LRA/50/2002
(consolidating
LRA/50&51/2002)

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – price – valuation date – yield – agreed virtual freehold value – whether inclusive of value of parking and gardens – hope value – valuation costs – appeal allowed on price and valuation costs – Leasehold Reform, Housing and Urban Development Act 1993, s33(1)(d)(2) & (5), Sch. 6 para 1(1).

IN THE MATTER of APPEALS against a DECISION of a LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

BETWEEN **BLENDCROWN LIMITED** **Appellants**

and

THE CHURCH COMMISSIONERS FOR ENGLAND **Respondents**

Re: 25-31 Hyde Park Gardens and 22-35 Stanhope Terrace London W2

Before: P H Clarke FRICS

Sitting at 48/49 Chancery Lane, London WC2A 1JR on 8-9 September 2003

The following cases are referred to in this decision:

West Hampstead Management Co Ltd v Pearl Property Ltd [2002] 3 EWCA Civ 1372; [2002] 3 EGLR 55
Becker Properties Ltd v Garden Court NW8 Property Co Ltd [1998] 1 EGLR 121
Wellcome Trust Ltd v Romines [1999] 3 EGLR 229

Land Securities Plc v Westminster City Council [1992] 44 EG 153
Hollington v F Hewthorn & Co Ltd [1943] KB 587
Cadogan Estates Ltd v Hows [1989] 2 EGLR 216
Saeed v Plustrade Ltd [2002] EWCA Civ 2011; [2002] 2 EGLR 19

T C Dutton instructed by Nicholson Graham & Jones, solicitors, for the appellants
K S Munro instructed by Radcliffes Le Brasseur, solicitors, for the respondents

DECISION OF THE LANDS TRIBUNAL

1. These are an appeal and cross-appeal by the nominee purchaser and landlords respectively of a block of flats in Bayswater against the decision of an LVT determining the price on collective enfranchisement and the valuation costs under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").

2. T C Dutton of counsel appeared for the nominee purchaser, Blendcrown Limited, and called Bruce Roderick Maunder Taylor FRICS MAE and Colin Alexander Craven ANAEA.

3. K S Munro of counsel appeared for the landlords, The Church Commissioners for England, and called Anthony Ford MRICS.

4. I made an unaccompanied external inspection of the appeal property and the surrounding area on 3 October 2003.

FACTS

5. From the evidence I find the following facts.

6. The appeal property (25-31 Hyde Park Gardens and 22-35 Stanhope Terrace) is on the Church Commissioners' Hyde Park Estate in Bayswater, immediately to the north of Hyde Park and to the south of Paddington, close to Lancaster Gate underground station. It is bounded by Bayswater Road, Brooke Street, Westbourne Street and Stanhope Terrace, with a circular garden in the middle of Sussex Square immediately to the north. The property may be considered in four parts.

7. The flats are in a substantial block originally built as a terrace of individual houses in about 1850. This building has accommodation on basement, ground and three or four upper floors and has now been converted into 80 flats with two caretakers' flats, 16 storage rooms and a plant room containing central heating boilers for the whole terrace. The building has frontages to a private roadway to the south (Hyde Park Gardens) and to the public highway, Stanhope Terrace, to the north. The Hyde Park Gardens frontage is the more imposing with stucco finish and Italianate ornament, with entrance porticos to each property. This was clearly the front of the terrace when it was occupied as individual private residences. The Stanhope Terrace frontage is also stucco but is less attractive in appearance.

8. Immediately to the south of the main frontage is a private roadway, Hyde Park Gardens, with access only from Brooke Street. It is wide enough to allow 33 cars to be parked in marked bays at an angle to the carriageway. This private roadway gives access to a private garden of triangular shape extending to Bayswater Road. This is an attractive mature garden with lawns, gravel paths, trees, palm trees and a boundary hedge. There is another

garden in the centre of Sussex Square immediately to the north-east of the main block of property just described. This is also an attractive mature garden, circular in shape, with lawns, gravel paths, trees, and an enclosing hedge.

9. The freehold of the appeal property is held by the Church Commissioners subject to two headleases now vested in Blendcrown.

10. The headlease of 25-27 Hyde Park Gardens and 22-27 Stanhope Terrace is dated 1 August 1952 and is for a term of 95½ years from 24 June 1952 at a fixed rent of £1,060 per annum. The headlease of 28-31 Hyde Park Gardens and 28-35 Stanhope Terrace is dated 24 August 1951 and is for a term of 96½ years from 24 June 1951 at a fixed rent of £1,590 per annum. Both headleases include in the demise the appropriate part of the private roadway (Hyde Park Gardens) but not the gardens, over which Blendcrown have rights of entry and use.

11. The parties have given only brief details of the occupational underleases of the 80 flats in the appeal property. Each underlease is believe to expire on 24 December 2047 at a fixed annual ground rent. These are between £30 and £150 per annum. I have been provided with a copy of the underlease dated 26 May 1965 of Flat 4, 26 Hyde Park Gardens. This is for a term of 84¼ years (less 10 days) from 29 September 1963 at a fixed rent of £90 per annum and a service charge equal to 1¾% of the costs incurred by the landlords in providing the services contained in the Third Schedule to the lease. The tenant is responsible for internal repairs and decorations. Two rights granted to the tenant under the First Schedule are material to these appeals. The first is the right to park cars on the forecourt of "the Building" (i.e. 25-31 Hyde Park Gardens and 22-35 Stanhope Terrace) within the areas delineated for that purpose and the right to pass and repass with motor vehicles over the forecourt for the purposes of access to the parking areas and flats. I believe the "forecourt" is a reference to the private roadway with parking bays known as Hyde Park Gardens. The second right is "to use the gardens and lawns around the Building as pleasure gardens and lawns respectively." In the absence of a plan attached to the lease it is unclear whether this right refers solely to the garden between Hyde Park Gardens and Bayswater Road or includes the garden in Sussex Square.

12. There is an approved Estate Management Scheme under the 1993 Act in respect of 25-31 Hyde Park Gardens and Sussex Square and, from the colouring on the plan attached to the Scheme, this appears to include the part of the property fronting Stanhope Terrace.

13. On 28 February 2001 the tenants of the appeal property listed in Appendix A to the notice serve an initial notice of collective enfranchisement on the Church Commissioners with Blendcrown Limited as nominee purchaser. The total purchase price was given as £1,390,000. On 11 May 2001 the Church Commissioners served a reversioners' counter-notice . The total purchase price was given as £6,830,000.

14. On 17 July 2001 Blendcrown made application to a leasehold valuation tribunal for the London Rent Assessment Panel for a determination as to the price to be paid upon the acquisition of the appeal property. Following a hearing on 2 and 3 April 2002 the tribunal

gave a decision on 14 August 2002. They determined the price on collective enfranchisement to be £6,586,857 and the sum payable to the headlessee to be £155,670, with a net premium payable to the freeholder of £6,431,187. In making their determination the tribunal decided that the correct valuation date was 3 April 2002, the date when the form of contract and transfer were agreed. The tribunal also determined that the valuation fee payable by Blendcrown is 0.125% of the freehold vacant possession value as at 3 April 2002 plus VAT.

15. On 11 September 2002 Blendcrown appealed to this Tribunal. On 24 September 2002 the Church Commissioners applied for leave to lodge a notice of appeal out of time; this was granted on 15 October 2002. The Church Commissioners' notice of appeal is dated 24 September 2002. These two appeals were consolidated on 30 November 2002.

ISSUES

16. The parties have prepared a statement of agreed facts and issues. From this statement the following are agreed:-

(i) The aggregate value of all the flats (including caretakers' flats) with the virtual freehold was £42,862,671 at 11 May 2001 and £45,434,431 at 3 April 2002.

(ii) The aggregate value of the two caretakers' flats with the virtual freehold was £414,000 at 11 May 2001 and £438,840 at 3 April 2002.

(iii) The aggregate value of the flats (excluding the caretakers' flats) was £42,448,671 at 11 May 2001 and £44,995,591 at 3 April 2002.

(iv) The apportionment between participating tenants and persons under section 18 of the 1993 Act on the one hand and non-participating tenants on the other hand (excluding caretakers' flats) is 82.8% of the aggregate value of the flats to the former and 17.2% of that value to the latter.

(v) The existing leasehold interests have a value equal to 77% of the virtual freehold values.

(vi) The value of head leasehold interest is £215,000.

17. The following matters are still in issue:-

(i) Valuation date: 11 May 2001, Blendcrown or 3 April 2002, Church Commissioners.

(ii) Yield for capitalisation and deferment: 7% Mr Maunder Taylor for Blendcrown, 6% Mr Ford for the Church Commissioners.

(iii) Whether the agreed figures for the values of the virtual freehold of the flats (subparagraphs (i) – (iii) in the preceding paragraph) include the value of parking and the right to use and manage (but not own) the gardens. Mr Craven for Blendcrown says that the agreed figures are inclusive of car

parking and garden rights, Mr Ford for the Church Commissioners says that the figures exclude the value of those rights. He values the car parking rights at £50,000 and the garden rights at £100,000.

(iv) Whether the purchase price should include hope value in respect of the non-participating tenants. Mr Maunder Taylor for Blendcrown says that there is no hope value. Mr Ford for the Church Commissioners puts this additional value at £306,066.

(v) Valuation costs under section 33(1)(d) of the 1993 Act: £10,200 plus VAT Mr Maunder Taylor for Blendcrown, 0.125% of the freehold vacant possession value (about £54,000 plus VAT) Mr Ford for the Church Commissioners.

18. The LVT fixed the price payable by the nominee purchaser on enfranchisement at £6,586,857 with the sum of £155,670 payable to the head lessee leaving £6,431,187 for the freehold. Mr Maunder Taylor puts the values at £4,799,989 for the freehold and £548,595 for the headlease respectively using a valuation date of 11 May 2001 but if I determine a valuation date of 3 April 2002 these figures are £5,210,856 and £526,314 respectively. Mr Ford has used only one valuation date, 3 April 2002. His figures are £6,830,750 for the total reversionary value and £416,000 consideration for the headleasees, a net premium of £6,414,750. I note that, on the evidence of Mr Ford, although the total freehold value contended for by the Church Commissioners (£6,830,750) is higher than that determined by the LVT, the net payment to the freeholders is less than that fixed by the LVT (£6,414,750 compared to £6,431,187). If the cross-appeal by the Church Commissioners had been wholly successful therefore the result would be a reduction in the net amount payable to them on enfranchisement, a result probably not intended.

VALUATION DATE

Blendcrown's case

19. Mr Dutton said that the correct valuation date is 11 May 2001, the date of the Church Commissioners' counter-notice. At that time there was, through the initial notice and the counter-notice, agreement in substance as to the quality of the freehold interest to be acquired by the nominee purchaser. The LVT wrongly determined the date to be 3 April 2002, by agreeing with the Church Commissioners' contention that it was the date of agreement of the draft contract and transfer.

20. It does not appear to be in dispute that the correct valuation date is when it became clear (by agreement or determination) what freehold interest is to be acquired by the nominee purchaser (see paragraph 1 of Schedule 6 to 1993 Act and the decision of the Court of Appeal in *West Hampstead Management Co Ltd v Pearl Property Ltd* [2002] EWCA Civ 1372; [2002] 3 EGLR 55). It is not necessary for all terms to be agreed provided there is agreement in substance as to the quality of the freehold interest to be acquired. In *West Hampstead* the issue was precisely what it was that had to be agreed or determined before the valuation date could be fixed. The Court held that it was the date when both the physical extent and the

quality of the freehold interest had been ascertained (paragraph [57]). Only then would the valuer know how to proceed with his valuation (paragraphs [47] and [61]).

21. The current appeals concern a slightly different point, namely were both the physical extent and the quality of the freehold interest ascertained on 3 April 2002 or had they been ascertained earlier, at the time when the counter-notice was served? The possibility that a counter-notice may produce agreement sufficient to fix the valuation date was expressly contemplated in *West Hampstead* (paragraph [58]).

22. Mr Dutton said that tenants must propose the terms of acquisition by an initial notice under section 13 of the 1993 Act. The landlord must then serve a counter-notice under section 21 setting out the terms agreed and not agreed and the landlord's counter proposals. One of the purposes of the counter-notice is to isolate any dispute as to what is required by the tenants. It appears from the counter-notice that the Church Commissioners' counter proposals relate to price, retention of rights reciprocal to those granted, retention of rights in the Charges Register and the reflection of section 34 of the 1993 Act in the transfer. The price is not relevant to the valuation date and the other counter proposals are no more than a statement of the legal consequences of accepting Blendcrown's proposals. In order to understand the effect of the proposals in the counter-notice it is necessary to consider section 34 and Schedule 7 to the Act. By section 34(9) the terms of the conveyance must conform with Schedule 7 unless otherwise agreed; under paragraph 3(b)(i) of Schedule 7 the conveyance is to be subject to all existing easements and rights for the benefit of other property. It follows therefore that the counter-notice accepted the tenants' proposals and indicated that the Church Commissioners would not be prepared to reach an agreement within section 34(9) of the 1993 Act. They would not agree to depart from Schedule 7. Thus, the counter-proposals were not proposals in substance, only in form, and the terms proposed by Blendcrown were agreed. The terms of acquisition (save as to price) were all identified and agreed by the date of receipt of the counter-notice. The tenants' proposals were agreed in substance and all that was outstanding was the detail. Nothing else was left for decision except the precise wording of the transfer documents. The extent of the freehold interest and the quality of that interest were thus agreed at the time of the counter-notice. There was nothing in the Charges Register to make it unclear as what is required. It was presumably for these reasons that the parties agreed in correspondence that the valuation date was 11 May 2001.

Church Commissioners' case

23. Mr Munro said that the issue as to the valuation date has now been decided in favour of the Church Commissioners by the decision of the Court of Appeal in *West Hampstead.* It is the date when the quality of the freehold title is agreed or determined, not merely the physical extent of that interest. In these appeals the correct valuation date is 3 April 2002 when the terms of the contract and transfer were agreed.

24. The valuation date is defined in paragraph 1 of the Schedule 6 to the 1993 Act. It is the date when the parties agree or the LVT determines what freehold interest is to be acquired. The LVT were right to adopt 3 April 2002 for the reasons given. The freehold interest to be

acquired was not agreed on the date of service of the counter-notice. At that time the physical extent of the interest was agreed but not the legal content or the quality of title. These were not agreed until the contract and transfer were agreed.

25. The following points support this view. First, it gives a date which is consistent with the valuation date under individual lease claims (paragraph 1 of Schedule 13). There is no logical reason why there should be different valuation dates. Second, paragraph 1(b) of the definition of valuation date in Schedule 6 provides for a single date which is the date of the last of multiple determinations. Third, the reference to "what freehold interest" and "the specified premises" in the definition indicate that the freehold is not a monolithic interest. The word "what" has to be given some meaning; it cannot refer, for instance, to the quality of the title or of the title guarantee to be given, dealt with in detail in paragraph 2(ii)(a) and (b) of Schedule 7. The term "what freehold interest" means the freehold interest after the determination of the issues required to be addressed under Schedule 7, i.e. matters under sections 62 and 63 of the Law of Property Act 1925, easements, rights of way and restrictive covenants. Any other date would provide the LVT with an insuperable difficulty because valuation before Schedule 7 issues had been resolved would not allow the tribunal to reflect those issues with valuation implications in the valuation. Fourth, in *Becker Properties Ltd v Garden Court NW8 Property Co Ltd* [1998] 1 EGLR 121, the former President (HH Judge Marder QC) thought that it would be "surprising" to suggest that the valuation date was either the date of the landlord's counter-notice or of the LVT's decision. Fifth, in Hague on Leasehold Enfranchisement (third edition) the editors say that the better view "is that the valuation date is the date when all the term of acquisition have been determined by agreement or the leasehold valuation tribunal" (paragraph 27-02). One of the editors (A E Radevsky) went further in a 1999 Blundell Lecture by contend that the date of counter-notice "would only be the correct valuation date when no other dispute as to the terms of the transfer of the freehold is raised". Sixth, the arguments set out above were accepted by the LVT in three decisions (C*halfont House* LON/ENF/452/00, *Templeco* LON/ENF/582/01 and *Leasewide* LON/ENF/594/01) but not in *Mutual Open* LON/ENF/463/00). In *West Hampstead* the Court of Appeal agreed with the decision and reasoning in *Templeco* and rejected the reasoning in *Mutual Open*.

26. On the facts Mr Munro said that, while he accepted that the physical extent of the freehold sought (although not the appurtenant property) could be identified by reference to the plan attached to the initial notice, "what freehold interest" is to be conveyed was not determined until the draft contract and transfer (TP1) were agreed on 3 April 2002.

Decision

27. I look first at the decision of the LVT regarding the valuation date. The tribunal referred to the parties' submissions and the *West Hampstead* decision and then said:-

> "26. In the present case looking at the landlord's counter-notice, paragraph 8 made it clear which rights the freeholder desired to retain and paragraph 9 thought that the provisions of Section 34 and Schedule 7 should be reflected in the transfer. Paragraph 10(ii) of the nominee purchaser's application to the Tribunal made it

clear that the terms in dispute included the terms of the conveyance. The form of the contract and transfer were not agreed until 3 April 2002.

27. In the circumstances, the Tribunal are of the view that the valuation date should be 3 April 2002, when Mr Dutton indicated that the form of the contract and transfer were agreed."

Blendcrown appeal against this decision seeking a valuation date of 11 May 2001, the date of the Church Commissioners' counter-notice.

28. I look now at the relevant statutory provisions. Under paragraph 1(1) of Schedule 6 to the 1993 Act "the valuation date" means:-

> "(a) the date when it is determined, either by agreement or by a leasehold valuation tribunal under this Chapter, what freehold interest in the specified premises is to be acquired by the nominee purchaser, or
>
> (b) if there are different determinations relating to different freehold interest in the specified premises, the date when determinations have been made in relation to all the freehold interests in the premises."

The term "specified premises" is defined in section 13(12) to mean the premises specified in the tenants' initial notice under section 13(a)(i) (or any less extensive premises agreed or determined), that is to say the premises as to which the tenants desire to acquire the freehold under the collective enfranchisement.

29. I note in passing that, when section 126 of the Commonhold and Leasehold Reform Act 2002 is brought into force, the present uncertainty regarding the valuation date will be replaced with a fixed date, the date of service of the initial notice ("the relevant date"). This provision does not apply in these appeals.

30. I look now at the right to enfranchise. This is contained in section 1 of the 1993 Act. Subsection (1) provides for "the right to collective enfranchisement" to be given to qualifying tenants of flats contained in premises to which Chapter I applies. The right is to have "the freehold of those premises acquired on their behalf" by a nominee purchaser at a price determined in accordance with the Chapter. Section 3 defines the premises to which these provisions apply. The right of collective enfranchisement under sections 1(1) and 3 applies to the building containing the flats (the relevant premises). The extent of the property to be enfranchised is, however, extended by section 1(2) and (3):-

> "(2) Where the right to collective enfranchisement is exercised in relation to any premises ("the relevant premises") –
>
> (a) qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either -

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not)."

The term "appurtenant property" in relation to a flat is defined in section 1(7) to mean:-

"any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat".

31. Section 2 of the Act deals with the acquisition of leasehold interests superior to those held by the qualifying tenants. Subsections (1) and (2) are relevant:-

"(1) Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ("the relevant premises"), then, subject to and in accordance with this Chapter –

(a) there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which this paragraph applies by virtue of subsection (2);

(b) ….

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1(1).

(2) Paragraph (a) of subsection (1) above applies to the interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of the flat contained in the relevant premises."

32. Thus, the basic right on collective enfranchisement is for the tenants to acquire the freehold and superior leasehold interest in which the qualifying flats are contained, in this case the building known as 25-31 Hyde Park Gardens and 22-35 Stanhope (the relevant premises). The tenants' initial notice proposes the acquisition of the two headleases held by Blendcrown. In addition tenants can acquire other property or rights. Where the other property is "appurtenant property" they can acquire the freehold. In this case, the initial notice specifies as appurtenant property the "private roadway recreational gardens and other appurtenant property". By reference to the plan attached to the initial notice this property comprises the private road (Hyde Park Gardens) and the triangular garden at the front of the building extending to Bayswater Road. (I note that, although not in issue, the private road and garden are not appurtenant property under section 1(3)(a) but property used in common under section 1(3)(b): the leases of the flats do not include within the demise the road and garden but grant only rights to use this land.) Where the other property is property used in common by the tenants, they may acquire the freehold of this property (or other property) or

be granted permanent rights over it or other property. In this case, the initial notice specifies half the garden in Sussex Square as property over which the tenants are to have rights in common in perpetuity.

33. I turn now to procedure. Section 13(1) requires a claim for collective enfranchisement to be made by the giving of notice of claim (called an initial notice) to the reversioner. Subsection (3) of this section sets out the contents of that notice, including the property and interests to be acquired and rights to be granted. The relevant parts of this subsection are:-

> "The initial notice must –
>
> (a) specify and be accompanied by a plan showing -
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> (i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),
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> (ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and
>
> (iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);
>
> (b) ….
>
> (c) specify -
>
> (i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and
>
> (ii) ….;"

This notice sets out the qualifying tenants' proposals for the enfranchisement.

34. The reversioner is then required to serve a counter-notice under section 21(1) of the 1993 Act. Where that notice admits the right to enfranchisement (as in this case) then it must, under subsection (3),:-

> "(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –
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> (i) in relation to any proposal which is not accepted, the reversioner's counter-proposal, and
>
> (ii) ….
>
> (b) if, in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b) any such counter-proposal relates to the grant of rights or the disposal of any freehold interest in pursuance of section 1(4), specify

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest,

as the case may be;

(c) ….

(d) state which rights (if any) any relevant landlord, desires to retain –

(i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser, or

(ii) …..

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

(e) include a description of any provisions which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7."

Thus, the reversioner's counter-notice is required to contained considerable detail and deal with the outstanding matters which must be agreed or determined before the acquisition can be completed.

35. Disputes are divided between the county court and LVTs (sections 90 and 91). Section 24(3) and (4) and Schedule 5 to the 1993 Act give county courts a jurisdiction where the terms of acquisition have been agreed or determined by an LVT but a binding contract has not been entered into within the appropriate period. Under section 91(1) any jurisdiction conferred on an LVT shall be exercised by a rent assessment committee constituted for that purpose and "any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such rent assessment committee." Those matters include:-

"(a) the terms acquisition relating to –

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) ….

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 …;"

36. Section 24 provides further for the determination of disputes. Under subsection (1):-

"Where the reversioner in respect of the specified premises has given the nominee purchaser –

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) ….

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice … was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute."

The words "terms of acquisition" are defined in subsection (8) to mean:-

"…the terms of the proposed acquisition by the nominee purchaser, whether relating to –

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4)."

37. Section 34 contains provisions regarding the conveyance to the nominee purchaser. Subsections (1), (2) and (9) are relevant:-

"(1) Any conveyance executed for the purposes of this Chapter, being conveyance to the nominee purchaser of the freehold of the specified premises, of a part of those premises or of any other property, shall grant to the nominee purchaser an estate in fee simple absolute in those premises, that part of those premises or that property, subject only to such incumbrances as may have been agreed or determined under this Chapter to be incumbrances subject to which the estate should be granted, having regard to the following provisions of this chapter.

(2) Any such conveyance shall, where the nominee purchaser is to acquire any interest in the specified premises, the part of the specified premises or (as the case may be) in the other property to which the conveyance relates, provide for the disposal to the nominee purchaser of any such interest.

(9) Except to the extent that any departure is agreed to by the nominee purchaser and the person whose interest is to be conveyed, any conveyance executed for the purposes of this Chapter shall –

(a) as respects the conveyance of any freehold interest, conform with the provisions of Schedule 7, and

(b) as respects the conveyance of any leasehold interest, conform with the provisions of paragraph 2 of that Schedule (any reference in that paragraph to the freehold being read as a reference to the person whose leasehold interest is to be conveyed, and with the reference to the covenants for title implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 being read as excluding the covenant in section 4(1)(b) of that Act (compliance with terms of lease)).”

Schedule 7 contains provisions relating to section 62 and 63 of the Law of Property Act 1925; rights of support, passage of water, etc; rights of way; and restrictive covenants.

38. Both parties rely on the recent decision of the Court of Appeal in *West Hampstead Management Co Ltd v Pearl Property Ltd.* The facts and decision are as follows. Upon collective enfranchisement by the appellant company the LVT determined the price payable for the freehold at £450,000, based on a valuation date of 22 February 2000, the date when the LVT determined whether there should be any leasebacks. The nominee purchaser had argued for a valuation date of 5 May 1999, the date when a consent order was made in the county court that the nominee purchaser was entitled to acquire the freehold. The landlord had argued for a valuation date of 22 February 2000, the date when the terms of the lease – back of two flats were agreed. Both parties appealed to the Lands Tribunal. The member (P R Francis FRICS) dismissed the nominee purchaser’s appeal and allowed the cross-appeal, determining the price at £519,000 with a valuation date of 22 February 2000, the date when both the extent of the premises and the terms of the acquisition had been determined. The nominee purchaser’s appeal against that decision, seeking a valuation date of 5 May 1999 and remission back to the Lands Tribunal, was dismissed. There had been no agreement as to the freehold interest to be acquired until the hearing before the LVT on 22 February 2000 and that was therefore the valuation date.

39. Giving judgment (with which Peter Gibson LJ and Cresswell J agreed) Arden LJ said (at 60B):-

> “[56] I now turn to para (1) of Schedule 6 and the definition of ‘valuation date’.
>
> [57] In my judgment, it is an important point that, in this definition, the date under para (a) is the date upon which it is determined by agreement, or by the leasehold valuation tribunal, what freehold interest in the specified premises is to be acquired. If it was simply a question of determining the physical premises then the word ‘what freehold interest in’, appearing in para (a), would not have been inserted. Accordingly, in my judgment, it must be the quality of the freehold interest that is being referred to, and such questions as whether it is encumbered or not. Moreover, the determination is to take place either by agreement or by the leasehold valuation tribunal.
>
> [58] In my judgment, an agreement could take place at the time of a consent order in county court proceedings. But that did not occur in the present case, and it could not be said that the form of the counternotice that the landlord served contained the landlord’s agreement to the freehold interest. That matter was not agreed and had to be determined by the leasehold valuation tribunal.

> [59] When one examines the powers of the leasehold valuation tribunal under section 24, it is important to note that a clear distinction is drawn in the definition of 'terms of acquisition' between (a) the interest to be acquired, and (b) the extent of the property to which those interests relate or the rights to be granted over any property. So the Act recognises there, and it seems to me consistently throughout, a clear distinction between physical property and the quality of the interests in the property."

40. Against this background of law I must answer the following questions. On what date did the parties reach agreement as to the extent and quality of the freehold interest to be acquired by Blendcrown (and such questions as to whether it was encumbered or not)? Was it 11 May 2001 (the date of the Church Commissioners' counter-notice, as contended by Blendcrown), or 3 April 2002 (the date of agreement of the terms of the contract and transfer), as contended by the Church Commissioners? The answers to these questions rest on a close study of the initial notice and counter-notice.

41. The initial notice is dated 28 February 2001. The premises and rights proposed to be acquired are set out under four heads by reference to a plan. First, the freehold of the premises containing the flats edged red, 25-31 Hyde Park Gardens and 22-35 Stanhope Terrace (under section 1(1)). Second, the freehold of the property edged green excluding the area edged red, comprising "private roadway, recreational gardens and other appurtenant property" (under section 1(2)(a)). This is the triangular area bounded by Stanhope Terrace, Westbourne Street, Bayswater Road and Brooke Street, containing the private road (Hyde Park Gardens), the garden between this road and Bayswater Road and a small area between the terrace of flats (edged red) and Stanhope Terrace. Third, rights in common in perpetuity over the land edged orange, half the garden in the centre of Sussex Square (section 13(3)(a)(iii)). Fourth, the leasehold interests under the headleases dated 24 August 1951 and 1 August 1952 (section 2(1)(a) or (b)). The proposed purchase price is £1,160,000 for the freehold interest, £50,000 for the roadway and gardens edged green and £180,000 for the leasehold interests.

42. The counter-notice by the Church Commissioners is dated 11 May 2001. It admits that the participating tenants are entitled to collective enfranchisement in relation to the specified premises (i.e. the flats edged red on the initial notice plan). The proposals in the initial notice relating to the land edged green and the land edged orange are also accepted. The proposed purchase price is not accepted, with a counter-proposal for a total price of £6,830,000. There are no additional leaseback proposals, no intention to grant rights or dispose of freehold property under section 1(4) of the 1993 Act and no requirement for the nominee purchaser to acquire any interests under section 21(4). The notice then states that the Church Commissioners desire to retain the following rights:-

> "All rights reciprocal to those to be granted to the nominee purchaser under Section 13(3)(a)(iii) of the Act
>
> Any rights in the Charges Register to the Freehold Title to the premises specified"

Finally, the notice states that:-

> "The provisions of Section 34 and Schedule 37" (sic) "shall be reflected in the Transfer"

This is clearly a reference to Schedule 7 to the Act which is linked to section 34.

43. Does that counter-notice, read with the initial notice, show that there was on 11 May 2001 agreement as to the extent and quality of the freehold interest to be transferred to Blendcrown? In my judgment, there was at that date agreement as to "what freehold interest in the specified premises is to be acquired by the nominee purchaser" under paragraph 1(1)(a) of Schedule 6 to the Act and therefore the correct valuation date is 11 May 2001.

44. I agree with Mr Dutton that it is necessary to look at the substance of the counter-notice, rather than the form, when deciding whether it indicated agreement as to the freehold interest to be transferred to the nominee purchaser. On the face of the notice three matters are not agreed: the price, the rights to be retained and the provisions to be included in the conveyance under section 34 and Schedule 7.

45. The lack of agreement on price is not relevant to the question I am now considering. As to retained rights, the Church Commissioners wished to continue to exercise their rights over the Sussex Square garden. This is clearly agreed when paragraph 1.4 of the initial notice is considered, which seeks the right to enter and use the gardens as pleasure gardens "in common with all other persons so entitled or who may for the time being be so authorised … subject to such regulations as apply thereto." As to the reference to retention of rights appearing in the Charges Register this is, in my view and as Mr Dutton submitted, a mere statement of a consequence of the transfer of the freehold and not a counter-proposal requiring agreement or determination.

46. This latter point also applies to the part of the counter-notice dealing with the provisions to be included in the conveyance in accordance with section 34 and Schedule 7. The note to this part of the counter-notice (note 9) envisages that these provisions are likely to be detailed but the Church Commissioners dealt very briefly with this matter, merely stating generally that the provisions of section 34 and Schedule 7 shall be reflected in the transfer. Again, this is a mere statement of the consequences of the transfer of the freehold to Blendcrown. It does not comprise a counter-proposal requiring agreement or determination. If a counter-proposal were intended, in the form of specific provisions, then these should have been set out under this part of the notice as envisaged by note 9. Section 34 and Schedule 7 to the 1993 Act are generally mandatory in form and the Church Commissioners by their answer in this part of the notice are merely stating that these provisions are to be reflected in the transfer, as required.

47. The question is not when were the terms of the contract and transfer agreed but when was the extent and quality of the freehold interest agreed, so that a conveyance embodying those matters can be prepared in accordance with section 34 and Schedule 7. In my judgment, this was at the date of the counter-notice, 11 May 2001. Blendcrown's appeal on this issue succeeds. In view of this decision it is not necessary for me to decide Blendcrown's application made at the hearing to amend their grounds of appeal. This was an application to add the additional argument that the Church Commissioners are estopped from

contending that the valuation date is other than 11 May 2001 due to their agreement in a letter dated 22 May 2001 that "for the purposes of the valuation date, the date of the Counter Notice, 11 May 2001 should apply." It is also not now necessary for me to consider the parties' valuations as at 3 April 2002, except in relation to an alternative award.

YIELD

Blendcrown's case

48. Before the LVT Mr Maunder Taylor used yields of 7%, 7.5% and 8% in his valuation. He now uses a single yield of 7%. This reflects hope value but he could not suggest a different yield without such value. In arriving at this yield Mr Maunder Taylor took into account the following factors. The location is central London but not a prime position. Location in the western arm of Hyde Park Gardens is not as good as the eastern arm. Although the building is a character building it lacks luxury common parts, fittings and finishing. The leases have 46 years unexpired with fixed ground rents.

49. Mr Maunder Taylor's main comparables are LVT decisions in respect of Flat 7, 27 Hyde Park Gardens (7%); Flat 5, 15-16 Hyde Park Gardens (7%) and Flats 2 and 3, 14 Hyde Park Gardens (7% and 8%). He also took into account the decision of the LVT in respect of Chalfont House, 37-49 Cadogan Lane, SW1 (6.5% and 7%).

50. Mr Maunder Taylor referred to Mr Ford's schedule of transactions on the Hyde Park Estate. The majority of these settlements have been analysed on 7% yields. This is the "tone" figure for the Estate. These transactions relate to a period between 1995 and 2000, when interest rates changed significantly, from 6.375% to 6% with an interest rate in March 2003 of 4%. Ground rent investment is long-term and not sensitive to short-term changes in interest rates. The mere size of the investment does not itself dictate any different yield rate. A valuation yield of 7% balances the interest rates in the money market with the prospects of long term growth.

Church Commissioners' case

51. Mr Ford uses a yield of 6% in his valuation. This was accepted by the LVT. Previously yield and deferment rates of 7% had been negotiated or determined by the LVT on the Hyde Park Estate. Mr Ford put forward two reasons for the lower rate in this case. First, this is the largest block enfranchisement to date in the most prestigious part of the Estate and thus significantly more attractive as an investment than previous enfranchisements. Second, there has recently been a downward movement in rates for other prime central London property. The Grosvenor and Wellcome Estates generally achieve 6% but recent cases show a reduction to 5%. Base lending rate in April 2002 was low and has been reduced further, although market interest rates have little bearing on enfranchisement yields. Investment accounts and equities fail to produce a significant return but investment in this type of property is attractive.

Decision

52. The decision of the LVT on yield is as follows (paragraph 46):-

> "The Tribunal accept that the market has been in a low interest period in terms of borrowing and investment. There have been consistently low interest rates for a number of years. The Tribunal agree with Mr Ford's figure of 6% for yield and deferment rates in the present case. The Tribunal agree that investment in this type of property is very attractive at the present time. The Tribunal see no reason to go above 6%. It is a fairly secure investment."

This decision relates to a valuation date of 3 April 2002, some 11 months after 11 May 2001 which I have determined is the correct valuation date in these appeals. This will have some bearing on the correctness of the LVT's decision. Blendcrown appeal against this decision seeking a yield of 7%. In seeking this higher yield Mr Maunder Taylor relies on LVT decisions, Mr Ford's schedule of settlements on the Hyde Park Estate and three other factors: location, the standard of the building and the unexpired term.

53. As to other LVT decisions, Mr Munro argued that these turn on the evidence at the hearing before the tribunal. Although they form part of a broad picture to the extent that they might influence those advising on cases which could go before an LVT or the Lands Tribunal, they are not evidence in themselves and are no substitute for evidence. I agree (see *Wellcome Trust Ltd v Romines* [1999] 2 EGLR 229 at 234L; *Land Securities Plc v Westminster City Council* [1992] 44 EG 153 at 155; *Hollington v F Hewthorn & Co Ltd* [1943] KB 587; *Cadogan Estates Ltd v Hows* [1989] 2 EGLR 216). I give no weight to the LVT decisions relied upon by Mr Maunder Taylor.

54. Second, Mr Maunder Taylor relies on a schedule of settlements on the Hyde Park Estate prepared by Mr Ford. This includes transactions between 1995 and 2000, the great majority analysed to show yields of 7%. This evidence is, in my judgment, of greater weight than LVT decisions but ranks below market evidence, which unfortunately is absent in these appeals. This settlement evidence is therefore the best that I have on yields. Mr Ford seeks to distinguish these settlements on two grounds: the size and better location of the appeal property and a recent downward movement in yield rates for central London property. I am not persuaded by these reasons for reducing the "tone" rate of 7% on nearby properties to 6% on the appeal property

55. I agree that the appeal property is in a marginally better location than adjoining properties to the east but I cannot agree that the larger size necessarily indicates a lower yield. I agree with Mr Maunder Taylor's opinion on this point. The hypothetical investors in the market would be fewer. They would bid for fixed ground rent income for 46 years. Although the prospects of capital growth should be taken into account in the yield, I am doubtful whether a 6% yield would have been achieved in May 2001. Although Mr Ford referred to 6% and even 5% yields on the Grosvenor and Wellcome Estates he did not give further information. He also referred to a *recent* downward movement in yields but the valuation date in these appeals has now been put back to May 2001 and there is no evidence that any recent downward movement also applied at that time. Then, the Repo rate of 5.25%

was higher than the 4% rate in November 2001 and at the later date when the value was determined by the LVT.

56. Having regard to the changed valuation date, by 11 months to a time of higher interest rates, and the evidence of settlements relating to adjoining properties to the east at 7% in general, I am satisfied that the decision of the LVT as to yield is wrong. In my judgment, for the earlier valuation date of 11 May 2001 the yield should be increased to 7%.

FREEHOLD VALUE (PARKING AND GARDEN)

Blendcrown's case

57. Mr Craven said that his agreement with Mr Ford as to the value of the virtual freehold value of the flats included the value of car parking and the right to use the garden. These rights have a value but Mr Craven could not put specific figures on them. In cross-examination he agreed that there is a difference in value between the right to use the garden and ownership of the garden. If the car parking is separately valued, a rental value of £1,100 per annum for each space and a total capital value of £50,000 are acceptable figures. His comparables to establish the virtual freehold value (from the western part of Hyde Park Gardens) include the value of parking and garden use.

58. The private roadway and parking area form an integral part of 25-31 Hyde Park Gardens and have a bearing on the value of the flats. To assist in arriving at opinions of value comparable evidence was obtained and adjusted to the valuation date. Mr Craven referred to a schedule of comparable sales showing, in the agents' details, the car parking spaces as an amenity enhancing the value of the apartments. The road on the eastern side of Hyde Park Gardens is a public highway with allocated spaces on the northern side of the building. There is therefore no justification for comparing the parking facilities in the two different parts of Hyde Park Gardens, as Mr Ford has done.

59. Mr Craven said that he agreed with the LVT that the benefit of the gardens is already reflected in the values of the flats. His flat values allow for the enhancement in value on the sole use by the tenants of the gardens in front of the building. Given that Mr Ford has now accepted his higher values for the flats, which reflect the value of the gardens, it would be double counting to add on a value for the garden.

60. Mr Dutton said that the dispute is about the effect of parking and the gardens on the agreed freehold values. Both parties have valued the existing interests by reference to virtual freehold values, which were then scaled down by reference to relativity. The relativity is ascertained by comparing two interests in land which are identical except for duration. The parties have agreed a relativity of 77% between the existing leasehold interests and virtual freehold values. If this relativity is used to ascertain the value of an existing leasehold interest in a flat which enjoys rights of parking and to use the garden, then it is implicit in such comparison that the freehold interest in that flat enjoys similar rights (in perpetuity). The contention of the Church Commissioners, that the freehold value should be

supplemented by an additional value for parking and gardens, can only be correct if they can point to some additional value from ownership compared to use. It is not possible for the freeholders to gain any such value without interfering with the rights enjoyed by each flat owner (see *Saeed v Plustrade Ltd* [2002] EWCA Civ 2011; [2002] 2 EGLR 19).

Church Commissioners' case

61. Mr Ford said that the existing leases provide for rights over the garden but the garden is to be included in the freehold sale. Ownership and control are different to rights of use and management. The purchase of the freehold of the garden in front of the flats and the roadway must have some value, which he put at £150,000. Access to the gardens in Sussex Square is also permitted under the existing headleases, in common with others. This garden is not included in the freehold sale.

62. As to the value of parking, in the eastern terrace of Hyde Park Gardens parking spaces are let at £1,100 per annum. Following the expiry of the headlease the freeholder will be entitled to receive a similar income in respect of the 33 spaces on the private road. Mr Ford said that, when calculating the value of the long leasehold interest or virtual freehold, he was unable to draw upon comparable evidence within the building because no long leases have been granted. He therefore used comparables from the eastern terrace in Hyde Park Gardens which do not have parking rights. His freehold vacant possession values agreed with Blendcrown do not include the benefit of off-street parking. He therefore valued the 33 spaces at £1,100 each multiplied by years purchase in perpetuity after 45.8 years, £51,546. However he accepted the LVT's determination of £50,000. Such an adjustment is not required when valuing the existing leasehold interests because the comparables relied upon were taken from the property. These existing underleases already enjoy off-street parking.

63. In cross-examination Mr Ford said that his position is that the additional figures for parking and the gardens represent the additional value of the freehold compared to rights under the existing leases. He agreed, however, that this additional value does not arise until the leases expire. In answer to a question from me, Mr Ford said that he did not include the comparables used to support his values in his evidence due to the agreement as to freehold values.

Decision

64. The position on this part of the appeal is, as both counsel agreed, unsatisfactory. In making their valuation as at 3 April 2002 the LVT arrived at a total freehold value of £46,310,312 including an addition of £50,000 for the value of parking. They reflected the value of the gardens in the value of the flats. Subsequently, the parties reached three agreements as at each of the valuation dates. The agreed total virtual freehold value for all flats (including caretakers' flats) as at 11 May 2001 is £42,862,671. Unfortunately, the parties are now unable to agree whether the value of parking and the gardens is included in the agreed values. The difference between the parties is £150,000, apportioned £100,000 to the gardens and £50,000 to parking. Thus, the position is that Mr Craven's total freehold value as at 11 May 2001 is the agreed figure of £42,862,671 (including parking and garden

rights) and Mr Ford's figure is £43,012,671 (including parking and garden rights) comprising the agreed figure of £42,862,671 plus £100,000 for garden rights and £50,000 for parking. There is no appeal by Blendcrown as to this part of the LVT's decision; the Church Commissioners appeal against the LVT's decision not to add £100,000 for garden rights on the grounds that this is reflected in the value of the flats (paragraph 59). The LVT added £50,000 for car parking rights (paragraph 54) and neither party has appealed against this part of the decision. What I am asked to do, in effect, is to interpret the agreement made by the parties after the LVT's decision, not determine an appeal against that decision.

65. Three matters are common ground. First, that the right to park on the private roadway (Hyde Park Gardens) and to use the gardens have a value. These rights add to the values of the flats. Second, there is a difference in value between the right to use the gardens and the ownership of the gardens. This was conceded by Mr Craven in cross-examination and is the basis of Mr Ford's evidence on this point, that ownership has a greater value than use. Third, if the car parking rights are to be valued separately then that value is £50,000 (Mr Ford's figure). This was conceded by Mr Craven in cross-examination. There is no agreement as to the value of garden rights, which Mr Ford puts at £100,000. Mr Craven did not suggest an alternative figure.

66. The occupational leases of the flats include the right to park on the private road (Hyde Park Gardens) and to use the gardens. On acquisition by collective enfranchisement it is agreed that the nominee purchaser will acquire the freehold of the flats (edged red on the initial notice plan) and the private road and garden (edged green on the plan). They will be granted permanent rights over the garden in Sussex Square (edged orange). Thus, on acquisition of the freehold the nominee purchaser will acquire by ownership greater rights than enjoyed by the tenants under their existing leases. It has been agreed, however, that the value of the existing leasehold interests is equal to 77% of the virtual freehold values. In my judgment it is implicit in this agreement that the lower value for the existing leases (77% of virtual freehold value) reflects not only the greater duration of the freehold but also the ownership of the road and adjoining garden in place of the previous rights. My conclusion is therefore that the agreement as to the aggregate values of the flats and as to a 77% relativity between existing leasehold and virtual freehold values means that the value of parking and garden use and ownership are both included in the agreed values. No addition of £150,000 is to be made in respect of parking and the gardens. The effect of this addition to the agreed virtual freehold values would be to change the agreed relativity of 77% and would represent double counting by adding to the freehold value an element of value already included by the use of the 77% relativity.

HOPE VALUE

Blendcrown's case

67. Mr Maunder Taylor said that he has been to numerous meetings with the tenants and knows that it has been difficult to obtain a sufficient number of qualifying tenants to participate in enfranchisement. Only one tenant has applied for a new long lease under the 1993 Act (Flat 7 in 27 Hyde Park Gardens). There are undoubtedly a substantial number who

do not wish to extend their leases and they form the applicants in this matter. There is a significant minority who do not wish to participate. Mr Maunder Taylor is of the opinion that investors will only pay hope value if satisfied that there will be long lease applications in the reasonably near future. He referred to his experience at 14-16 Hyde Park Gardens, where he is manager, and to the LVT decision in respect of Chalfont House.

68. Mr Maunder Taylor reflected any hope value in his yield. A specific addition for hope value is not justified on the evidence. There is no hope value in the caretakers' flats. The only way to release the value of these flats is to remove the residential caretakers. This would reduce the values of tenanted flats which reflect the benefits of residential caretakers.

69. Mr Dutton said that, should this matter proceed to the Court of Appeal, Blendcrown would wish to argue that, on the true construction of Schedule 6, it is not possible to attribute any hope value to the non-participating tenants. However, it is accepted that the decision in *Becker* is of such persuasive authority in the Lands Tribunal that it should be followed. But the LVT were right not to add for hope value in this present case. Mr Dutton said that Mr Ford postulates in his evidence that the nominee purchaser is a purchaser but they are specifically excluded under paragraph 3(1A) of Schedule 6.

Church Commissioners' case

70. Mr Ford said that marriage value is released through the merger of interests. It has been agreed that marriage value should be split equally. The freeholders are then required to pay an element of this marriage value to the intermediate headlessee. Hope value is another way of referring to market value.

71. In this case there are 15 non-participating tenants. If the reversions to these flats are marketed an investor would assess the potential of releasing the marriage value from negotiated lease extensions in the short to medium term. The chances of these leases being traded and of new lessees wishing to acquire an extended term are high. It is generally at acquisition that purchasers wish to acquire the security of a long lease and are prepared to negotiate a voluntary acquisition. This is not the sole motivation: it is often important to participators to have a role in the future management of the building. Conversely, a tenant may decide not to participate because he does not wish to be involved in such management. It is however possible for such a tenant to acquire an extension to his lease. In these circumstances the new freeholder is entitled to 50% of the marriage value on that transaction. The financial position of tenants may change, enabling them to invest in the future in an appreciating asset.

72. In view of the large number of non-participating tenants the chances of granting lease extensions in the future are high. It must follow that, if it is accepted that existing values should be adjusted to the "no 1993 Act world", then it is likely that any purchaser of a flat who has not participated will subsequently wish to take a longer lease. Funding must be raised by participating tenants to fund the non-participators and they are likely to wish to recoup some of their financial outlay as soon as possible.

73. Mr Ford referred to negotiations on other blocks by Cluttons where hope value has been accepted. In this present case there are 15 non-participating flats and therefore the potential to extract hope value is much greater. Consequently, an investor would pay 25% of the potential marriage value or, more precisely, the hope value of the prospect of extracting 50% marriage value in the short to medium term.

74. In their determination, the LVT attributed £50,000 to the prospect of the headlessee releasing value from the sale of caretakers' flats. This hope value should be attributed to the headleaseholders' interest before the marriage value released from the whole transaction is apportioned between freeholder and leaseholder. There is no disagreement with this figure. The headlessees require the flats for caretakers but the underleases do not contain such a provision. The only possibility of the headlessee being able to sell underleases on the caretakers' flats is if they acquire the freehold. In the no-1993 Act world the prospect of achieving such an acquisition of the freehold is greatly reduced. Additionally, in this case, the prospect is only enhanced by the fact that the freehold is already owned by the nominee purchaser. In the no-1993 Act world, and without the special purchaser factor of the residential management company, the prospect of realising any value is quite remote. The application by the LVT of 10% hope value to the headlessees' interest in the caretakers' flats further endorses the view that hope value must be attributable to the non-participating flats.

Decision

75. This issue concerns hope value in respect of the flats occupied by non-participating tenants. The LVT made no addition on the grounds that there was no, or no reliable, evidence that any of the non-participating tenants wished to obtain an extended lease. Mr Ford's views on hope value were little more than speculation (paragraph 43). The Church Commissioners appeal against that decision.

76. When calculating marriage value under paragraph 4(2) of Schedule 6 to the 1993 Act only flats occupied by participating tenants are to be included in the calculation. Hope value is the additional value which would be paid by a hypothetical purchaser of the freehold interest in the expectation that non-participating tenants might seek, and pay for, an extension to their leases at some time in the future. Mr Dutton, while reserving his position on any appeal, accepted that hope value is not excluded as a matter of law in these appeals. He said, however, that, on the evidence of Mr Maunder Taylor, there is no hope value. Mr Ford has put this value at 25% of the potential marriage value, that is to say hope value of the prospect of extracting 50% of marriage value in the short to medium term.

77. I would emphasise that hope value is a speculative element of value which does not lend itself to objective assessment. It is essentially a matter of informed opinion. I cannot accept Mr Maunder Taylor's view that, because he found no indication that non-participating tenants might wish to extend their leases and did not wish to participate in the collective enfranchisement, this shows the absence of hope value. What we must consider is the subjective view of a hypothetical purchaser. If Mr Maunder Taylor's approach is correct it is unlikely that hope value could ever be attributed to the flats of non-participating tenants. The fact that a tenant does not wish to participate in acquiring the freehold or extend his lease at

the time of collective enfranchisement does not mean that he (or his successor-in-title) will not be interested in paying for a lease extension at some time in the future. Hope value is by its nature speculative, uncertain and incapable of precise assessment. It is the value now of the chance of a future payment.

78. In my judgment, there are two reasons why a purchaser would include an element of hope value in the price in this case. First, and most importantly, the relatively short unexpired terms of the flats at the valuation date, 46½ years. I did not hear evidence as to the mortgageability or funding of flats with these relatively short unexpired terms but there may well be problems of funding in the future as the unexpired terms reduce leading to requests for lease extensions on sale. Second, the number of non-participating flats (15 with a value of 17.2% of the aggregate value) is sufficiently large to give the expectation that some will seek lease extensions in the future. Clearly, the greater the number of the non-participating flats the greater the chances of future applications for lease extensions and the realisation of hope value. For these reasons I find that a purchaser of the freehold in May 2001 would have included in his price an element of hope value.

79. As to the amount of this value, precision is impossible. I cannot accept Mr Maunder Taylor's view that it is included in a yield of 7%. If I had accepted a 6% yield then I might have been persuaded that this yield is low enough to reflect an element of hope value. A yield of 7% is, however, too high for it to reflect more than investment value. There should be a separate addition for hope value. Mr Ford said that an investor would pay 25% of the potential marriage value, representing the hope of the prospect of extracting marriage value by lease extensions in the short to medium term. I agree with Mr Ford's approach but think that 25% is too optimistic in the circumstances of this case. In my view, a purchaser, although including hope value in his price, would have been more cautious and attributed only 5% of the possible marriage value of the non-participating flats as hope value.

VALUATION

80. Most elements of the valuation were agreed after the LVT hearing or are not in dispute. My decisions on the disputed matters are:-

(i) valuation date, 11 May 2001;

(ii) capitalisation and deferment yield, 7%;

(iii) the agreed virtual freehold figures for the aggregate values of the flats include the value of parking and the gardens;

(iv) there is hope value in respect of the non-participating flats equivalent to 5% of the marriage value for these flats.

Incorporating the agreed and determined figures in the calculations necessary to fix the price payable by the nominee purchaser I arrive at a net payment of £4,876,763. My valuations and calculations are set out in Appendix A to this decision.

81. My decision as to the valuation date includes a decision on an issue of law and I am required under rule 50(4) of the Lands Tribunal Rule 1996 to give an alternative award. If I had decided that the valuation date was 3 April 2002 I would have determined that the net payment by the nominee purchaser is £5,717,047. My valuations and calculations are set out in Appendix B to this decision. Alternative values have been agreed for the flats for the two valuation dates. As to yield I would have determined a yield of 6½% for the later valuation date.

VALUATION FEES

Blendcrown's case

82. Mr Maunder Taylor disagreed with the LVT's conclusion that valuation fees are invariably charged as a percentage of value rather than as an hourly rate. This is the first case in which he has been involved in which the landlord has sought reimbursement of fees as a percentage of value. He referred to three other valuers' fee quotations to Blendcrown in this case, none charged as a percentage of value. He also referred to the LVT decision in respect of Chalfont House, where a fixed valuation fee of £6,000 plus VAT was determined, to include an allowance for risk and responsibilities in a large and complex valuation.

83. A reasonable fee should be what a reasonably minded landlord could negotiate with a reasonably minded valuer of the experience and standing justified by the complexity of the case. In Mr Maunder Taylor's opinion the middle of the three quotations submitted to Blendcrown is the starting point adjusted by an inflationary factor of 20% from 1997 (when the quotation was given) to 2001, producing a fee of £10,200 plus VAT. Mr Maunder Taylor referred to other valuation fees agreed or determined in respect of central London properties.

84. Mr Dutton said that section 33 of the 1993 Act limits reasonable costs in three stages: by identifying the works for which payment can be properly claimed, by identifying the actual cost of the works and by limiting the cost by reference to the standard of reasonableness. There is little dispute that the valuation exercise is within section 33. But identifying the actual cost to the Church Commissioners is more difficult. There is no agreement between the Commissioners and Cluttons as to the amount which they will be charged for the valuation. When it comes to determine the reasonableness of Cluttons' valuation fees this cannot be done until it is known what they will charge. In order to assess reasonableness, the following must be known: time taken, the profit element in the hourly charge of £200 an hour charged by Mr Ford and the uplift needed. In the absence of this information it was necessary for the LVT to fixed a figure on the limited material available and this should not have exceeded £10,200 plus VAT.

85. There are restrictions on recoverable costs under section 33 in respect of work done and reasonableness of cost. The first step is to identify the valuation work done by Cluttons. This is referred to in the evidence of Mr Ford but it is not known how long this work took. The cost of work for LVT proceedings is not recoverable. With this in mind it is necessary for Mr Ford to separate the valuation work and work in connection with the LVT

proceedings. There may be some overlap but there is a lack of information on which Blendcrown can comment.

86. It is not easy to identify the actual cost of the valuation works due to a lack of supporting information. We do not know what costs "have been incurred" under section 33. It appears to be common ground that a fair price for the valuation work should reflect the actual work undertaken and the size of the job and therefore Cluttons' potential liability for negligence. It is not agreed how these two elements are to be taken into account. The following matters are relevant. The experience of the person doing the work and the time taken are most important. Complex cases will justify higher fees because they take longer. High value cases may also justify a higher fee. It may be that an hourly rate will depend on the size of the job, if only because low value cases may be charged at discounted rates. Thus, the appropriate way of assessing the reasonableness of valuation fees is to apply an hourly rate to the time spent.

87. Mr Ford's approach, based on a percentage of value, is unsatisfactory for many reasons, eg the price charged is not directly linked to Cluttons' exposure to potential negligence but to the freehold value (unencumbered), which is only one element in the valuation; the percentage charged is too high and it is unknown how this is related to the time taken. At Mr Ford's hourly rate of £200 a fee of £55,000 represents 275 hours or more of work or a substantial mark-up on the hourly rate. Even a mark-up of 100% would represent 137 hours of valuation work.

Church Commissioners' case

88. Mr Ford said that under the management contract between Cluttons and the Church Commissioners it is agreed that Cluttons may charge a valuation fee of 0.25% of the freehold vacant possession value on an enfranchisement claim. This covers investigation of the claim and an initial valuation. These are the fees recoverable under section 33 and do not include negotiations or representations to the LVT. Cluttons may additionally charge 2% of the total premium for negotiations and hourly rate fees for LVT proceedings. Mr Ford's charge-out rate is £200 an hour. These fees were agreed as part of an overall management contract on competitive tender in October 1995. These fees have subsequently twice been agreed on renewal. In only one case on the Hyde Park Estate has the question of fees been referred to an LVT for determination (37 Connaught Square), although it has occasionally been necessary to agree a slightly reduced fee. The sale of 31/34 Connaught Square was recently completed with a valuation fee of 0.25% of the freehold vacant possession value (or 2.35% of the gross consideration). The same fee basis has been agreed with other clients, including the Wellcome Trust.

89. In this case the property is significantly larger and of higher value than usual and therefore Cluttons proposed to the Church Commissioners recovery of only half their usual scale fee, i.e. 0.125% of the freehold vacant possession value. This produces a recoverable fee in the region of £54,000.

90. The extent of the work included:-

(i) investigation of the validity of the claim;

(ii) inspection of a large proportion of the flats;

(iii) preparation of a schedule of accommodation for each flat (including floor areas);

(iv) calculation of consideration payable to headlessees.

91. Mr Ford said that it is not Cluttons' practice to undertake valuation work on an hourly basis nor is it the usual practice of most reputable firms. An hourly rate does not take into account possible liability for negligence. In an LVT decision concerning 38 Connaught Square the tribunal awarded fees on an hourly basis but the Church Commissioners did not appeal due to their satisfaction with the overall outcome. Mr Ford made detailed criticisms of the fee quotations referred to by Mr Maunder Taylor.

92. Mr Ford said that the valuations in this case have been complex and the valuation exercise has been extremely thorough. This has assisted the nominee purchaser. An hourly rate is not appropriate because it does not take into account the liability carried by Cluttons. Out of 56 completed enfranchisement cases, 55 claimants have accepted Cluttons' fees.

93. During cross-examination Mr Ford said that he could not say how long the valuation exercise took nor could he say what element of profit is included in his hour rate of £200.

94. Mr Munro said that the LVT were right to accept the evidence of Mr Ford. They are the best tribunal to assess this issue. The Lands Tribunal should only interfere if the LVT have made an error in principle, which is not suggested here.

Decision

95. The decision of the LVT as to the valuation costs payable by Blendcrown is as follows (paragraph 67):-

> "In the Tribunal's experience, valuation fees are invariably charged as a percentage of value rather than as an hourly rate. In this case, Cluttons propose charging half their usual scale fee that is, 0.125% as recoverable from the tenants. The Tribunal consider this to be reasonable in all the circumstances of what they agree has been a complex exercise. The relevant percentage of 0.125% is to be based on the freehold vacant possession value as determined by the Tribunal as at the valuation date of 3 April 2002, rather than being based on Cluttons' opinion of the freehold vacant possession value. The valuation fee is to carry VAT in the usual way."

The percentage fee adopted by the LVT applied to the freehold vacant possession value of the flats determined by the tribunal produces a fee of £57,887.89 plus VAT. Blendcrown appeal against this decision and put forward a fee of £10,200 plus VAT.

96. Recoverable valuation costs are to be determined under section 33 of the 1993 Act, the relevant parts of which are as follows:-

> "(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner …, for the reasonable costs of and incidental to any of the following matters, namely –
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) any valuation of any interest in the specified premises or other property;
>
> (e) …
>
> …….
>
> (2) For the purposes of subsection (1) any costs incurred by the reversioner … in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
>
> (3) …
>
> (4) …
>
> (5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.
>
> (6) …
>
> (7) …"

97. Thus, the valuation costs claimed by the Church Commissioners under these provisions must satisfy four conditions. First, they must have been incurred in pursuance of the service of the initial notice dated 28 February 2001. Second, they must be costs of and incidental to the valuation of any interest in the specified premises or other property (ie the appeal property including the gardens and private roadway). Third, they must be reasonable, and they will only be regarded as reasonable if, and to the extent that, they might reasonably have been expected to have been incurred by the Church Commissioners if they had been personally liable for those costs. Fourth, they must not relate to costs incurred in connection with LVT proceedings.

98. This issue relates to the amount of the valuation fee recoverable by the Church Commissioners. The LVT fixed this at 0.125% of the freehold vacant possession value of the flats. I agree with Mr Maunder Taylor that the LVT were wrong to say that valuation fees are invariably charged as a percentage of value. This was the position in the past but in these days of competitive fees an owner seeking a valuation following the service of an initial notice would, in my judgment, look for a fixed fee, where the amount of his liability is certain at the outset. He would not agree to a fee dependent on the size of the valuation and therefore uncertain as to amount and wholly dependent upon the opinion of value put forward by the valuer. A fixed fee would necessarily reflect the work involved and, to some extent, the size and complexity of the valuation, although it does not necessarily follow that a valuation of a large amount should be proportionately greater than a valuation of a lesser amount, as would be the case with a fee calculated as a percentage of value. I therefore reject the approach of the LVT in assessing the reasonable valuation costs as a percentage of value. In my view this does not produce a reasonable fee but an excessive fee.

99. In my judgment, the reasonable fee payable by Blendcrown should be a fixed fee based on a reasonable amount of valuation work costed at a reasonable hourly rate. Mr Ford said that his rate is £200 an hour. I accept this as reasonable. I was not given any breakdown of this figure but, in my opinion, it is sufficient to cover cost, profit and an allowance for risk, in the sense that any valuation has the potential to give rise to a negligence claim. I should add, however, that I do not give this latter point the importance given to it by Mr Ford. Although the valuations in this appeal are high, all professional work is potentially the source of negligence proceedings and I do not find there to be any unusual or special risks in this case.

100. I therefore find that a reasonable valuation fee in this appeal should be based on an hourly rate of £200. My difficulty, however, is lack of evidence as to the time which was, or should have been, taken to prepare a valuation of the appeal property. This point can, however, be tested by looking at the number of chargeable hours produced by applying the hourly rate to the fees fixed by the LVT and that suggested by Mr Maunder Taylor.

101. The fee of 0.125% fixed by the LVT, applied to their freehold vacant possession value, produces a fee of £57,887. At £200 an hour this is equivalent to 289 hours of work, clearly a wholly excessive number of hours for this valuation. Even if this fee scale is applied to the lower value subsequently agreed by the parties of £42,862,671, it still produces a fee of £53,578, equivalent to 268 hours of valuation work. Mr Maunder Taylor's alternative fee of £10,200 is equivalent to 51 hours of work. In the absence of evidence as to how long this valuation should reasonably have taken, I can only adopt a robust approach. In my judgment, 51 hours is a reasonable and adequate time for this valuation (perhaps even slightly generous) and I therefore accept the fee of £10,200 plus VAT put forward by Blendcrown. Their appeal on this issue is successful.

CONCLUSION

102. On the question of price Blendcrown's appeal has been successful as to the valuation date and yield. The Church Commissioners' cross-appeal has been successful in part as to hope value and unsuccessful as to the addition to the agreed values of the flats of specific

values for parking and gardens. Overall, Blendcrown's appeal on price has been successful: I have reduced the price from £6,431,187, as fixed by the LVT, to £4,876,763. Accordingly, I determine that the net price payable by Blendcrown under section 32 and Schedule 6 to the 1993 Act for the freehold of 25-31 Hyde Park Gardens and 22-35 Stanhope Terrace (edged red), the private roadway (Hyde Park Gardens) and contiguous gardens (edged green) and permanent rights over the garden in Sussex Square (edged orange) is £4,876,763 (four million eight hundred and seventy-six thousand and seven hundred and sixty-three pounds).

103. As to valuation costs, Blendcrown's appeal is also successful. I determine that the valuation costs under section 33(1)(d) of the 1993 Act payable by Blendcrown are £10,200 plus VAT.

104. This decision concludes my determination of the substantive issues in this appeal. It will take effect as a decision when the question of costs has been decided and at that point, but not before, the provisions relating to the right of appeal in section 3(4) of the Lands Tribunal Act 1949 and order 61 rule (1) of the Civil Procedure Rules will come into operation. The parties are invited to make submissions as to the costs of these appeals. A letter accompanying this decision sets out the procedure for submissions in writing.

DATED: 15 December 2003

(Signed) P H Clarke

ADDENDUM

105. I have receive written representations on costs from both parties.

106. Blendcrown seek their costs in both appeals but accept that it may be appropriate to discount them by £1,000 to reflect their late application to amend their grounds of appeal regarding the valuation date. In support they refer to two principles. First, that costs will normally follow the event. The overwhelming impression is that Blendcrown are the successful party. They succeeded in reducing the total price by about £1.1m and in reducing the price payable to the Church Commissioners by more than £1.5m. They were wholly successful in their appeal on valuation costs. Second, a partial order for costs should only be made where an appeal is limited in valuation terms or, in some circumstances, where an offer has been made. There are no relevant offers in this case. It is not appropriate to make a partial order in these appeals. Blendcrown's success is obvious, both on a point by point basis and overall in terms of price payable.

107. The Church Commissioners submit that a single order should be made. This should award Blendcrown 80% of their costs on the standard basis, to reflect the time spent at the

hearing on their late application to amend their case and the success of the Church Commissioners on the issue of hope value, which was acknowledged by Blendcrown to be an important point of principle.

108. I agree that, although there are two appeals, there should be a single order for costs. On the question of price, Blendcrown's appeal has been successful as to the valuation date and yield. The Church Commissioners' cross-appeal has been successful in part as to hope value and unsuccessful as to the addition to the agreed values of the flats of specific values for parking and gardens. Overall, Blendcrowns appeal has been successful on price, which I have reduced from £6,431,187, as fixed by the LVT, to £4,876,763. Blendcrown's appeal on valuation costs has been wholly successful. In my judgement Blendcrown should receive all their costs, other than those relating to their late application to amend the grounds of appeal, where I accept their submission that £1,000 should be deducted for this matter.

109. Accordingly, I order the Church Commissioners to pay Blendcrown's costs of these appeals (except those in respect of their late application to amend their grounds of appeal where I order a deduction of £1,000 to reflect this matter), such costs, if not agreed, to be the subject of a detailed assessment on the standard basis by the Registrar of the Lands Tribunal.

DATED: 16 January 2004

(Signed) P H Clarke

APPENDIX A

VALUATIONS & CALCULATIONS AS AT 11 MAY 2001

VALUE OF FREEHOLD (all flats)

Ground rents	£ 6,060	
YP 46½ years @ 7%	13.67	£ 82,840
Reversion to	£42,862,671	
Defer 46½ years @ 7%	0.043	£1,843,095
	Value of freehold	£1,925,935

MARRIAGE VALUE (participating flats)

Virtual freehold £42,448,671 @ 82.8%				£35,147,499
Elimination of ground rents			£ 4,905	
YP 46½ years @ 7%			13.67	£67,051
Reversion to non-participating flats,				
£42,448,671 @ 17.2%			£7,301,172	
& caretakers' flats			414,000	
			£7,715,172	
Defer 46½ years @ 7%			0.043	£331,752
				£35,546,302

LESS

Existing freehold:-				
Ground rents	£4,905			
YP 46½ years @ 7%	13.67	£67,051		
Reversion to £42,448,671 @ 82.8%				
plus caretakers' flats	£35,561,499			
Defer 46½ years @ 7%	0.043	£1,529,144	£ 1,596,195	
Existing leaseholds, £42,448,671				
@ 82.8% = £35,147,499 @ 77%			£27,063,574	£28,659,769
			Marriage value	£ 6,886,533
			Freeholders' share, 50%	0.5
			Freeholder's share of marriage value	£ 3,443,266

HOPE VALUE (non-participating flats)

Virtual freehold £42,448,671 @ 17.2%				£7,301,171
Elimination of ground rents			£1,155	
YP 46½ years @ 7%			13.67	£ 15,789
				£7,316,960

LESS

Existing freehold:-				
Ground rents	£1,155			
YP 46½ years @ 7%	13.67	£15,789		
Reversion to	£7,301,171			
Defer 46½ years @ 7%	0.043	£313,950	£ 329,739	
Existing leaseholds £7,301,171				
@ 77%			£5,621,902	£5,951,641
				£1,365,319
				@ 5%
			Hope value	£ 68,266

HEAD LEASEHOLD INTEREST

Agreed value of headlease	£ 215,000
Value of freehold	1,925,935
	£2,140,935

Head leasehold interest 10.04% of combined values

Agreed value of head lease	£215,000
Share of marriage value, 10.04% of £3,443,266	£345,704
Hope value of caretakers' flats	£ 50,000
Attributable to headlease	£610,704

PRICE PAYABLE BY NOMINEE PURCHASER

Value of freehold	£1,925,935
Freeholders' share of marriage value	£3,443,266
Hope value, non-participating flats	£ 68,266
Hope value, caretakers' flats	£ 50,000
	£5,487,467
Attributable to headlease	£ 610,704
Price payable by nominee purchaser	£4,876,763

APPENDIX B

ALTERNATIVE VALUATIONS & CALCULATIONS AS AT 3 APRIL 2002

VALUE OF FREEHOLD (all flats)

Ground rents			£ 6,060	
YP 45½ years @ 6½%			14.51	£ 87,931
Reversion to			£45,434,431	
Defer 45½ years @ 6½%			0.057	£2,589,762
			Value of freehold	£2,677,693

MARRIAGE VALUE (participating flats)

Virtual freehold £44,995,591 @ 82.8%				£37,256,349
Elimination of ground rents			£ 4,905	
YP 45½ years @ 6½%			14.51	£71,171
Reversion to non-participating flats,				
£44,995,591 @ 17.2%			£7,739,242	
& caretakers' flats			438,840	
			£8,178,082	
Defer 45½ years @ 6½%			0.057	£ 466,151
				£37,793,671

LESS

Existing freehold:-				
Ground rents	£4,905			
YP 45½ years @ 6½%	14.51	£71,171		
Reversion to £44,995,591 @ 82.8%				
plus caretakers' flats	£37,695,189			
Defer 45½ years @ 6½%	0.057	£2,148,626	£ 2,219,797	
Existing leaseholds, £44,995,591				
@ 82.8% = £37,256,349 @ 77%			£28,687,388	£30,907,185
			Marriage value	£ 6,886,486
			Freeholders' share, 50%	0.5
			Freeholder's share of marriage value	£3,443,243

HOPE VALUE (non-participating flats)

Virtual freehold £44,995,591 @ 17.2%				£7,739,242
Elimination of ground rents			£1,155	
YP 45½ years @ 6½%			14.51	£ 16,759
				£7,756,001

LESS

Existing freehold:-				
Ground rents	£1,155			
YP 45½ years @ 6½%	14.51	£16,759		
Reversion to	£7,739,242			
Defer 45½ years @ 6½%	0.057	£441,137	£ 457,896	
Existing leaseholds £7,739,242				
@ 77%			£5,959,216	£6,417,112
				£1,338,889
				@ 5%
			Hope value	£ 66,944

HEAD LEASEHOLD INTEREST

Agreed value of headlease	£ 215,000
Value of freehold	2,677,693
	£2,892,693

Head leasehold interest 7.43% of combined values

Agreed value of headlease	£215,000
Share of marriage value, 7.43% of £3,443,243	£255,833
Hope value of caretakers' flats	£ 50,000
Attributable to head lease	£520,833

PRICE PAYABLE BY NOMINEE PURCHASER

Value of freehold	£2,677,693
Freeholders' share of marriage value	£3,443,243
Hope value, non-participating flats	£ 66,944
Hope value, caretakers' flats	£ 50,000
	£6,237,880
Attributable to head lease	£ 520,833
Price payable by nominee purchaser	£5,717,047