967 Act and followed the Court of Appeal's decision in *Prospect Estates –v- Grosvenor Estate Belgravia (2008)*.

In this case the judge concluded that the building had two floors of permitted office use and two floors of residential use and as a result the residential use required by planning consent and the terms of the lease was substantial. The office use could not be regarded as prominent as was the case in *Prospect Estates*. The judge held that the fact that the whole building was used as offices (contrary to permitted use) was irrelevant.

As a result the judge concluded that the building should not be excluded from the definition of a house and it would be reasonable to call the building a house i.e. the lessee succeeded in establishing a claim under the 1967 Act.



Nailrile Revisited

The Two-Stage Enfranchisement

We commented in our last newsletter on some aspects of this case, but there is another aspect which is likely to provide more headaches for practitioners in the months ahead: what happens if a leaseholder applies to extend his lease, and then may, or may not, go on to participate in a collective enfranchisement claim for the building?

The **problem** identified in *Nailrile* was that, in a situation where there is a substantial ground rent both under the underlease and the headlease, and there is no profit rent, the headleaseholder (ILI) – assuming he does not opt to commute the headlease rent – takes a substantial lump sum when the lease is extended (Stage 1), and then when the collective claim comes in (Stage 2), the negative value in the ILI is deducted from the value of the freeholder's interest. The freeholder cries "foul!"

The **solution**, as found by the Lands Tribunal, is that the freeholder can and should claim compensation under paragraph 2(c) of paragraph 5 of schedule 13 at Stage 1.

But there are at least two further issues which remain unresolved:

1. The calculation of the loss. No valuation was ever attached to the *Nailrile* decision. The two valuers had diametrically opposed views, and the appeal was compromised without agreement being reached.
2. In *Nailrile*, unusually, it was common ground that there was going to be a collective claim. In most cases – we are currently engaged in two – it is far from clear whether a collective claim will ever be made. If such a claim is found to be unlikely, by how much should the extra claim be discounted?

There is no doubt that, sooner or later, this issue will find its way back to the Lands Tribunal.



Knight Frank, more than just enfranchisement

We, as a department as well as a firm, have been driving the 'one stop shop' strategy. Clients that come to us for Leasehold Enfranchisement advice are then easily able to receive advice from Knight Frank Finance, Knight Frank Residential Block Management and also our Residential Investment team in order to help find a 'white knight' or investor in collective enfranchisement claims.

CONTACT US

If you would like to discuss any of the above or anything else in relation to Leasehold Reform work, any member of our team would be delighted to speak to you.

For further information please contact:

Robert Orr-Ewing	020 7861 1430
Gavin Buchanan	020 7861 1514
David Radford	020 7861 1103
Jeremy Dharmasena	020 7861 1587
Vanda Kelsey	020 7861 1739
Riccardo Carrelli	020 7861 1734