UPPER TRIBUNAL (LANDS CHAMBER)

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LRA/68/2008
(Consolidated)

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD REFORM – collective enfranchisement – terms of acquisition – assessment of valuation evidence and of comparables – whether additional value arising from possibility of amalgamating ground/lower ground floor flat with caretaker's flat – whether any hope value in respect of a flat whose tenant was neither a participating tenant nor a tenant who had served a section 42 notice – relationship between value of freehold and of long leases – form of the covenant restrictive of user which should be imposed

IN THE MATTER OF TWO APPEALS FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

(LRA/56/2007)

BETWEEN	**EARL CADOGAN**	**Appellant**
	and	
	BETUL ERKMAN	**Respondent**

and

(LRA/68/2008)

BETWEEN	**BETUL ERKMAN**	**Appellant**
	and	
	EARL CADOGAN	**Respondent**

Re: 42 Cadogan Square
London SW1X 0JW

Before: His Honour Judge Nicholas Huskinson
and
A J Trott FRICS

Sitting at 43-45 Bedford Square, London WC1B 3AS
on 7, 8 and 9 February 2011

K S Munro instructed by Pemberton Greenish on behalf of Earl Cadogan
Steven Jourdan QC instructed by Forsters LLP on behalf of Betul Erkman

The following cases are referred in this decision:

Cadogan Square Properties Limited v Earl Cadogan [2010] UKUT 427 (LC)
McHale v Cadogan [2010] EWCA Civ 147
Earl Cadogan v Sportelli [2008] UKHL 71
Bircham & Co (Nominees) (No.2) v Clarke [2006] Lands Tribunal LRA/63/2005 (unreported)
Culley v Daejan Properties Limited [2009] UKUT 168 (LC)
Dependable Homes Ltd v Mann [2009] UKUT 171 (LC)
31 Cadogan Square Freehold Limited v Earl Cadogan [2010] UKUT 321 (LC)
Moreau v Howard de Walden Estates Limited [2003] Lands Tribunal LRA/2/2002 (unreported)
Higgs v Paul [2005] Lands Tribunal LRA/2/2005 (unreported)
Chelsea Properties Limited v Earl Cadogan [2007] Lands Tribunal LRA/69/2006 (unreported)
Blendcrown Ltd v Church Commissioners for England [2004] 1 EGLR 143
Le Mesurier v Pitt (1972) P & CR 389
Peck v The Trustees of Hornsey Parochial Charities (1971) 22 P & CR 789
Earl Cadogan v Cadogan Square Properties Limited [2011] UKUT 68 (LC)

The following cases were referred to in argument:

Tsiapkinis v Earl Cadogan [2008] Lands Tribunal LRA/59/2006 (unreported)
Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39
Nailrile Ltd v Earl Cadogan [2009] 2 EGLR 151
Tudor v M25 Group Ltd [2004] 1 WLR 2319
7 Strathray Gardens Ltd v Pointstar Shipping & Finance Ltd [2005] 1 EGLR 53

DECISION

Introduction

1. There are two appeals before the Tribunal, namely an appeal by Earl Cadogan (hereafter called "the Freeholder") and an appeal by Betul Erkman (hereafter "the Nominee Purchaser") from the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("the LVT") dated 16 March 2007. By this decision the LVT decided the outstanding matters in dispute regarding the terms of acquisition whereby the Nominee Purchaser was to purchase from the Freeholder the freehold of 42 Cadogan Square ("No.42") pursuant to a collective enfranchisement under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993. Both the Freeholder and the Nominee Purchaser were dissatisfied with the decision of the LVT and both applied to the LVT for permission to appeal. Permission was granted to both parties by the LVT without any restriction being placed on the ambit of the appeal in the grant of permission. The LVT noted that the issues the parties sought to raise were intertwined and that questions of law and valuation arose. The LVT therefore decided it should "simply grant to each of the Respondent and the Applicant permission to appeal (or cross-appeal) from its above mentioned Determination to the Lands Tribunal". The appeals were heard together with the Freeholder being treated as the Appellant and the Nominee Purchaser as the Respondent. The appeals proceeded by way of a rehearing.

2. The points in issue between the parties are points which relate to the price to be payable upon the enfranchisement and also as to the form of a restrictive covenant which is to be included in the transfer in respect of the permitted user of the premises.

3. As regards the issues originally raised between the parties which would affect the price to be payable on the enfranchisement, certain matters which once were in dispute have been resolved:

(1) The parties disagreed regarding the deferment rate to be applied when assessing the present value of the freehold reversion upon leases which, in this case, had only 17.29 years left to run. However a different constitution of this Tribunal (the Honourable Mr Justice Morgan and A J Trott FRICS) heard conjoined appeals in various cases, including the present, on this discrete issue. The Tribunal's decision in *Cadogan Square Properties Limited v Earl Cadogan* [2010] UKUT 427 (LC) was that in the present case the appropriate deferment rate to apply is 5.25%. The LVT had applied 5%.

(2) The parties disagreed as to whether, when calculating the marriage value under Schedule 6 paragraph 4 of the 1993 Act, the existing leases of participating tenants were to be valued with or without 1993 Act rights. It has now been decided by the Court of Appeal in *McHale v Earl Cadogan* [2010] EWCA Civ 147 that in calculating the marriage value the existing leases of the participating tenants are to be valued on the basis that they do not enjoy 1993 Act rights. In the light of the *McHale* decision the parties to the present appeal have agreed that the Freeholder's appeal against the LVT's decision on this point (which had

decided the point contrary to the way the Court of Appeal decided the point in *McHale)* must be allowed. The valuers have produced their respective valuations on the basis of the decision in *McHale*. We revert at the end of this decision to the Nominee Purchaser's argument that appropriate arrangements should be put in place to protect the Nominee Purchaser against the possibility that the Supreme Court may reverse the decision in *McHale* in whole or in part. For the present all that needs to be noted is that the *McHale* issue is not a live issue before us.

(3) The decision in *McHale* therefore gives rise to the question as to the percentage deduction that needs to be applied to open market valuations of existing leases for the purpose of obtaining the value of those existing leases without 1993 Act rights. The parties have agreed that, for the purposes of this appeal only, and only because the amount of money involved is small and the time and expense needed properly to debate the issue would be extensive, the adjustment which should be made for 1993 Act rights to the sale of existing enfranchiseable leases with short unexpired terms which are in evidence in the present case is a deduction of 12.5%. Accordingly this issue is no longer a live issue before us in the present appeal.

(4) Having regard to certain dealings in the interests in No.42 there was at one stage a disagreement between the parties as to whether the tenant of the ground and lower ground floor flat ("GLG Flat") was or was not a participating tenant for the purposes of the calculations under paragraphs 3 and 4 of Schedule 6. There was also a disagreement as to whether in the circumstances of the present case there must be taken to be an agreement within section 18 of the 1993 Act between the existing tenant of the GLG Flat and the Nominee Purchaser. However as regards these points the following matters have been agreed between the parties in an Agreed Statement of Issues such that it becomes unnecessary for the Tribunal to decide the issues:

> "1.1 For the purposes of this appeal [the Freeholder] accepts that the tenant of the [GLG Flat], Mrs Kiazim is not a participating tenant
>
> 1.2 For the purposes of this appeal [the Freeholder] accepts that there was no agreement between the nominee purchaser and Mrs Kiazim falling within section 18 of the 1993 Act.
>
> 1.3 For the purposes of this appeal [the Freeholder] accepts that the freehold is to be valued on the basis that the purchaser is acquiring the freehold subject to the notice under section 42 of the 1993 Act relating to the GLG Flat served by Cigdem Erkman on 17 June 2004, and that the purchaser of the freehold will consider that there is a 75% chance of the claim to a new lease made by that notice proceeding to completion and a 25% chance of it not proceeding to completion."

4. In summary the remaining issues before the Tribunal are as follows:

(1) The virtual freehold value of the GLG Flat.

(2) The question of whether there should be any adjustment to the virtual freehold value of the GLG Flat to reflect the prospect of an amalgamation of that flat with the caretaker's flat which occupies the remaining (front) part of the lower ground floor and whether there should similarly be an adjustment to the virtual freehold value of the caretaker's flat to reflect this prospect. This dispute raises the question of (i) whether the Freeholder is entitled to raise this point at all and (ii) if he is so entitled, whether as a matter of valuation the hypothetical purchaser (ie the purchaser who is assumed to be bidding for the freehold for the purposes of the valuation exercise in Schedule 6) would increase his bid to reflect this possible amalgamation of units.

(3) The value of the existing lease of the first floor flat.

(4) The question of whether the hypothetical purchaser would increase his bid to reflect the existence of hope value in respect of flat 3, which is held by a non participating tenant who has not served a section 42 notice seeking a lease extension. The hope value in question is value to reflect the hope that the hypothetical purchaser might have of coming to an early negotiated arrangement with the tenant of flat 3 whereby that tenant obtained an extended lease and marriage value was thereby unlocked and was, in consequence, available to be shared between that tenant and the hypothetical purchaser.

(5) The relationship between the value of a freehold on the one hand and a long lease of 107 years or more on the other hand (the dispute being whether the relativity was 99% or 98.5% or 98%).

(6) The form of the restrictive covenant regarding the user and occupation of the flat.

Facts

5. The parties have helpfully prepared a detailed Agreed Statement of Facts. This is attached as Appendix 1 to this decision.

6. The existing headlease of No.42 includes a covenant by the lessee in the following terms:

> "Not to use or permit the demised premises or any part thereof to be used otherwise than as a self contained Maisonette comprising the ground floor and rear part of the Basement, a self contained flat on each of the first, second, third and fourth floors each flat and the Maisonette to be in one occupation only with boiler room and store and Caretaker's quarters in the front basement to be occupied by a full-time Caretaker for the premises on a service basis …"

It is convenient at this stage to note that the Freeholder's formal counter-notice, served in response to the participating tenants' section 13 notice, set out the Freeholder's counter proposals regarding the provisions of the transfer to the Nominee Purchaser and asked that there be included a covenant by the Nominee Purchaser with the Freeholder for the benefit of the estate:

> "11.3.3 Not to carry on or permit to be carried on at the specified premises any trade business or profession and not use or permit to be used the specified premises for any auction, exhibition meeting or public entertainment or any unlawful, illegal or immoral purpose or otherwise than as a single private dwellinghouse in one family occupation only or as not more than six self-contained flats or maisonettes each such flat or maisonette to be in the occupation of one family or household only."

The Freeholder's proposals had changed by the time of the hearing before the LVT and the terms of the restrictive covenant which the LVT ordered to be included in the transfer were as follows:

> "Not to carry on or permit to be carried on on the Property or any part thereof any trade, business or profession and not to use or permit the Property or any part thereof to be used for any illegal or immoral purpose or for any auction exhibition meeting or public entertainment or otherwise than as not more than six self-contained private residential flats each such flat to be used as a private dwelling in one family occupation only or as a single private dwelling house in one family occupation only".

7. It is agreed that the valuation date for the purposes of the Schedule 6 valuation is 29 November 2005, being the date of service of the participating tenants' section 13 notice. However prior to the service of this section 13 notice the then tenant of the GLG Flat on 17 June 2004 served a section 42 notice seeking a lease extension. An application was made to the LVT to determine the premium and terms on which the new lease should be granted and the matter proceeded as far as a hearing on 4 and 5 October 2005 before the LVT. However the hearing was not completed and was adjourned part heard to January 2006 but, in the meantime the section 13 notice was served and as a result of that the claim for the extended lease under section 42 became frozen. All the rights and obligations arising under this section 42 notice were assigned on the occasion of the transfer of the lease of the GLG Flat from Cigdem Erkman on 19 December 2006 to her mother Mrs Kiazim. As recorded above it is agreed for the purpose of this appeal that Mrs Kiazim did not become a participating tenant.

8. By its decision dated 17 April 2007 the LVT decided various matters including the following matters which are relevant to the points in issue before the Tribunal:

(1) As regards the virtual freehold value of the GLG Flat the Nominee Purchaser's expert (Mr Gavin Buchanan BSc MRICS, a partner at Knight Frank) referred to certain comparables, especially the sale in April 2002 of the ground floor flat at 58 Cadogan Square in an unimproved state, and he contended for a value of £1,354,800. The Freeholder's expert (Miss Frances Joyce FRICS, a partner at W A Ellis) referred to various comparables including in particular the sale of the improved ground and lower ground floor flat at the next door building, namely

44 Cadogan Square, in February 2003. She argued for a value of £1,710,000. The Tribunal considered that Mr Buchanan's approach was to be preferred, but after making certain observations and adjustments the LVT concluded that the proper valuation was £1,715,000.

(2) The LVT did not give any consideration to any possible extra value for the GLG flat to be derived from a possible amalgamation of the GLG flat with the caretaker's flat. This point was not raised at all before the LVT by the Freeholder and it is therefore unsurprising that the LVT made no comment upon the point.

(3) As regards the existing lease value of the first floor flat the LVT decided that a sale of the lease of the first floor flat together with the headlease at £650,000 gave a good indication that the value of the first floor flat was £650,000 in January 2006. The LVT reached this conclusion on the basis that it considered the agreed apportionment of the price, ie as apportioned between vendor and purchaser, of £75,000 for the headlease and £575,000 for the lease of flat 1 was artificial. The LVT had regard to certain comparables referred to by Mr Buchanan and decided the value of the first floor flat (before deduction for 1993 Act rights) in the sum of £638,577. It therefore rejected the Freeholder's argument that the apportionment of £575,000 to the first floor flat in the combined sale of the first floor flat and the headlease was in effect determinative of the value of the first floor flat.

(4) As regards the question of hope value, bearing in mind the state of the legal authorities at that date the LVT was not asked to make a finding on this point, but the Freeholder reserved his position to argue the point thereafter.

(5) As regards the value of a freehold as compared with a long lease the LVT adopted a relativity of 99%.

(6) As already noted above the LVT ordered the inclusion in the transfer of a restrictive covenant in terms different from those in the original headlease and those in the Freeholder's counter-notice. The LVT's reasoning upon this point stated that since No.42 enjoyed the prime location of Cadogan Square the covenant sought manifestly satisfied the statutory conditions, ie the conditions in Schedule 7 paragraph 5.

9. As already mentioned above permission to appeal was granted to both the Freeholder and the Nominee Purchaser. It may be noted that, although the point in paragraph 4(2) above (regarding possible extra value from amalgamating the caretaker's flat into the GLG Flat) was not raised before the LVT, the Freeholder in his application for permission to appeal dated 3 April 2007 included in paragraph 14 a complaint that the valuation of the caretaker's flat did not take into account, inter alia, the possibility of doing a deal with the tenant of the GLG Flat so as to release value by amalgamating the two flats to make one larger flat. The point was repeated in the Freeholder's statement of case. Mr Jourdan accepted that the point had been raised by the Freeholder long ago both in the pleadings and in evidence and that the Nominee Purchaser was in no way prejudiced by this point being raised. However he maintained the

argument that, as the point had not expressly been raised before the LVT, the Freeholder was not entitled to raise the point at all before the Tribunal. If he were wrong upon this point then he made submissions that, on the evidence, no value had been proved to attach to this possibility of amalgamation. We return to these points below.

10. Before us we heard oral evidence from Miss Joyce (who we have already referred to above and who gave evidence before the LVT) and from Mr Julian Clark BSc, MRICS, a partner at Gerald Eve who also appeared on behalf of the Freeholder. We heard oral evidence from Mr Buchanan (already referred to above and who gave evidence before the LVT) on behalf of the Nominee Purchaser. At the request of the parties we heard the opening of the case and then adjourned until 2pm so as to enable us to carry out an accompanied site inspection – the inspection was only of the GLG Flat and the caretaker's flat and the garden at No.42.

Evidence

11. We propose to summarise the evidence given on behalf of each party on each issue separately, taking the issues in the sequence referred to in paragraph 4 above.

Issue 1: virtual freehold value of the GLG Flat

12. Miss Joyce had revisited the comparables which she had relied upon before the LVT and excluded four of them: flat 1 at No.58 (historic), flat 2 at No.18 and flat 2 at No.2A (both fronting Pont Street and therefore remote from Cadogan Square) and the lower maisonette at 1 Lennox Gardens (remote). She now relied upon three comparables, all of which were sales of long leasehold interests in ground floor and basement maisonettes: flat 1 at No.44, flat 1 at No.58 (both on the square) and flat 2 at No.22 (off square). Miss Joyce's preferred comparable was flat 1 at No.44 because, firstly, it adjoined the subject property and so enjoyed an almost identical location; secondly, it was of almost identical size and layout; and, thirdly, it required only a single adjustment (for improvements).

13. Miss Joyce provided details of the adjustments that she had made to each comparable and which were the same as those presented to the LVT. She adjusted for time to November 2005 using the Savills PCL South West Flats Capital Value Index ("the Savills Index") and took the relativity in each case at 98%. All of the comparables had been modernised and she allowed for this by deducting 12.5% from the value of flat 1 at No.44 and flat 1 at No.58 but 17.5% from the value of flat 2 at No.22. Further adjustments were made for layout and proportion, outside space, separate entrances and the position on the square. The average adjusted rate was £1,190 psf.

14. Miss Joyce produced a second schedule showing the effect of doubling her previous adjustment for improvements in the light of the LVT's decision to adopt an adjustment for improvements of 32% (Mr Buchanan's figure). This gave an average adjusted rate of £999 psf.

In the case of her preferred comparable of flat 1 at No.44 this revised adjustment meant making a total allowance of £381 psf which Miss Joyce described as "generous". Applying this rate to the agreed floor area of the GLG Flat gave a freehold value of approximately £1,713,000. Miss Joyce said that the LVT's determination of £1,715,000 was a fair figure and it was adopted by Mr Clark in his valuations.

15. Miss Joyce did not accept that flat 1 at No.58 was the best comparable given that there was evidence, two years apart, of its sale in both an unimproved and an improved condition. She felt that an adjoining flat that was identical with the GLG Flat was a better comparable. She accepted that flat 1 at No.44 had been sold in a modernised condition, albeit that she understood from her sales team that the works "were not to the highest standards" (she had not seen the flat herself). She said that it was "probably right" to say that there were different markets for unimproved flats and for improved flats.

16. Miss Joyce suggested that the large difference in value between the two sales of flat 1 at No.58 (32%) which Mr Buchanan attributed to the improvements may have been a result of the purchaser getting a bargain in one instance and paying too much in the other. There was no way of knowing about the individual circumstances of the two sales and one could not assume that the large difference in values was due solely to the improvements. To demonstrate such a relationship one would need to have a number of examples.

17. The parties agreed at the hearing that the value of the Freeholder's interest in the GLG Flat should be calculated on the assumption that Mrs Kiazim was a non participating tenant. Miss Joyce took the "as seen" (improved) value of this flat, which such an assumption requires, at £1,960,000 or £1,143 psf. She obtained this figure by taking the unimproved value at 87.5% of the improved value.

18. Miss Joyce was asked why she had used 12.5% to adjust for improvements when, in her latest analysis of comparables, she had used 25% to derive the unimproved value of the GLG Flat from the comparable at No.44 (Appendix 4, Schedule B). She said that she had used 12.5% in her original valuation before the LVT (Appendix 4, Schedule A) and that she should have used 25% to be consistent with her revised valuation. Following further questioning, however, Miss Joyce accepted that it was necessary to include any increase in value that was due to the actual improvements that had been carried out to the GLG Flat rather than to consider any generic adjustment. On this basis she said that the improvements to the GLG Flat were "not impressive" and that were the flat to be modernised now it would be done differently. Therefore a lower figure than 25% was indeed appropriate and, upon reflection, she thought that "maybe 12.5% was right" and that it was adequate to reflect the actual improvements to the GLG Flat.

19. Mr Buchanan said that his starting point for deriving the unimproved value of the extended leasehold interest in the GLG Flat was the sale of flat 1 at No.58 in April 2002. He made adjustments for time, lease length (using a relativity of 99%), added £100,000 to reflect its dilapidated condition and made further adjustments for outside space and the position on the Square. After making further amendments during the hearing Mr Buchanan said that the

virtual freehold value of the GLG Flat at November 2005 in its unimproved state was £1,400,000 or £816 psf.

20. Mr Buchanan said in his witness statement that it was far more reliable to assess the value of the subject flat by reference to prices for unimproved flats than improved flats. He said there was a "different market for such flats". Mr Buchanan illustrated his point by comparing the sale prices of three flats; flat 1 at No.58, the ground/lower ground floor flat at No.21 and flat 1 at No.44, each of which was sold twice; once in an unimproved condition and once having been professionally modernised. A comparison of the pre and post improvement work values showed an uplift of 32%, 38% and 50% respectively.

21. In his original witness statement Mr Buchanan described the tenant's improvements as "major improvements" and said that "the layout of the maisonette was vastly improved as a result". In a supplementary witness statement that was adduced at the hearing, Mr Buchanan said that the difference between the improved and unimproved values of the GLG Flat should be no more than 5% to reflect the limited extent of the works and the fact that they were carried out in 1993/94. He therefore valued the GLG Flat, as improved, at £1,470,000 or £857 psf as at November 2005.

22. Mr Buchanan accepted that the first sale of flat 1 at No.44 in April 2002 was not an open market transaction because it involved a short lease and a settlement regarding a lease extension. He said that although he had mainly based his valuation upon the sale of flat 1 at No.58, unimproved, in April 2002 he had also had regard to the other transactions referred to in his Appendix 3. He accepted that the adjustment of £100,000 that he had made to put flat 1 at No.58 into repair was not based upon evidence, or upon advice received from a quantity or building surveyor, or upon knowledge of what works were actually required, or upon his own inspection.

Issue 2: whether additional value arises from the possibility of amalgamating the GLG Flat with the caretaker's flat

23. Miss Joyce in her witness statement did not prepare any valuation for the purpose of analysing what if any value might be obtained from the linking of the GLG Flat and the caretaker's flat. Instead the circumstances in which she examined the possibility of this amalgamation was when she was analysing the existing leasehold value of the first floor flat. In the course of considering whether the LVT was correct in concluding that it was artificial for £75,000 of value to be attributed to the value of the headlease (ie within the £650,000 paid for the headlease together with the lease of the first floor flat) Miss Joyce was concerned to examine what if any value the headlease in fact had. She detected various possible values in the headlease, one of which involved value from this possible amalgamation of the GLG Flat and the caretaker's flat. However she was considering these points for the broad proposition of whether there was in effect no value in the headlease rather than for the purpose of making a properly considered examination of what if any value might be obtained from an amalgamation of the GLG Flat and the caretaker's flat. Thus in paragraph 7.19 of her witness statement she stated:

> "If the two units are linked, the resulting maisonette will have a higher proportion of basement to ground floor space than currently and so the share of freehold value could be lower (as at the valuation date) than the £1,000 psf determined by the LVT. If, for the sake of illustration, the overall rate were reduced by 10% to £900 psf, on a total GIA of 2,346 sq ft, the value would be £2,111,400. This would compare with £2,015,000 (£300,000 plus £1,715,000) for the two units separately, which is an increase of £96,400."

That was the totality of the 'valuation evidence' in Miss Joyce's witness statement regarding the possible amalgamation of the two units. On the basis of this Mr Clark adopted £96,400 as being available additional value which fell to be apportioned as between the caretaker's flat and the GLG Flat at certain places in his calculations. The following points may be noted regarding Miss Joyce's evidence on this point as developed further by her in her oral evidence:

(1) She did not perceive any such additional value (ie from an amalgamation of the units) when preparing her evidence for the LVT in relation to the section 42 claim in respect of the GLG Flat which went to a hearing before the LVT (which was adjourned part heard) in October 2005. Nor did she perceive any such value from this potential amalgamation of units in her evidence to the LVT in the present case in 2007.

(2) She accepted that she had merely given the £96,400 figure "for the sake of illustration" to show broadly that there was some value in the headlease. She said that if she had done a proper valuation she would have done it in a different way and the figure would have been higher. However she accepted she had not done any such proper valuation. She observed that she would be very surprised if it did not work out in the way she indicated.

(3) Miss Joyce accepted that she had not considered any detailed figures including costs of moving the large boilers from their present location to the front bedroom under the front steps, which is where she proposed they should be moved.

(4) It would appear that Miss Joyce had not given any or any significant consideration to any possible practical problems such as a requirement for listed building consent in putting the boiler(s) in the front room or whether they could physically be accommodated there.

(5) During the course of her evidence in chief she stated that the 10% allowance was intended to be a generous allowance to allow for absolutely everything. She said that she considered £96,400 to be a conservative figure. She suggested that if the caretaker's flat was amalgamated with the GLG Flat then the value of the whole should be given by her original figure for the GLG Flat (£1,715,000) plus a further £900 per sq ft for the caretaker's flat.

24. Mr Buchanan dealt with this proposed amalgamation of units in his supplemental witness statement. He stated that for the purpose of properly considering such an amalgamation it would be essential to obtain advice from a building surveyor and a heating engineer on what

works would be involved and the costs thereof and how long it would take. He also stated it would be necessary to consider what statutory consents would be required, especially the question of listed building consent. He was also concerned that the existing rights of the tenant of the second floor flat (whose lease had already been extended) would prevent any such major reorganisation of the heating installations without the consent of that tenant. He stated that he was not a building surveyor but he did have sufficient experience to state that the cost associated with merging the two units and dealing with the communal boilers were likely to be considerably higher than £96,400. He stated that he did not consider the hypothetical purchaser of the freehold would be prepared to pay anything extra to reflect the speculative possibility that there might be additional value released by merging the two units in 2023.

Issue 3: existing lease value of first floor flat

25. Miss Joyce pointed to paragraph 1.4 of the Agreed Statement of Facts (Appendix 1 hereto) which records how the headlease together with the underlease of the first floor flat and benefit of the section 42 notice in respect of that flat was assigned on 13 January 2006 to the Nominee Purchaser for a total sum of £650,000. In the respective Land Registry entries the prices stated to have been paid were £75,000 for the headlease and £575,000 for the underlease of the first floor flat. Miss Joyce stated that the vendor of these two interests had been obliged to serve a notice in respect of the proposed sale of the headlease upon the underlessees of the building under section 5 of the Landlord and Tenant Act 1987. The purchase price stated for the headlease in such notice she understood to have been £75,000. Miss Joyce said that she had been advised by the lessees of the second and fourth floor flats that, together with the lessee of the third floor flat, they attempted to exercise their option to acquire the headlease at the stated price of £75,000 but failed to do so because of some legal problem. Miss Joyce therefore argued that the value of the headlease was £75,000 leaving £575,000 as the open market value of the lease of the first floor flat. Miss Joyce stated that it was not a matter of surprise that substantial value should be perceived to exist in the headlease because (a) the acquisition of the headlease would enable the purchaser to constitute a participating tenant for the purpose of a collective enfranchisement and (b) there was potential value in linking the caretaker's flat which was held under the headlease with the GLG Flat (see Miss Joyce's evidence on this point in paragraph 23 above) and (c) because by purchasing the headlease and enabling themselves to pursue a collective enfranchisement, the section 42 lease extension procedures for the GLG Flat were suspended with the resultant deferment of the day when the premium would have to be paid for such a transaction.

26. Miss Joyce adjusted the price of £575,000 for time, lease length and to remove the value of the 1993 Act rights at 15% (this was prior to the agreement between the parties that an adjustment of 12.5% should be used – see paragraph 3(3) above). She obtained an existing leasehold value of £482,533 to which she added £17,500 to allow for the cost of putting the flat into repair, giving a final figure of £500,000. As a check she had regard to the relativity of £500,000 with the virtual freehold value of the first floor flat as determined by the LVT (and not challenged on appeal) of £1,199,708. She noted that the relativity was 41.68% which she considered to be much more in line with the Gerald Eve/John D Wood 1996 Graph of Relativity at this lease length than was the existing lease value as contended for by the Nominee Purchaser and as decided by the LVT.

27. Mr Buchanan noted the sale of the headlease together with the lease of the first floor flat for £650,000. He observed these were related sales and were declared as such and stamp duty was paid on the £650,000. He stated that it was agreed between the valuers that the investment value of the headlease was nil. He considered the whole of the £650,000 was attributable to the first floor flat which produced a price of £565 per sq ft (ie £650,000 for 1151 sq ft) and that this figure sat comfortably with other sales of short leases of first floor flats, which he produced at his Appendix 7. This document was one which had been produced by Miss Joyce for the LVT hearing. He pointed out that the values per sq ft, after deduction of 15% for 1993 Act Rights (which is the figure Miss Joyce had applied to her table) produced an average value of £575 psf if one excluded from the table the transaction relating to the first floor flat itself. He pointed out that Miss Joyce's figure of only £575,000 or £500 per sq ft (which is a figure inclusive of 1993 Act Rights) could not be right when compared with these comparables showing an average of £575 per sq ft after deduction of 1993 Act Rights. He also drew attention to the transaction relating to the sale of the second floor flat at No.42 itself as shown on his Appendix 7 which indicated a rate per sq ft of £492 after deduction of 15% for 1993 Act Rights, which showed that £500 per sq ft for the more valuable first floor flat inclusive of 1993 Act Rights could not be correct.

Issue 4: hope value in respect of flat 3

28. Mr Clark considered this issue in the light of the House of Lords' decision in *Earl Cadogan v Sportelli* [2008] UKHL 71 where it was held that hope value is payable in respect of non participating flats only. He understood from that decision that the terms of the new extended lease were assumed to be freely negotiated and not bound by statutory assumptions as to length, rent, improvements, the terms of the lease or limitations upon the landlord's share of marriage value. He quantified the potential marriage value that would be released by a voluntary negotiation of a new lease for flat 3 on the basis that the existing lease would be extended beyond its term date by 100 years and that the rent payable would be a peppercorn.

29. Mr Clark said that the hope value of the non participating tenant of flat 3 seeking a freely negotiated lease extension would be 20% of the potential marriage value. He said that there was very little or no market evidence to support this figure. Instead he relied upon the unchallenged evidence of Mr Roland Cullum FRICS in *Bircham & Co (Nominees) (No.2) v Clarke* [2006] Lands Tribunal LRA/63/2005 (unreported) which he said recorded a purchaser's thinking where it was sought to determine hope value. In that appeal, involving a short leasehold property at 13 South Terrace, Kensington, Mr Cullum took hope value at 20% of the potential marriage value. He referred in his evidence to his experience of valuing the former Smith's Charity South Kensington Estate for sale to the Wellcome Trust in 1995/96 and to negotiations regarding the sale of a smaller estate in Ennismore Gardens.

30. Mr Clark also relied upon *Culley v Daejan Properties Limited* [2009] UKUT 168 (LC) in which the Tribunal, the President and P R Francis FRICS, identified the proportion of non participating flats and the length of unexpired term as two particular matters to be borne in mind when considering the amount of hope value. Hope value was likely to be higher the greater the proportion of non participating flats and lower the longer the unexpired term. In

this context Mr Clark acknowledged that marriage value reduces once the unexpired term falls below 30 years but he felt that this would be counter-balanced by an increasing likelihood that the tenant of flat 3 would wish to negotiate for a new lease within the next few years. Mr Clark said that it was very rare for tenants to leave a lease extension until the last moment. He thought that an allowance of 20% for hope value in these appeals was reasonable as at November 2005.

31. The starting point for Mr Clark's hope value calculation was the LVT's assessment of the freehold vacant possession value of flat 3 at £989,800. This was not in dispute between the parties. He took a relativity of 41.4% of this figure (being the average of the revised relativities adopted by Miss Joyce in respect of the GLG Flat and flat 1) to value the existing leasehold interest. Using these inputs gave a potential marriage value of £160,325. Mr Clark took hope value at 20% to give £32,050 (rounded).

32. Mr Buchanan said that flat 3 was owned by Mr Allen, an elderly tenant (thought to be in his late 70s) who was not interested in joining the collective enfranchisement and who had expressed no interest in extending his lease. Mr Allen was the original tenant under the underlease and Mr Buchanan said that he understood that he intended to remain in occupation of the flat for the rest of his life. Under these circumstances Mr Buchanan said that a hypothetical purchaser of the freehold interest would not be prepared to pay any hope value given the remote prospect of negotiating an early lease extension. It might be possible that a subsequent owner of the lease would be prepared to consider such a deal but Mr Buchanan noted that as the unexpired term of the lease grew shorter the potential marriage value would diminish. He found it difficult to imagine that a rational purchaser of the freehold would place any value on the prospect of a lease extension, especially since in the context of the overall price Mr Clark's estimate of hope value was "small enough not to worry about".

33. Mr Buchanan said that he had not been instructed to estimate the existing lease value of flat 3 or the potential marriage value that a lease extension would release. He had seen no evidence from the Freeholder's valuers to support their estimate of the existing lease value of flat 3.

Issue 5: relativity between freehold and long leasehold values

34. Miss Joyce explained that her firm, W A Ellis, used a scale of relativities when comparing long leasehold values with freehold values. For leases with unexpired terms greater than 130 years the relativity was 99%. For unexpired terms of between 120 to 130 years the relativity was 98.5% and for leases with less than 120 years unexpired the relativity was 98%. (Miss Joyce did not give a lower boundary for the application of the 98% relativity.)

35. Mr Clark said that his firm, Gerald Eve, used a similar, but not identical scale. For leases with unexpired terms greater than 130 years the relativity was 99%. Between 125 to 130 years the relativity was 98.75%, between 115 years and 125 years it was 98.5% and between 100 to 115 years the relativity was 98%.

36. Mr Buchanan increased the virtual leasehold value by 1% to obtain the freehold value, ie a relativity of approximately 99%. (He did not specify the range of unexpired terms to which this relativity applied.)

Issue 6: form of restrictive covenant

37. There is set out in paragraph 6 above the text of (i) the user covenant in the existing headlease, (ii) the user covenant as proposed by the Freeholder in his counter-notice, and (iii) the user covenant as eventually contended for by the Freeholder before the LVT, being the form ordered by the LVT to be included in the transfer. During his closing submissions Mr Jourdan on behalf of the Nominee Purchaser made it clear that the Nominee Purchaser would accept the clause in the form as proposed by the Freeholder in his counter-notice.

38. On behalf of the Freeholder Miss Joyce gave evidence in support of the inclusion of the requirement that each of the six self contained private residential flats should be used "as a private dwelling in one family occupation only", or that the building, were it to become a single private dwellinghouse, should be occupied "as a single private dwellinghouse in one family occupation only". She said that she could understand a landlord with other property in Cadogan Square wishing to see the quality of tenants and the ambience of the area maintained by the requirement that individual units of accommodation remained in single family occupation. She accepted that market forces and price levels made it improbable that there would be flat sharing by young professionals as happens in other less valuable parts of London, but she contended that the ability to prevent sharing of occupation was something which a landlord could reasonably wish to see preserved in a freehold transfer. She pointed out that if sharing of occupation was permitted then this could lead to a higher density of use which would not be advantageous in terms of preserving the quality of the area by reason of potential noise, number of cars, movements within the square, etc. In paragraph 8.6 of her proof of evidence she stated:

> "At present, the majority of purchasers of properties in the square are either families or individuals who, I believe, would also have a preference for other properties in the square to be similarly occupied."

39. On behalf of the Nominee Purchaser Mr Buchanan expressed the view that it would be unreasonable to include any covenant which prevented flat sharing. If members of the same family could share occupation then why should not friends who were not members of the same family also share occupation. He accepted that without any restriction it would in theory be possible to have one or two persons living in each of the bedrooms and in effect living independent lives, but he pointed out that insofar as the property turned into what could properly be described as a house in multiple occupation then there were planning and other powers available to the local authority to control this. However he did not envisage what should be permitted as going so far as constituting a house in multiple occupation – he pointed out that what the Nominee Purchaser contended for was a clause which would permit nothing beyond reasonable flat sharing.

Freeholder's submissions

40. On behalf of the Freeholder Mr Munro addressed the various issues before the Tribunal and advanced the following arguments upon them.

Issue 1: virtual freehold value of the GLG Flat

41. As regards the value of the virtual freehold of the GLG Flat Mr Munro noted that Mr Buchanan had, during the course of the proceedings, agreed the existing leasehold value for the GLG Flat without 1993 Act rights in the sum contended for by the Freeholder, namely £703,088. However Mr Buchanan continued to contend that the unimproved virtual freehold value of the GLG Flat was £1,400,000, which gave a relativity of 50%. He submitted that this high relativity, which was out of step with the various relativity graphs and the graph of graphs (see Mr Buchanan's Appendix 11), should sound a preliminary warning to the Tribunal that Mr Buchanan's virtual freehold valuation was too low. From these graphs one would expect the existing leasehold value (ie with 17.29 years unexpired) of the GLG Flat without 1993 Act rights to be worth substantially less than 50% of the virtual freehold value.

42. Mr Munro invited the Tribunal to treat with caution Mr Buchanan's evidence because it appeared (so he submitted) that Mr Buchanan had unconsciously allowed a significant inconsistency to appear in his evidence in relation to the value of improvements at the GLG Flat. He pointed out that in Mr Buchanan's original witness statement, served at a stage when it was thought the tenant of the GLG Flat would or might be treated as a participating tenant such that an unimproved value needed to be identified, Mr Buchanan had described the improvements which had been made as "major improvements" and described the layout of the maisonette as being "vastly improved", whereas in his supplemental witness statement, which proceeded on the basis that the tenant of the GLG Flat was not a participating tenant such that it was relevant to consider the "as was" value rather than the unimproved value, he stated that the difference between the improved and unimproved value:

> "… should be no more than 5% to reflect the limited extent of the works and the fact that they were carried out in 1993/1994."

Mr Munro submitted that this apparent difference of opinion could not be rationalised and that Mr Buchanan must, unconsciously, have allowed his mind to be influenced by the circumstances in which the valuation assessment was being made.

43. As regards Mr Buchanan's analysis of the effect of improvements on the value of flats in Cadogan Square and his conclusion, based thereon, that the value of sales of improved flats gave no reliable indication as to the value of unimproved flats, Mr Munro advanced the following arguments. He pointed out that as regards the material relied upon by Mr Buchanan by way of his three "matched pairs" of transactions (ie a sale or disposal unimproved and then a later sale improved of the same property) there was a problem regarding the matched pair at 44 Cadogan Square because the first transaction was a settlement and not a market transaction. That left merely two pairs, namely the sale unimproved and improved of the flats at 21 and 58

Cadogan Square. However he submitted that two pairs of transactions were not enough to give guidance as to the sort of deduction to make from the value obtained on a flat which had been improved to the highest standards when seeking to value a flat that was unimproved. He submitted that Mr Buchanan's material and arguments were not sufficient to negate Miss Joyce's methodology or judgment in obtaining the value of the virtual freehold unimproved of the GLG Flat by reference to the sale of the mirror image ground and lower ground floor flat at the next door building (No.44) in its improved state.

44. Mr Munro accepted that the manner in which the valuation experts had advanced their case involved them both in effect relying upon one comparable. Thus although Mr Buchanan referred to other comparables, his analysis was in effect based upon the sale of the unimproved ground floor flat at 58 Cadogan Square. Similarly Miss Joyce, although referring to other comparables, in effect based her judgment upon the transaction relating to the sale of the improved ground and lower ground floor maisonette at 44 Cadogan Square. Mr Munro submitted that there was always a potential difficulty and weakness in relying in effect upon one comparable. He submitted that the Tribunal was not obliged to approach the matter on an either/or basis and to accept in full either Mr Buchanan's analysis or Miss Joyce's analysis.

Issue 2: whether additional value arises from the possibility of amalgamating the GLG Flat with the caretaker's flat

45. As regards the argument advanced on behalf of the Nominee Purchaser that the Freeholder was not allowed to take the point at all that additional value arises from the possible amalgamation of the GLG Flat with the caretaker's flat, by reason of its not having been raised before the LVT, Mr Munro submitted that consistently with the analysis of the Tribunal in *Dependable Homes Ltd v Mann* [2009] UKUT 171 (LC) at paragraph 23 the Freeholder was entitled to advance this point. The Freeholder was not arguing for a price higher than that for which he argued before the LVT, the present appeal was proceeding by way of a rehearing, and in consequence the Freeholder was not prevented from arguing for an ingredient which contributed towards the price, being an ingredient that had not previously been identified and contended for. He pointed out there was no possible prejudice to the Nominee Purchaser because the Freeholder's position on this point and his intention to argue it had been made clear over three years earlier.

46. Mr Munro submitted that in considering the argument that there was extra value to be unlocked from the amalgamation of the caretaker's flat with the GLG Flat the Tribunal was entitled to stand back and ask the following question: why was the present collective enfranchisement (and other similar collective enfranchisements which were being pursued on behalf of other Erkman family interests in Cadogan Square) being pursued so vigorously? He submitted that there must be some hidden value in the collective enfranchisement for the Nominee Purchaser. He asked rhetorically whether this could be because the courts have fixed too high a deferment rate such that those seeking to enfranchise were wishing to take advantage of this favourable deferment rate. However having asked this question he reminded himself that it was not open to him to say that the deferment rate was wrong. He then

suggested that the only explanation for this vigorous pursuit of the enfranchisement was because there must be some hope value or other potential value within the building.

47. With that introduction Mr Munro then passed to the evidence. He accepted that there were weaknesses in Miss Joyce's evidence on the suggestion that an amalgamation of units would produce extra value, the difficulties being these:

(1) Miss Joyce considered the valuation of the GLG Flat in 2005 (for the section 42 extension hearing before the LVT which was ultimately adjourned part heard) and in 2007 (before the LVT in the present case), but she had not then perceived any such additional value from the amalgamation of units as she now argued for.

(2) In her witness statement before this Tribunal Miss Joyce merely gave the £96,400 figure for the sake of illustration to show broadly that some value existed in the headlease (this was relevant to issue 3) rather than as a properly analysed valuation of the prospect of amalgamating the units.

(3) Miss Joyce in her evidence said that if she had done a proper valuation she would have done it in a different way and the figure would have been higher, but she accepted that she had not done a proper valuation. Miss Joyce had merely observed in evidence that she would be "very surprised if it did not work out in the way I have indicated".

(4) Miss Joyce had not considered any detailed figures including in particular the costs and practicalities of moving the boilers nor had she considered potential practical problems such as the need (and if needed the availability) of listed building consent for putting the boiler in the front bedroom.

48. However while accepting the foregoing difficulties with Miss Joyce's evidence, Mr Munro reminded the Tribunal that Miss Joyce's evidence on the point was to the effect that the £96,400 spoken to by her was, she said, a conservative figure.

Issue 3: existing lease value of first floor flat

49. Mr Munro argued that Miss Joyce was clearly correct in contending that the best possible evidence regarding the value of the existing lease of the first floor flat as at the valuation date on 29 November 2005 was to have regard to the sale of the headlease together with the lease of the first floor flat only a few weeks later on 13 January 2006 at the total price of £650,000 which was apportioned as between the vendor and purchaser (such apportionment being shown in the relevant Land Registry entries) as £575,000 for the lease of the first floor flat and £75,000 for the headlease. Mr Munro accepted that the lease of the first floor flat had not been offered on the open market, but he pointed out that the interests were offered to the people likely to pay the most money. He also submitted that Miss Joyce was correct in contending that there was substantial value in the headlease for the reasons described in paragraph 23 above. Also this was not merely a theoretical valuation at £75,000 – there was unchallenged evidence that the other tenants in the building had been prepared actually to pay £75,000 for

the headlease but had been unable to conclude this purchase because of legal difficulties. Accordingly it was known that £650,000 was paid for the two interests together and it was known that the headlease did have value itself, being a value which could properly be put at £75,000. It followed therefore that this pointed to the value of the existing lease of the first floor flat being £575,000. The points raised on behalf of the Nominee Purchaser by Mr Buchanan did not get to grips with this central point.

Issue 4: hope value in respect of flat 3

50. Mr Munro confirmed that it was merely in respect of flat 3 that there was a dispute regarding the existence and quantification of hope value. As regards the GLG Flat and flat 4 which were also held by non participating tenants there was an agreement as to the approach to be applied in both cases and agreement as to the figures regarding flat 4. (As regards such agreement see the Tribunal's note of qualification at the end of this decision.)

51. Mr Munro pointed out that any hope value for flat 3 needed to be dealt with separately – ie it was not already dealt with in the deferment rate, see paragraph 69 of Lord Neuberger's speech in *Sportelli*.

52. Mr Munro submitted that the hypothetical purchaser would be advised as to the potential marriage value which could be unlocked by the grant of a lease extension to the tenant of flat 3. The hypothetical purchaser would be aware that this tenant was not a participating tenant and had not served a section 42 notice seeking an extension of the lease. Mr Munro questioned whether the hypothetical purchaser would actually make enquiries as to the personal circumstances of the tenant of flat 3. He submitted the hypothetical purchaser would be advised that very few lessees actually allow their leases to run out rather than exercise rights to claim an extended lease or to participate in a collective enfranchisement. He submitted that the evidence indicated also that the vast majority of lessees did not leave seeking a lease extension until the last minute – he referred to Appendix 9 to Mr Clark's witness statement.

53. As regards the quantification of the hope value Mr Munro relied upon Mr Clark's own opinion which was expressed by way of agreement with previous evidence given by Mr Roland Cullum FRICS in relation to 13 South Terrace, namely that a hypothetical purchaser would be prepared to pay, as part of the purchase price of the freehold, 20% of the marriage value that would be released if on the valuation date a lease extension was to be granted to the tenant of flat 3. Upon any such notional transaction, were it to be proceeding under section 42, the marriage value would fall to be divided 50:50, such that a payment of 20% of such marriage value would involve a payment of 40% of the landlord's share of the marriage value. Mr Munro contended that the Freeholder was entitled to rely upon Mr Clark's own evidence to the Tribunal and also, by way of support, upon what was in effect the hearsay evidence of Mr Cullum given in the 13 South Terrace case – he referred to *31 Cadogan Square Freehold Limited v Earl Cadogan* [2010] UK UT 321 (LC) at paragraph 79. Mr Munro pointed out that one could not expect there to be open market valuation evidence which could identify the quantum of hope value, because open market transactions would be affected by being carried out in the Act world rather than the no-Act world.

54. As regards the argument that the hypothetical purchaser would be concerned by the fact that it was being asked to pay money on the valuation date in return for a chance of obtaining future hope value, being a chance which might not materialise until several years later when the amount of the marriage value available would have decreased, Mr Munro pointed out that, while it was generally agreed between the experts that the amount of marriage value decreased as the remainder of the lease got shorter, there was no evidence as to how much smaller the marriage value available would be in, say, 10 years from the valuation date.

Issue 5: relativity between freehold and long leasehold values

55. Mr Munro commended the evidence given by Miss Joyce that the appropriate percentage to use was 98% where the long lease was 100 to 115 years, 98.5% where it was 115 to 125 years and 99% where it was more than 125 years.

Issue 6: form of restrictive covenant

56. Mr Munro referred to the relevant statutory provisions which are to be found in Schedule 7 paragraph 5 of the 1993 Act:

> "(1) As regards restrictive covenants, the conveyance shall include –
>
> (a) such provisions (if any) as the freeholder may require to secure that the nominee purchaser is bound by, or to indemnify the freeholder against breaches of, restrictive covenants which –
>
> (i) affect the relevant premises otherwise than by virtue of any lease subject to which the relevant premises are to be acquired or any agreement collateral to any such lease, and
>
> (ii) are immediately before the appropriate time enforceable for the benefit of other property; and
>
> (b) such provisions (if any) as the freeholder or the nominee purchaser may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of any such lease or collateral agreement as is mentioned in paragraph (a)(i), being either –
>
> (i) restrictions affecting the relevant premises which are capable of benefiting other property and (if enforceable only by the freeholder) are such as materially to enhance the value of the other property, or
>
> (ii) restrictions affecting other property which are such as materially to enhance the value of the relevant premises; and
>
> (c) such further restrictions as the freeholder may require to restrict the use of the relevant premises in a way which –

(i) will not interfere with the reasonable enjoyment of those premises as they have been enjoyed during the currency of the leases subject to which they are to be acquired, but

(ii) will materially enhance the value of other property in which the freeholder has an interest at the relevant date.

(2) In this paragraph 'restrictive covenant' means a covenant or agreement restrictive of the user of any land or building."

57. Mr Munro submitted that it did not matter whether the argument fell to be considered under paragraph (b) or (c), because in the present case it was not suggested that the restrictions sought by the freeholder (and imposed by the LVT) would interfere with the reasonable enjoyment of the premises as they have been enjoyed during the current leases subject to which they are to be acquired. Accordingly the crucial question was whether the user restriction sought by the Freeholder was one which:

> "will materially enhance the value of other property in which the freeholder has an interest at the relevant date."

The other property to which the Freeholder draws attention is the other property owned by him in Cadogan Square – ie effectively the whole of Cadogan Square except for those buildings which have already been enfranchised. Mr Munro also drew attention to the fact that the LVT had upheld the Freeholder's arguments on this point and had ordered the inclusion of the covenant as sought by the Freeholder – the burden was on the Nominee Purchaser to show that the LVT was wrong in its conclusion, see *Moreau v Howard de Walden Estates Limited* [2003] Lands Tribunal LRA/2/2002 (unreported) at paragraph 172.

58. Mr Munro argued that the statutory test of material enhancement is not a particularly stringent one. Decisions of the Lands Tribunal in, inter alia, *Moreau* and in *Higgs v Paul* [2005] Lands Tribunal LRA/2/2005 (unreported), show that the maintenance of value of other property will satisfy the test and that there is no need for evidence as to the effect on monetary value of the proposed covenant, it being a matter of general impression and not a detailed valuation exercise. Thus the concept of material enhancement includes both an increase in value due to restrictions and the maintenance of value which would otherwise deteriorate.

59. Mr Munro submitted that the Nominee Purchaser's contentions were for a covenant which would in effect allow her to put as many unconnected people into each flat as could fit, such that without the restriction sought by the Freeholder the Nominee Purchaser (or the lessees of the respective flats) could turn the property into a common boarding house or a house in multiple occupation. Mr Munro submitted that the wording of the covenant in the existing lease, which restricts the use of each flat to being "in one occupation only" gives rise to a problem because it is unclear as to what is meant by one occupation. Similarly the clause proposed by the Freeholder in his counter-notice, which would restrict the occupation of each of the six self contained flats or maisonettes to "the occupation of one family or household only" would give rise to argument as to what is meant by "household".

60. Mr Munro accepted that there was no evidence either way before the Tribunal as to what covenants exist in relation to other buildings in Cadogan Square.

Nominee Purchaser's submissions

61. On behalf of the Nominee Purchaser Mr Jourdan QC advanced the following arguments upon the various issues.

Issue 1: virtual freehold value of the GLG Flat

62. Mr Jourdan accepted that both Mr Buchanan and Miss Joyce relied heavily on one comparable each, 58 Cadogan Square (unimproved) in the case of Mr Buchanan and 44 Cadogan Square (improved) in the case of Miss Joyce. He submitted the two sales were only 10 months apart so that the argument that the comparable at No.58 was too old a transaction was unsound, especially bearing in mind that the adjustment required over the relevant period was a very modest one because the market was flat.

63. He submitted that the comparable relied upon by Miss Joyce was a professionally modernised flat and that the evidence was that such flats sell to a different market as compared with unimproved flats. He referred to Mr Buchanan's evidence upon this point which Miss Joyce had accepted was probably correct. Mr Jourdan drew attention to the paired sales in unimproved and improved states at Nos.21, 44 and 58 Cadogan Square and submitted that the uplift in values (32%, 38% and 50% respectively) were far too large a percentage to enable an appropriate adjustment to be made to a value obtained on a sale of such an improved flat for the purpose of obtaining the unimproved value. In comparison the adjustments needed to Mr Buchanan's comparable at 58 Cadogan Square were, he submitted, modest and mostly uncontroversial (now that Mr Buchanan had corrected for the allowance he had not previously fully made for outside space).

64. Mr Jourdan also referred to the fact that three LVTs have looked at the relevant evidence and two of them have arrived at far lower figures than the present LVT (namely the decisions relating to 23 Cadogan Square and 38 Cadogan Square – the latter was the subject of an outstanding appeal where the assessment of certain virtual freehold values was in issue).

65. The Tribunal drew attention to the fact that at certain stages in the calculation it was necessary to assess the improved or "as was" condition of the GLG Flat (ie the condition it was in at the valuation date and without disregarding improvements) because the tenant of the GLG Flat is not a participating tenant. The Tribunal asked Mr Jourdan whether the argument that it was wrong to start with a comparable for the sale of an improved flat (as Miss Joyce did) rather than an unimproved flat (as Mr Buchanan did) was equally strong when what was sought to be valued was the GLG Flat in its as was state – ie without disregarding improvements. Mr Jourdan submitted that Mr Buchanan, when saying that sales of improved flats were of no assistance, was dealing with flats which had been professionally improved to a high standard

recently. That was to be compared with what had happened at the GLG Flat, where the improvements had been made in about 1994 and where the improvements were no more extensive than those recorded in the Agreed Statement of Facts. He accepted that Mr Buchanan did indeed in his witness statement state that the layout of the GLG Flat was vastly improved, but that was merely dealing with the layout rather than the finish. Mr Buchanan had added 5% to the unimproved value to allow for these improvements and, on Mr Buchanan's figures, this amounted to £70,000 (ie 5% of £1,400,000). Mr Jourdan submitted that an allowance of £70,000 for the improvements as recorded in the Agreed Statement of Facts was ample. He submitted in fact that any purchaser of the GLG Flat would be likely to strip out the finish so as to be left with merely the improved layout.

Issue 2: whether additional value arises from the possibility of amalgamating the GLG Flat with the caretaker's flat

66. Mr Jourdan submitted that this point was not open to the Freeholder at all because it had not been taken before the LVT. The Freeholder was not entitled to take a completely new point, see paragraph 9 above.

67. Quite apart from the foregoing, Mr Jourdan submitted that the fact that it had apparently not occurred to the Freeholder or his expert (Miss Joyce) when preparing evidence for the LVT in 2005 and separately in 2007 that there was extra value to be unlocked by an amalgamation of these two units pointed strongly towards the fact that there was no such extra value to be unlocked at all.

68. Mr Jourdan drew attention to the weaknesses in Miss Joyce's evidence on this topic as summarised in paragraph 23 above. He submitted that no satisfactory evidence had been called by the Freeholder on this new point. He further pointed out that the lease of flat 2 had already been extended, but the Freeholder had failed to establish that there existed the right to interfere with the heating system and to move the boilers without the consent of such tenant. The hypothetical purchaser would be further discouraged from bidding any extra to reflect the possible value of amalgamating the units by the prospect of having to come to some agreement with the tenant of flat 2. In summary Mr Jourdan argued that the point was not open to the Freeholder and, if it was open, the Freeholder had failed to prove any extra value arising from the alleged possibility of amalgamating the two units.

Issue 3: existing lease value of first floor flat

69. Mr Jourdan submitted that the LVT at paragraphs 65-69 of its decision correctly analysed this point. The LVT took into account the transaction at £650,000 involving the headlease and the lease of the first floor flat, but the LVT also looked at the other evidence presented to it. In the light of all the evidence the LVT reached the appropriate conclusion. Mr Jourdan submitted that the difficulty with the Freeholder's case is that he disregards the other evidence and concentrates intensely on this one off-market sale of the headlease together with the lease

of the first floor flat – the Freeholder then says that in the light of this single transaction there is no answer to the Freeholder's argument.

70. Mr Jourdan submitted that an analysis of the other comparables referred to by Mr Buchanan supported the figure which the LVT reached.

Issue 4: hope value in respect of flat 3

71. The hope value issue related only to this third floor flat. Mr Jourdan pointed out that Mr Clark had accepted there was no new evidence on this issue since he and Miss Joyce gave evidence to the Lands Tribunal in *Chelsea Properties Limited v Earl Cadogan* [2007] Lands Tribunal LRA/69/2006 (unreported) where Miss Joyce had suggested an allowance of 10% for hope value and where it was held that there was no satisfactory evidence in that particular case of any hope value.

72. Mr Jourdan drew attention to the fact at the subject premises (ie No.42) there were three live section 42 notices outstanding at the valuation date, namely in respect of the GLG Flat, the first floor flat, and the fourth floor flat (the tenant of the second floor flat having already obtained an extension), but the tenant of the third floor flat (ie flat 3) had not served one. Also the tenant of flat 3 had declined the opportunity to participate in the collective enfranchisement. The evidence showed that as time goes by the latent marriage value diminishes, as Mr Clark accepted. Also the material in Mr Clark's Appendix 9 showed that there were 156 section 42 claims for lease extensions which were made when the outstanding term of the lease was 17.33 years unexpired or less on the Grosvenor and Cadogan Estates, and of these about a third were made when the lease had 5.75 years or less. At such a late stage in the lease the marriage value would, as Mr Buchanan said, be very small. He submitted that no rational hypothetical purchaser of the freehold of No.42 would pay any or any significant hope value in these circumstances in respect of flat 3. Mr Jourdan also submitted that there was no satisfactory evidence before the Tribunal as to what the latent marriage value was, because Miss Joyce had not prepared an existing lease value in respect of flat 3.

Issue 5: relativity between freehold and long leasehold values

73. Mr Jourdan submitted that on the facts of the present case, and bearing in mind the approaches taken by the respective valuers, it would be appropriate to adopt a percentage of 98.5%.

Issue 6: form of restrictive covenant

74. Mr Jourdan pointed out that the Nominee Purchaser now contended for exactly the form of covenant which the Freeholder had formally requested in his counter-notice.

75. Mr Jourdan submitted that the restrictive covenant sought by the Freeholder was substantially different from the restrictive covenant in the headlease and therefore the imposition of this covenant would only be justified under Schedule 7 paragraph 5(c) and not under paragraph 5(b), see *Moreau*. Accordingly the question was whether the proposed covenant would materially enhance the value of other property in which the Freeholder had an interest at the relevant date. Mr Jourdan submitted that the decision in *Moreau* was incorrect in holding that a material enhancement could be proved without the need for valuation evidence and in holding that material enhancement could be established in general terms. Mr Jourdan contrasted the wording of Schedule 7 paragraph 5(c) with the wording of section 84(1A) of the Law of Property Act 1925 which referred, in the context of restrictive covenants, to "practical benefits of substantial value or advantage". Under Schedule 7 paragraph 5(c)(ii) there was no alternative to the word "value". Accordingly it was necessary for the Freeholder to prove that the proposed covenant would materially enhance the value (in money terms) of other property in which he had an interest at the relevant date. The Freeholder had failed to do this.

76. Mr Jourdan further submitted that, if the foregoing was wrong and the *Moreau* approach was the correct one, then the LVT was wrong to impose the restrictive covenant which it did impose. He submitted that the words used in the covenant imposed would prevent two friends, who were not part of the same family, from sharing a flat together. There was no justification for such a restriction and it could make no difference to the remainder of the Cadogan Estate whether a flat was occupied by people who were in the same family or people who were not in the same family. The existing headlease required that the various units were "in one occupation only" but did not require that the occupants must be members of the same family.

77. Mr Jourdan also drew attention to the fact that there was no evidence that a covenant in the form imposed by the LVT (as opposed to a covenant in the form in the Freeholder's counter-notice – being a form which the Nominee Purchaser would agree to) had been imposed uniformly or indeed even widely or at all in relation to other buildings in Cadogan Square. Thus this was not a case where the Freeholder could argue that, if the covenant sought by him was not imposed, then this would constitute the first breach in an otherwise uniform local law where everyone was bound by a covenant in these terms.

Conclusions

Issue 1: virtual freehold value of the GLG Flat

78. Both Miss Joyce and Mr Buchanan relied mainly upon one comparable; Miss Joyce relied upon the sale of flat 1 at No.44 in February 2003 (improved) while Mr Buchanan relied upon the sale of flat 1 at No.58 in April 2002 (unimproved). Mr Buchanan said that there were different markets for improved and unimproved flats. Miss Joyce said that he was "probably right" about that.

79. The parties have agreed that for the purposes of the Schedule 6 valuation, and for the purposes of these appeals only, the tenant of the GLG Flat is to be assumed to be a non participating tenant. We are therefore concerned to ascertain the value of that flat without making any adjustment for improvements; in other words its value "as is". So we begin our analysis by considering the condition of the GLG Flat as it was at the valuation date (29 November 2005). By that time the flat had been improved. A brief description of the improvements is contained in a licence for alterations dated 11 April 1984 and is reproduced in the statement of agreed facts (see Appendix 1). Mr Buchanan described the improvements in his witness statement in the following terms:

> "6.2 It is clear from the extent of the improvements that the original state of the maisonette was unmodernised and lacking in en suite facilities. The creation of en suite bathroom facilities to the bedrooms, dressing room to the master bedroom, separate WC/cloakroom for the guests, direct access to the garden from the master bedroom and also the dining room, forming new laundry room and storage in the vault space and hence enlarging the kitchen are major improvements. The layout of the maisonette was vastly improved as a result."

80. At the valuation date a prospective purchaser of the GLG Flat would know that the adjoining ground/lower ground floor flat 1 at No.44 had sold in February 2003 for £2,500,000. We agree with Miss Joyce that, in all its essential characteristics, flat 1 at No.44 is the best comparable to the GLG Flat. In some respects the GLG Flat is better than its neighbour; for instance it has bay windows to the front which improve the oblique view of the Square and it has a larger outdoor area.

81. Judging from the date of the licence for alterations the improvements to the GLG Flat were undertaken some twenty years before the valuation date. We accept that the improvements to flat 1 at No.44 were undertaken much more recently (during the second half of 2002) and that, despite Miss Joyce's hearsay evidence to the contrary, they were likely to have been completed to a high standard as contended by Mr Buchanan (who also could only rely on hearsay evidence). They would also reflect a more contemporary approach to layout and finishes. But, in our opinion, and supported by Mr Buchanan's observations, the GLG Flat had been improved in a way that had increased its value. We can see no reason why a prospective purchaser would look to the sale of the unimproved flat 1 at No.58 in April 2002 as a better comparable than the more recent sale of the adjoining and improved flat 1 at No.44.

82. We note that all three of the unimproved sales relied upon by Mr Buchanan (at Nos.21, 44 and 58) occurred before any of the sales of the improved properties took place. At the time of the unimproved sales the market was therefore apparently unaware of the significant increases in value that such improvements could generate. But that is not true at the valuation date by which time the sale of the three improved properties had taken place. The prospective purchaser of the GLG Flat would be well aware of the possible returns from modernisation. He would be buying a flat which, although not improved to the latest specification, benefitted from "major improvements" and a "vastly improved layout" compared to an unimproved flat. What would such a prospective purchaser do when considering making a bid?

83. Advised by Mr Buchanan he would start with the rate per square foot derived from the sale of the unimproved No.58 and increase this by 5% to allow for what he now describes in his supplementary witness statement as the "limited extent" of the improvements at No.42. This gives a value of £1,470,000 (£857 psf). Advised by Miss Joyce he would start with the average of the improved values of Nos.44, 58 and 22, deduct 25% to obtain the unimproved value and then add back 12.5% to reflect the actual improvements at the GLG Flat. This gives a value of £1,960,000 (£1,143 psf). So there is some £500,000 difference between the two experts.

84. In our opinion a prospective purchaser would look first at the values being obtained for comparable improved properties. He would recognise that No.44 was the best, but not the only, such comparable. He would also recognise that the GLG Flat was not as valuable as its newly improved neighbour at No.44. Further expenditure would be required to refurbish the GLG Flat to an equivalent standard. We approach the valuation of the improved GLG Flat by looking at what it would be worth if it had been improved to the same standard as No.44.

85. The parties agree that the sale price of flat 1 at No.44 (improved) is £2,629,570 (£1,493 psf) when adjusted for time to the valuation date. Apart from improvements Mr Buchanan makes no further adjustments but we agree with Miss Joyce that a further adjustment should be made to reflect the superior outdoor space at the GLG Flat and we adopt her allowance of 2.5%. For the reasons that we explain in our conclusions on issue 5 below we consider that a relativity adjustment of 98% should be made. Applying these adjustments to the time adjusted value gives a figure of £2,750,316 (£1,562 psf). Applying that rate to the GLG Flat gives a rounded value of £2,680,000 were it to be improved to the same standard as flat 1 at No.44. The difference between this figure and Miss Joyce's valuation is £720,000 or £420 psf.

86. The above analysis assumes that the prospective purchaser would consider the value of a fully improved GLG Flat by reference only to the sale of flat 1 at No.44. A more cautious approach, and one which Miss Joyce adopted when calculating the value of the GLG Flat, is to take an average of the improved comparables (and assuming that all the properties were improved to the same high standard). Flat 2 at No.22 was sold after the valuation date and, in any event, as Mr Munro established during cross-examination of Mr Buchanan, it can be distinguished from the GLG Flat in several respects. The improved flat 1 at No.21 was sold before the valuation date and can be included in our analysis (although it is more than twice the size of the GLG flat on account of which Mr Buchanan described it – and we agree – as being less reliable).

87. In our opinion the purchaser would give significantly more weight to the sale of flat 1 at No.44 and we have weighted this transaction at 70%, while weighting the transactions at Nos.21 and 58 at 10% and 20% respectively. In analysing these other two transactions we have adopted Mr Buchanan's adjustments for No. 21. We also prefer Mr Buchanan's revised adjustment of 7.5% for outside space at No.58. The weighted average rate so calculated is £1,450 psf which gives a value for the GLG Flat (improved to the standard of flat 1 at No.44) of £2,485,000 (rounded). The difference between this figure and Miss Joyce's valuation is £525,000 or £306 psf. Miss Joyce said during cross-examination that she thought an allowance

of £300 psf or 30% was the maximum deduction that would be made in respect of improvements. In our opinion a prospective purchaser would consider that there was an adequate margin of safety in the range of £525,000 to £720,000 to allow for the costs of further refurbishment and upgrading of the GLG Flat and to justify a price of £1,960,000. We consider that Mr Buchanan is wrong to start by looking at unimproved values and that his valuation of £1,470,000 substantially undervalues the GLG Flat in its improved state as at the valuation date.

88. It is also necessary, given the agreement of the parties about how the section 42 notice is to be taken into account, to consider the unimproved value of the GLG Flat as at the Schedule 13 valuation date of 17 June 2004. Mr Buchanan relies upon the sale of flat 1 at No.58 and values the GLG Flat at £1,352,606 (£789 psf). This figure is Mr Buchanan's value of £1,400,000 as at November 2005 adjusted for time at 3.5%. Miss Joyce takes the unimproved value as 87.5% of the improved value which gives £1,715,000. Mr Clark adopts this figure and then adjusts it for time at 3.1% (based on the Savills Index) to give £1,661,835 (£969 psf). As at June 2004 a prospective purchaser would be aware of the sales of the improved properties at flat 1 at No.44 and flat 1 at No.58 and would therefore know that improvement works could lead to a large increase in value. In our opinion that prospect would affect the price that a purchaser would be prepared to pay for an unimproved property to a level that is not properly reflected in Mr Buchanan's three unimproved comparables, all of which were sold before any of the improved flats were sold. We consider that Mr Buchanan's allowance of 5% for improvements is too low and does not reflect the observations about them that he made in his original witness statement. It is true that the improvements were undertaken a long time before the valuation date but they were described as major works and their benefits in terms of the improved layout are enduring. We consider that a deduction of 12.5% from the improved value to reflect the improvements is reasonable and we adopt Mr Clark's unimproved value of £1,661,835.

Issue 2: whether additional value arises from the possibility of amalgamating the GLG Flat with the caretaker's flat.

89. As regards the question whether this point is open to the Freeholder at all, we conclude that it is. The Freeholder is not contending for a higher price than he contended for before the LVT. There is no possible prejudice to the Nominee Purchaser in this point being raised. The point was raised in paragraph 14 of the original grounds of appeal on the basis of which the Freeholder sought (and was granted) permission to appeal in 2007 and the point was further developed in the Freeholder's experts' witness statements served over two years ago.

90. However we conclude that the Freeholder has failed to prove on the evidence that a hypothetical purchaser would attach any additional value to this possibility of amalgamating the two units. There were substantial difficulties with Miss Joyce's evidence on this topic as summarised in paragraph 23 above and accepted by Mr Munro. In summary Miss Joyce had not prepared any form of valuation in respect of the alleged value which could be obtained by amalgamating the two units – she had instead merely taken certain figures "for the sake of illustration", being figures which happen to show a value of £96,400. She had merely asserted

that if she had done a proper valuation she would be very surprised if such a valuation had not worked out in the way she indicated, namely even higher than £96,400. However this additional value from amalgamating the units had formed no part of her written evidence to the LVT in 2005 or in 2007. Also she had not considered the practical problems, either in engineering terms or in listed building consent terms of moving the boilers to the front room. We conclude the Freeholder has simply failed to prove his case on this point. We reject Mr Munro's submission which appeared to us to amount to a suggestion that, even if we found the Freeholder's valuation evidence on this point unsatisfactory, we should fill the gap by speculating that there must be some hidden value in the transaction for the Nominee Purchaser bearing in mind how the Nominee Purchaser was pressing forward vigorously with this collective enfranchisement and bearing in mind how other nominee purchasers connected with the Erkman family were pressing forward with similar collective enfranchisements in relation to other buildings in Cadogan Square. We conclude it would be wrong for us to speculate in this manner or to attach any weight to any such argument.

Issue 3: existing lease value of first floor flat

91. In relation to the sale of the headlease together with the lease of the first floor flat for £650,000 in January 2006, Miss Joyce accepted that this was a single transaction in which (i) the lease of the first floor flat was not offered separately from the headlease but was only offered as part of a bundle with the headlease, and (ii) this bundle of interests was not offered on the open market but was only offered to a potential purchaser (or potential purchasers) within No.42. Miss Joyce accepted that the market in general did not have a chance to bid for the lease of the first floor flat.

92. We can see how the headlease could have value to other tenants within the building bearing in mind the potential rights under the 1993 Act which ownership of the headlease might bring. However there is no evidence before us to suggest that in the open market (and with such special purchasers not bidding) the headlease would have any significant value. We conclude the LVT's approach was correct in looking at all the evidence, including the comparables relied upon by Mr Buchanan. We do the same. Having looked at the evidence in this manner we conclude it would be wrong to find that the value of the lease of the first floor flat was only £575,000. Such a value is shown in Appendix 7 to Mr Buchanan's proof of evidence as giving a rate per square foot substantially less than other transactions relating to first floor flats in Cadogan Square and also substantially less than a transaction in relation to flat 2 at No.42 – one would normally expect the first floor to command a higher rather than a lower price per square foot than the second floor flat. We see no reason to differ from the LVT's decision that the proper value to take for the existing lease of the first floor flat was £638,577 (£555 per square foot) which after agreed deduction of 12½% for 1993 Act rights becomes £558,755, which is the figure adopted by Mr Buchanan.

93. We observe that the relativity between this figure and the agreed virtual freehold value for the first floor flat of £1,199,708 is 46.57%. Miss Joyce said that the Gerald Eve/John D Wood 1996 graph of relativity upon which she relied as a check showed a relativity for an unexpired term of 17.29 years of 38.66%. We consider that the difference between these two

relativities reflects, at least in part, the compromise reached by the parties about the allowance to be made for the benefit of the Act and their acceptance of the LVT's figure for the virtual freehold value of flat 1. We also note that the parties have agreed both the virtual freehold value and the value of the existing leasehold (17.57 years unexpired as at the valuation date for the section 42 notice), of flat 4. These show a relativity of 47.39% which is consistent with the relativity in respect of flat 1. We do not consider that the result of the comparison between the expected (38.66%) and derived (46.57%) relativities invalidates the analysis of the evidence that we have reviewed and adopted.

Issue 4: hope value in respect of flat 3

94. The tenant of flat 3, Mr Allen, has not served a section 42 notice and has not participated in the collective enfranchisement. But that does not mean that he, or his successor in title, might not want to extend the lease in the future. The financial benefits of doing so, in terms of a share of the marriage value, are an attractive incentive, although, in the no Act world with which we are here concerned, the tenant has no right to a prescribed share of such value.

95. It is accepted by the parties (and was recognised by the House of Lords in *Sportelli*) that marriage value declines as the unexpired term of the lease reduces. But we heard no evidence about how that decline would operate in this case and there were no comparative valuations to assist us. Mr Munro submitted that capital growth would offset the reduction in marriage value over time, but again there was no evidence of how, and to what extent, this might happen. We have Mr Clark's assessment of hope value at 20% of the potential marriage value, which is based upon the LVT's unchallenged figure for the extended lease value of flat 3 and an existing lease value which is derived from an average of Miss Joyce's relativity figures. It is also based on the hearsay evidence of a third party, Mr Cullum, to this Tribunal in *Bircham*, an uncontested appeal that was heard by written representations.

96. There is evidence that it is very rare, but not unique, for a tenant to let his lease run to term. But approximately one third of tenants who serve section 42 notices in respect of leases with unexpired terms of 17.33 years or less do so when there are less than 5.75 years remaining on the lease. Given these figures and the current position, so far as is known, of the tenant of flat 3, we can see little to encourage a prospective purchaser that he could expect an early approach to extend the lease. Mr Clark's assessment that such a purchaser would pay 20% of the potential marriage value as at the valuation date (or 40% of his share of that value if it were to be divided equally) is, in our opinion, far too optimistic.

97. In *Blendcrown Ltd v Church Commissioners for England* [2004] 1 EGLR 143 the Tribunal, P H Clarke FRICS, said at 151 [77]:

> "I would emphasise that hope value is a speculative element of value that does not lend itself to objective assessment. It is essentially a matter of informed opinion. … [It] is, by its nature, speculative, uncertain and incapable of precise assessment."

We consider the Tribunal's description to be a fair summary of the valuation problems faced by the prospective purchaser of No.42. Such a purchaser would be cautious about attributing any significant value to the prospect of a single tenant, holding a short lease and who has given no indication to date that he wants to extend his lease, making an early approach to negotiate a new lease and to share the (diminishing) marriage value. In our opinion such a purchaser might be prepared to make a small allowance for hope value by rounding up his bid but we do not think it likely that this would be greater than a maximum of £10,000. We have therefore made an end allowance to reflect such limited hope value. Our valuation is given in Appendix 2 and we have rounded up the premium payable to reflect hope value for flat 3 in the sum of £8,444.

Issue 5: relativity between freehold and long leasehold values

98. There is little difference between the parties on this issue. The Nominee Purchaser argues that the relativity for very long leases (which we take to be over 100 years unexpired term) should be 99% and the Freeholder says that it should range between 98% and 99% depending upon the length of the unexpired term under consideration. We prefer the evidence of the Freeholder on this issue which is supported at the lower end of the range by reference to the Gerald Eve/John D Wood 1996 graph which shows a relativity of 98% at 100 years. In our opinion the following range of relativities is appropriate: leases with unexpired terms of 100 to 114 years – 98%; 115 to 129 years – 98.5% and above 130 years – 99%. We do not consider that the additional category of 98.75% proposed by Mr Clark for unexpired terms of between 125 – 130 years is justified.

Issue 6: form of restrictive covenant

99. In summary the various restrictions we have to consider are restrictions of No.42 to use as:

> Covenant (a): A self-contained maisonette and self-contained flats each to be "in one occupation only." This is the existing covenant in the headlease.
>
> Covenant (b): A single private dwelling in one family occupation only or not more than six self-contained flats or maisonettes each to be "in the occupation of one family or household only". This is the restriction proposed in the Freeholder's counter-notice being the restriction which the Nominee Purchaser is prepared to accept.
>
> Covenant (c): A single private dwellinghouse in one family occupation only or as not more than six self-contained private residential flats each to be used as "a private dwelling in one family occupation only". This is the covenant contended for by the Freeholder and accepted by the LVT.

100. The Freeholder's case started from the proposition that some tightening of the user restriction beyond covenant (a) above was justified under the terms of Schedule 7 paragraph 5 (which is set out at paragraph 56 above). Mr Munro submitted that this existing covenant was unsatisfactory and gave rise to potential argument as to what is meant by "in one occupation

only". We do not overlook the fact that there is a separate covenant against nuisance or annoyance. However Mr Jourdan did not argue that there was no need for any modification of covenant (a) which already appears in the headlease. It therefore being the approach of both parties that there should be some modification of the covenant beyond covenant (a), we are prepared to accept that some modification to the restrictive covenant, ie so that the restriction is somewhat tighter than in covenant (a), can properly be introduced under Schedule 7 paragraph 5. The question therefore next arises as to which subparagraph of paragraph 7 is applicable and what are the relevant principles.

101. We are not concerned with subparagraph 5(1)(a).

102. As regards subparagraph 5(1)(b), this is concerned with preserving the substance of an existing restriction but adapting the wording to make the restriction applicable to the current circumstances (including the fact that one is concerned with a transfer of a freehold rather than the grant of a lease). The Freeholder wants to move to a more restrictive covenant than covenant (a). Whether the alteration is a movement to covenant (b) above or to covenant (c) above the alteration will constitute an alteration of substance rather than merely the preservation or continuance of an existing restriction. However an alteration of substance is not something that can properly be done within the words "with suitable adaptations", see *Le Mesurier v Pitt* (1972) P & CR 389 and *Moreau*. Accordingly the alteration does not fall within subparagraph 5(1)(b) and it is necessary to consider what additional restriction, ie beyond covenant (a), can properly be introduced under subparagraph 5(1)(c).

103. As regards subparagraph 5(1)(c)(i) there is no evidence before us to suggest that either covenant (b) or covenant (c) would interfere with the reasonable enjoyment of the premises as they have been enjoyed during the currency of the leases subject to which they are to be acquired. Accordingly, no problem arises in relation to either of the proposed covenants under this provision.

104. In order to fall within subparagraph 5(1)(c)(ii) it is necessary that the covenant will materially enhance the value of other property in which the Freeholder has an interest at the relevant date. We accept that, having regard to *Peck v The Trustees of Hornsey Parochial Charities* (1971) 22 P & CR 789 and to *Le Mesurier* and to *Moreau* the word "enhance" includes the concept of maintaining a value which would otherwise deteriorate.

105. We also accept and adopt the analysis in *Moreau* at paragraph 185 where P H Clarke FRICS stated:

> "185. The second question is will each proposed restriction materially enhance the value of other property in which the respondents have an interest? I heard evidence and submissions on material enhancement, including attempts to evaluate precisely in monetary terms the effect of the restrictions on adjoining property. In my judgment, this is an impossible valuation exercise. The question of material enhancement can, in my view, only realistically be considered in general terms. I give no weight to this particular evidence nor to the alleged admission by Mr Ryan (the exact extent of

> which has been disputed) that there would be only a slight diminution in value in the absence of the respondents' restrictions. We are not concerned with diminution in value but with the *material enhancement in value* in consequence of the restrictions. In my judgment, material enhancement is essentially a matter of general impression."

We do not accept Mr Jourdan's argument that, having regard to the comparison of language between Schedule 7 paragraph 5 of the 1993 Act and section 84(1A) of the Law of Property Act 1925 as amended it is a prerequisite of a finding under subparagraph 5(1)(c)(ii) (ie a finding that a restriction will materially enhance the value of other property) that there must be valuation evidence which quantifies in money terms the effect on value of other property owned by the Freeholder. We conclude that it is not necessary for there to be quantified valuation evidence to show that the inclusion of a restriction will uplift the value of other relevant property by £x or will prevent the diminution in value of other relevant property by £y (where £x and £y are quantified sums). However there must be evidence to satisfy the Tribunal, albeit as a matter of general impression, that there will be some monetary uplift in value (albeit unquantified) or the prevention of some monetary diminution in value (albeit unquantified). If all that was proved was that a landlord merely lost some advantage, being an advantage which could have no effect one way or the other on monetary values of other relevant property, then this would not be sufficient. In the present case we conclude that adequate control over the nature of occupation of No.42 or of the various units within it is a matter of importance for the Freeholder. A restriction which sufficiently controls the nature of this occupation is a restriction which in our judgment will materially enhance the value of other property owned by the Freeholder in Cadogan Square. We reach this conclusion despite there being only broad evidence on the topic from Miss Joyce rather than a fully worked valuation.

106. Accordingly we conclude that the Freeholder is entitled to some tightening of the user restriction beyond the restriction in the existing headlease. Such a tightening will be so as to provide sufficient control over the occupation of No.42 and will thereby enhance the value of other property owned by the Freeholder in Cadogan Square.

107. The question therefore arises as to the extent to which the restriction should be tightened. We do not consider that the Freeholder is entitled to argue that as subparagraph 5(1)(c)(i) is satisfied and as the restriction as contended for by him will also satisfy paragraph 5(1)(c)(ii), then the Tribunal must necessarily accept the Freeholder's contentions and order the inclusion of a restriction in the exact form contended for by the Freeholder. To do so overlooks the opening words of paragraph (c) which are "such further restrictions as the Freeholder may require to restrict the use of the relevant premises in a way which …". So far as concerns the word "require" we do not read this in the sense of meaning demand or command as in the expression: "witnesses are required to attend court no later than 9.45 am on the morning of the hearing". Instead we consider the word require is synonymous with "need". Also the opening words refer to "such further restrictions". Thus the only restrictions which can be imposed are such further restrictions as are needed to restrict the use of the relevant premises in a way which complies with subparagraphs (i) and (ii). Unless a further restriction is needed for such purposes it should not be included. Accordingly in a case where the Nominee Purchaser is prepared to agree a further restriction (in a form originally asked for by the Freeholder) we conclude that the appropriate inquiry is to consider whether this restriction falls within paragraph 5(1)(c) (and we do conclude that it does so) and then to consider whether, granted

that a restriction in this form can be imposed, there is some yet further restriction beyond this which the Freeholder needs being a restriction falling within subparagraphs (c)(i) and (ii).

108. In so concluding we do not overlook the reasoning in *Le Mesurier* at page 398, but we note that the Tribunal there was considering the continuance of existing restrictions (with adaptation if appropriate) and not the introduction of new restrictions.

109. Testing the matter in the foregoing way, we do not accept that it will materially enhance the value of other property in which the Freeholder had an interest at the relevant date for the restriction to be further tightened from a restriction to use "in the occupation of one family or household only" to a restriction to use as "a single private dwellinghouse in one family occupation only". A restriction to use "in the occupation of one family or household only" will prevent use as a common boarding house or a house in multiple occupation (as feared by Mr Munro in his submissions). The evidence before us has not satisfied us that there would be any enhancement in the value of any other relevant property if there was forbidden occupation which could properly be described as the occupation of one household but could not be described as the occupation of one family. We consider it to be a significant weakness in the Freeholder's case on this point that there has not been produced any evidence to the Tribunal as to what are the forms of covenant which have been imposed in other transfers on collective enfranchisement or what are the forms of covenant applicable to the tenants of other buildings in Cadogan Square. There has been no evidence laid before us to suggest that if the Freeholder fails to obtain the imposition of the restriction in the form he seeks then this will in some way be the first breach in a uniform local law which has hitherto been successfully imposed. Indeed the very fact that the Freeholder himself expressly requested in his counter-notice the imposition of a covenant in a different form (being the form the Nominee Purchaser is prepared to accept) suggests that there is not some uniformity of covenants applying elsewhere in Cadogan Square.

McHale

110. Just before the present case was heard by us we heard an appeal in another case relating to a collective enfranchisement at 23 Cadogan Square where the parties were the Freeholder (ie Earl Cadogan) and a nominee purchaser which, putting it broadly, is within the Erkman family interests. The advocates representing the parties in that case were the same as in the present case. A point arose in relation to No.23 as to how the nominee purchaser in that case could preserve its position against the possibility that the Supreme Court might grant permission to appeal against the Court of Appeal's decision in *McHale* (see paragraph 3(2) above). One of the matters dealt with in argument in relation to No.23 was whether the Tribunal could (and if it could whether it should) order the inclusion as part of the terms of acquisition of some form of clause which, putting it broadly, would provide that if the *McHale* decision was reversed then the parties would agree (or the Tribunal would decide) how much less the purchase price would have been if calculated on the basis of the Supreme Court's decision rather than the Court of Appeal's decision in the *McHale* case – and the clause would then provide for the repayment by the Freeholder to the nominee purchaser of the difference between the price paid and the price that would have been payable on that basis. In the present case Mr Jourdan also

asked that the Tribunal should consider ordering the inclusion as part of the terms of acquisition of a clause to this effect. The parties adopted in the present case the arguments they had presented in relation to 23 Cadogan Square. We have given our decision in relation to 23 Cadogan Square in *Earl Cadogan v Cadogan Square Properties Limited* [2011] UKUT 68 (LC). We do not repeat what we there said, but we merely state that for the reasons given in that case we do not order the inclusion of any such clause into the terms of acquisition.

Valuation

111. Our valuation is shown in Appendix 2. We determine the total premium payable in the sum of £2,220,000, apportioned £2,219,396 to the freehold interest and £604 to the intermediate leasehold interest.

Note of qualification

112. As will have been seen from the foregoing, the parties have agreed several matters for the purposes of the present appeal. Certain of those matters are recorded in paragraph 3 above and certain others emerged during the course of the hearing. What we say below is not to be taken as in any sense a criticism of the parties – indeed the parties are to be commended upon the extent of the agreements which were reached for the purposes of the present case. There are however certain points which we would wish to draw attention to as being points which were indeed agreed and upon which the Tribunal has not been asked to make any ruling. It is possible that some or all of these matters may fall to be considered in other cases – in saying that we are not to be taken as expressing any view one way or the other as to whether the approach adopted by the parties, by agreement, in the present case is correct.

113. We first draw attention to the agreement that the GLG Flat should be treated for the purposes of the Schedule 6 calculation as being in the hands of a non participating tenant. The history regarding the ownership of the lease of the GLG Flat is set out in the Agreed Statement of Facts (see Appendix 1). In summary, as at the valuation date (namely 29 November 2005 being the date of service of the section 13 notice) the GLG Flat was held by Cigdem Erkman who was a signatory to the section 13 notice and who was a participating tenant. In due course this lease (in fact an underlease) of the GLG Flat was assigned to Cigdem Erkman's mother, Mrs Kiazim, on 19 December 2006, and she chose not to participate in the claim for the collective enfranchisement and, so the parties agreed, she became a non-participating tenant on 2 February 2007. As recorded in paragraph 3(4) above the parties to the present appeal have agreed for the purposes of this appeal that the tenant of the GLG Flat, namely Mrs Kiazim, is not a participating tenant. The valuers for both parties have approached the assessment of price under Schedule 6 on the basis that the lease of the GLG Flat was held by a non participating tenant. The fact remains however that as at the valuation date the lease of the GLG Flat was in the hands of a participating tenant – indeed had this not been the case then the section 13 notice could not have been given at all. It may be a matter for future argument as to whether in such circumstances the valuation under Schedule 6, which requires examination of a notional sale to a hypothetical purchaser as at the valuation date, should be conducted on the basis that the relevant flat was in the hands of a participating tenant on the grounds that it was

so held on the valuation date itself. However both parties have agreed to proceed on the basis that the lease of the GLG Flat was in the hands of a non participating tenant and both parties have approached the Schedule 6 calculations on that basis. We accordingly have done the same but we are not to be taken, by reason of having done so, as making any finding that this is the correct basis.

114. Separately from the foregoing, and as a consequence of the lease of the GLG Flat being treated as being in the hands of a non participating tenant, a question arose as to how the valuation under Schedule 6 should be performed bearing in mind that a section 42 notice had been served in respect of the GLG Flat and having regard to Schedule 6 paragraph 3(1)(b) which provides that one of the assumptions to be made for the purpose of valuing the freeholder's interest is that it is being offered for sale

> "on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant)."

115. The manner in which the valuers for both parties in the present case approached the question of the contribution to the purchase price made by the GLG Flat was, as stated above, to treat the tenant of the GLG Flat as being a non participating tenant. The valuers then not merely had regard to the section 42 notice (which the Act expressly says is permitted) but also appear to have had regard to the rights and obligations arising under this section 42 notice. We say this because both valuers approached the GLG Flat by first assessing the deferred value of the Freeholder's reversion in that flat and then considering whether some extra value would flow from the fact that a section 42 notice had been served such that, as a consequence, the section 42 transaction might proceed (they agreed a 75% chance of this). They then approached the matter on the basis that, if this transaction did proceed, the value which would be unlocked should be assessed by calculating such marriage value as would be appropriate in an assessment of the price to be paid pursuant to Schedule 13 supposing that an extended lease was to be granted pursuant to the section 42 notice. In other words the valuers both had regard not merely to the existence of the section 42 notice but also to the rights and obligations arising under it.

116. At one stage during his closing speech Mr Munro began to advance an argument based upon, in particular, the judgment of Lord Neuberger in *Sportelli* at paragraph 107, to the effect that the appropriate course where a section 42 notice has been served is to have regard to the fact that such a notice has been served (which thereby is evidence that the lessee of that flat is keen to obtain some lease extension) but not to have regard to the rights and obligations which accrue pursuant to such notice. We asked Mr Munro whether he was seeking to contend that both valuers had throughout their evidence proceeded on the wrong basis and whether he was contending that they should not have assessed the situation pursuant to the section 42 notice and the rights and obligations thereunder when deciding what if any additional value might be perceived by the hypothetical purchaser to exist in the premises from the ability to do some deal with the lessee of the GLG Flat. Mr Munro then indicated that he did not seek to argue this point. In the circumstances of the present case that was no doubt entirely understandable.

However we merely note that in another case it may need to be decided in circumstances such as these, where it is agreed that a flat is held by a non participating tenant and where a section 42 notice has been served in respect of it prior to the valuation date, as to whether in assessing such hope value as may exist in relation to that flat it is right (i) to have regard to the rights and obligations arising under the section 42 notice, or (ii) to disregard any such rights or obligations and merely take into account the fact that a section 42 notice has been served as evidence indicating that the lessee of that flat is seriously interested in obtaining a lease extension through negotiation. If (ii) is correct then this would appear to involve assessment as at the valuation date without disregarding improvements and without reference to rights to an extended lease under the 1993 Act whereas if (i) is correct this contemplates a transaction pursuant to the 1993 Act with a valuation date as at the date of service of the earlier section 42 notice and with the flat to be valued disregarding improvements.

Dated 11 April 2011

His Honour Judge Nicholas Huskinson

A J Trott FRICS

APPENDIX 1

STATEMENT OF FACTS RELATING TO THE CLAIM FOR COLLECTIVE ENFRANCHISEMENT OF 42 CADOGAN SQUARE, LONDON SW1

1. **Circumstances of the References**

1.1 The claim for the collective enfranchisement of 42 Cadogan Square, London SW1 was dated 29 November 2005, but was received on 30 November. It was served on Cadogan Estates Limited and The Right Honourable William Gerald Charles Earl Cadogan by the participating tenants on behalf of the Nominee Purchaser, Betul Erkman.

1.2 The Participating Tenants were named in the notice as follows:

Flat	Floor	Tenants
Caretaker's	Lower Ground	Everard Donald Stirling Page and Antony John Wedgwood (as executors of Isobel Margaret Torrance Goetz deceased)
	Lower Ground & Ground Floor	Cigdem Erkman (*)
	First Floor	Everard Donald Stirling Page and Antony John Wedgwood (as executors of Isobel Margaret Torrance Goetz deceased)
(*)	Underlease subsequently assigned to Halide Kiazim, who became a non-participating tenant on 2 February 2007 (see paragraph 1.5 below).	

1.3 The non-participating tenants were named in the notice as follows:

Flat	Floor	Tenants
	Second Floor	Mark Gordon Glaser
	Third Floor	Clive John Allen
	Fourth Floor	David Martin Zahn

1.4 The headlease, together with the underlease and benefit of the section 42 notice of claim in respect of the first floor flat was assigned on 13 January 2006 to Betul Erkman for a total sum of £650,000. In the respective Land Registry entries dated 12 May 2006, the prices stated to have been paid on 13 January 2006 were £75,000 for the headlease and £575,000 for the underlease of the first floor flat.

1.5 The underlease and benefit of the section 42 notice of claim in respect of the lower ground & ground floor flat were assigned to Halide Kiazim on 19 December 2006. Mrs Kiazim chose not to participate in the claim for collective enfranchisement. The status of Mrs Kiazim as a non-participating tenant is accepted by the freeholder for the purpose of this appeal only.

1.6 There are outstanding claims for extended leases in respect of:

(a) Lower ground & ground floor flat dated 16 June 2004

(b) First floor flat dated 28 November 2005

(c) Fourth floor flat dated 22 August 2005

These claims are frozen pending the outcome of the collective claim.

1.7 The collective claim was admitted by way of the counter notice dated 24 February 2006

1.8 The Nominee Purchaser applied on 7 August 2006 to have the enfranchisement price and other terms of the transfer determined by the Leasehold Valuation Tribunal.

1.9 The enfranchisement price is to be determined, according to the basis of valuation provided by the Leasehold Reform, Housing and Urban Development Act 1993 in Schedule 6 (as amended).

2. Tenure of the Subject Property

2.1 The Freehold interest in the entire property at 42 Cadogan Square is vested in Earl Cadogan.

2.2 The Headlease The headleasehold interest of the whole of 42 Cadogan Square is vested in Betul Erkman, by way of a lease dated 9 March 1961, for a term of 64 years from 25 March 1959, and thus expiring 25 March 2023. Paying the yearly rent of £100 per annum on the usual quarter days. The original demise included 40 Clabon Mews, which is a mews house to the rear of the building. The freehold of the No.40 was sold on 31 January 1984 and pursuant to a claim under the 1967 Act, whereupon the head rent payable was reduced from £100 per annum to £70 per annum.

2.3 Underleases: These were granted at various dates and at various rents, as detailed below:

Flat	Lease date	Lease expiry	Rent payable	Service Charge
Ground & Basement Flat	24/03/1961	15/03/2023	£45 pa	27%
1st Floor Flat	10/06/1960	15/03/2023	£35 pa	18%
2nd Floor Flat	24/03/2005	15/03/2113	Peppercorn (following lease extension)	18%
3rd Floor Flat	22/01/1960	15/03/2023	£35 pa	18%
4th Floor Flat	23/05/1960	15/03/2023	£35 pa	18%

2.4 The underlease of the second floor flat was extended under the Leasehold Reform Housing and Urban Development Act 1993 (as amended). The extended lease contains similar undertakings on behalf of lessee and lessor to those outlined above, together with such additional covenants as were negotiated between the parties. Until the expiry or sooner

determination of the headlease, the headlessee holds the benefit of the rights and the burden of the liabilities of the Estate, subject to the terms of the headlease.

3. Description of the Property and its Surroundings

3.1 Cadogan Square is a much sought after and prime residential location in central London within easy walking distance of the restaurant and shopping facilities of Knightsbridge and Brompton Road to the north and west, Sloane Street to the east and Sloane Square and the Kings Road to the south. There are London Transport Underground stations at Knightsbridge and Sloane Square and bus routes in Sloane Square, Sloane Street, Kings Road, Knightsbridge and Brompton Road. There is a taxi rank in Sloane Square. There are NCP car parks in Cadogan Place to the east and Pavillion Road to the north.

3.2 42 Cadogan Square is a converted terraced town house built on basement, ground and four upper floors. It is situated on the west side of Cadogan Square. The accommodation comprises a caretaker's flat in part of the basement and five private dwellings. A passenger lift serves the basement to fourth floor.

3.3 The accommodation and gross internal floor areas of the flats as currently arranged are as follows:

Floor	Flat	GIA (Sq m)	GIA (Sq ft)	Accommodation
GF/LGF (rear)		171.22	1,715	Ground Floor – entrance hall, sitting room, master bedroom with en suite bathroom and dressing room, WC/cloakroom, steps down to terrace. Basement (rear) – dining room, kitchen, laundry, bedroom, WC/cloakroom.
1	Flat 1	106.97	1,151	Entrance lobby, reception room, bathroom, WC/cloakroom, four bedrooms.
2	Flat 2	105.53	1,136	Entrance lobby, drawing room, dining room, kitchen, two bedrooms (both en suite bathrooms), WC/cloakroom.
3	Flat 3	105.69	1,138	Drawing room, dining room, three bedrooms, kitchen, bathroom, WC/cloakroom
4	Flat 4	82.70	890	Drawing room, dining room, kitchen, master bedroom, one further bedroom with en suite bathroom, WC/cloakroom, roof terrace.
LGF (front)	Caretaker	58.60	631	Entrance hall, reception room, kitchen, two bedrooms, bathroom/WC.

4. **Alterations**

4.1 The following alterations have been made to the ground & lower ground floor flat:

i) Under a licence dated 18 August 1999 Cadogan Estates Limited granted permission to retain unauthorised alterations made to 42 Cadogan Square. These alterations are described in the Licence as the installation of external burglar bars to basement windows to front lightwell.

ii) Under a Licence dated 11 April 1984 Cadogan Estates Limited granted permission to make alterations to 42 Cadogan Square. These alterations are described in the Licence as in the:

Basement

Remove existing window to bedroom 3 cut out brickwork and fix new glazed door and frame. Construct new partition to enclose lobby and reposition door. Construct new flat roof with opening skylight over area outside kitchen. Remove wall between kitchen and area. Install new opening skylight in existing flat roof over kitchen. Form new steps up to terrace.

Ground floor

Form new dressing room and bathroom off master bedroom. Form new bathroom off bedroom 2. Form new cloakroom off hall.

APPENDIX 2

42 CADOGAN SQUARE: LANDS CHAMBER VALUATION

Valuation Date: 29 November 2005				
		£	£	£
1.	**VALUE OF FREEHOLDER'S INTEREST**			
(i)	*Participating flats*			
	(a) Apportioned head rent receivable from caretaker's flat and flat 1	13		
	x YP 17.31 years @ 6%	10.5881		
			138	
	(b) Reversion to FHVP value on 25 March 2023			
	Caretaker's flat	300,000		
	Flat 1	1,199,708		
		1,499,708		
	x PV of £1 in 17.31 years @ 5.25%	0.4124		
			618,480	
	Freeholder's interest in participating flats		618,618	
(ii)	*Non participating flats*			
	(a) Apportioned head rent receivable from			
	G/LG Flat, Flats 2, 3 and 4	57		
	x YP 17.31 years @ 6%	10.5881		
			604	
	(b) Reversion to FHVP value on 25 March 2023			
	G/LG Flat (s42 notice outstanding: see (d) below)			
	Flat 3	989,800		
	Flat 4 (s42 notice outstanding: see (e) below)			
	x PV of £1 in 17.31 years @ 5.25%	0.4124		
			408,194	
	(c) Reversion to FHVP value on 15 March 2113			
	Flat 2	1,044,250		
	x PV of £1 in 107.29 years @ 5%	0.0053		
			5,535	
	(d) G/LG Flat (taking account of s42 notice)			
	(i) *Assuming s42 notice proceeds (75%)*			
	Premium receivable by freeholder (see Annex A)	788,246		
	x PV of £1 in 0.5 years @ 5.25%	0.9747		
		768,303		
	x 75% probability	0.75		
			576,227	
	(ii) *Assuming s42 notice does not proceed (25%)*			
	FHVP value on expiry of headlease	1,960,000		
	x PV £1 in 17.31 years @ 5.25%	0.4124		
		808,304		
	x 25% probability	0.25		
			202,076	

		£	£	£
	(e) Flat 4 (taking account of s42 notice)			
	Agreed by the parties		326,771	
	Freeholder's interest in non-participating flats		1,519,407	
	Total value of Freeholder's interest			2,138,025
2.	**VALUE OF INTERMEDIATE LEASEHOLDER'S INTEREST**			
(i)	*Participating flats*			
	Profit rent: caretaker's flat	0		
	Flat 1	22		
		22		
	x YP 17.29 years @ 7%, 2.5%, 30p tax	7.296		
			161	
(ii)	*Non-participating flats*			
	Profit rent: G/LG Flat, flats 2, 3 and 4	58		
	x YP 17.29 years @ 7%, 2.5%, 30p tax	7.296		
			423	
	Total value of intermediate leaseholder's interest			584
	Total value of landlords' interests			2,138,609
3.	**MARRIAGE VALUE**			
	Participating tenants with unexpired terms of less than 80 years.			
(i)	*Proposed interests*			
	(a) value of landlords' proposed interests	0		
	(b) Value of participating tenants' interests with a share of the freehold			
	Caretaker's flat	300,000		
	x PV of £1 in 17.31 years @ 5.25%	0.4124		
		123,720		
	Flat 1	1,199,708		
	Total value of proposed interests		1,323,428	
	Less			
(ii)	*Existing interests*			
	(a) Value of Freeholder's interest	618,618		
	(b) Value of intermediate leaseholder's interest	161		
		618,779		
	(c) Value of existing underlease in Flat 1	558,755		
			1,177,534	
	Marriage value		145,894	
	Landlords' share of marriage value at 50%			72,947
				2,211,556
	Round up to reflect hope value in respect of flat 3 (£8,444)			2,220,000

		£	£	£
4.	**APPORTIONMENT OF MARRIAGE VALUE AND PREMIUM PAYABLE**			
(i)	*Freeholder*			
	(a) Value of freeholder's interest (including hope value at flat 3)	2,146,469		
	(b) Share of marriage value:			
	£2,146,469 x £72,947 £2,147,053	72,927	2,219,396	
(ii)	*Intermediate leaseholder*			
	(a) Value of intermediate leaseholder's interest	584		
	(b) Share of marriage value:			
	£584 x £72,947 £2,147,053	20		
			604	
	Total premium payable			£2,220,000

ANNEX A

G/LG Flat: Valuation under Schedule 13 of the 1993 Act

		£	£	£
	Valuation date: 17 June 2004			
1.	**DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST**			
(i)	*Value of freeholder's existing interest*			
	Reversion to FHVP value	1,661,835		
	x PV of £1 in 18.77 years @ 5.25%	0.3827		
			635,984	
(ii)	*Value of Freeholder's proposed interest*			
	Reversion to FHVP value	1,661,835		
	x PV of £1 in 108.77 years @ 5%	0.0038		
			6,315	
	Diminution in the value of Freeholder's interest		629,669	
2.	**DIMINUTION IN VALUE OF INTERMEDIATE LEASEHOLDER'S INTEREST**			
	Agreed by the parties		344	
	Diminution in the value of the landlords' interests			630,013
3.	**MARRIAGE VALUE**			
(i)	*Value of proposed interest*			
	Freeholder's	6,315		
	Intermediate leaseholder's	NIL		
	Tenant's (108.74 year lease) @ 98% of FHVP value	1,628,598		
			1,634,913	
	Less			
(ii)	*Value of existing interests*			
	Freeholder's	635,984		
	Intermediate leaseholder's	344		
	Tenant's (18.74 year lease)	681,257		
			1,317,585	
	Marriage value		317,328	
	Attributed to landlord @ 50%			158,664
	Premium payable			788,677
4.	**APPORTIONMENT OF MARRIAGE VALUE AND PREMIUM PAYABLE**			
(i)	*Freeholder*			
	(a) Diminution in value of interest	629,669		
	(b) Share of marriage value:			
	£629,669 / £630,013 x £158,664	158,577		
			788,246	

(ii)	*Intermediate leaseholder*			
	(a) Diminution in value of interest	344		
	(b) Share of marriage value:			
	£344 / £630,013 x £158,664	87		
			431	
				788,677