UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement - building comprising two flats with potential to convert back into a single house – relevance of participating tenant's unwillingness to countenance development – alternative valuations of freeholder's interest agreed - whether valuation capable of including "development hope value" – whether capable of including "development marriage value" - Leasehold Reform, Housing and Urban Development Act 1993, Schedule 6, paragraphs 3 and 4 – appeal dismissed – cross appeal allowed.

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

BETWEEN

MISS E PADMORE **Appellant**

and

THE OFFICIAL CUSTODIAN FOR CHARITIES ON BEHALF OF THE TRUSTEES OF THE BARRY AND PEGGY HIGH FOUNDATION **Respondent**

Re: 11/11A Lancaster Avenue,
Hadley Wood,
Barnet,
Hertfordshire
EN4 0EP

Before: Martin Rodger QC, Deputy President,

Sitting at: 43-45 Bedford Square, London WC1B 3AS
on 3 December 2013

The appellant in person
Piers Harrison instructed by Gisby Harrison solicitors, for the respondent

The following cases are referred to in this decision:

Cadogan v McGirk (1997) 29 H.L.R. 294
Cravecrest Ltd v Duke of Westminster [2012] UKUT 68
Day v Hosebay [2012] UKSC 41
Earl Cadogan v Sportelli and another [2008] UKHL 71
Forty-Five Holdings Ltd v Grosvenor (Mayfair) Estate [2009] UKUT 234 (LC)
Maryland Estates Ltd v Abbathure Flat Management Co Ltd [1999] 1 EGLR 100
Money v Cadogan Holdings Ltd [2013] UKUT 211 (LC)
Themeline Ltd v Vowden Investments [2011] UKUT 168
West Midland Baptist (Trust) Association (Inc) v Birmingham Corporation [1968] 2 QB 188

DECISION

Introduction

1. This is an appeal and cross appeal, by way of review, against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("the LVT"), dated 1 October 2012 on an issue of law arising in a collective enfranchisement claim under Part I of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The LVT determined that, applying Schedule 6 of the 1993 Act, the price payable by the appellant, Ms Elaine Padmore, to the respondent trustees on the acquisition by her of their freehold interest in 11 Lancaster Avenue, Hadley Wood, Barnet ("the Building") was £150,000.

2. The only contentious issue in these proceedings has been the proper approach to valuing the Building under Schedule 6 of the 1993 Act in light of the agreed fact that, although currently arranged as an upper and lower maisonette each of which is let under a separate lease, the Building is suitable for conversion back into a single house. It is common ground that the Building would be more valuable as a single house and that the potential to develop it in that way adds value to the respondents' freehold interest; the parties do not agree how that value is to be reflected in the price payable for the freehold in a collective enfranchisement under the 1993 Act.

3. Significantly, the parties reached agreement on the alternative valuations which would be appropriate depending on the answer which the LVT gave to the legal question it was asked to answer. The LVT selected its figure of £150,000 because it determined that, as a matter of law, the development potential of the Building should be reflected in the value of the freeholder's interest determined under paragraph 3 of Schedule 6 (which requires an assumption that no tenant in the Building is in the market for the freehold). That approach assumed that a purchaser of the freeholder's interest would pay a premium because of the prospect or hope of being able to reach agreement with the owner of the leasehold interests for the acquisition of those interests to enable the Building to be converted to a house. A valuation on that basis was described by the LVT as including "development hope value".

4. In their cross appeal the respondents argue that the true price ought to be £194,000, and that it should be arrived at by taking the development potential of the Building into account when ascertaining the freeholder's share of the marriage value determined in accordance with paragraph 4 of Schedule 6. On that basis a sum is included in the valuation to reflect the ability of the appellant herself, as nominee purchaser, to convert the premises to a house at the valuation date. That approach was described by the LVT as including "development marriage value".

5. Before the LVT and in her appeal the appellant contends that the true price ought to be £85,000, and that it ought to take into account neither development hope value nor development marriage value. The former is said to be precluded because the appellant herself has no interest in realising the development value of the Building. The latter is

prohibited, the appellant contends, because as the Tribunal held in *Themeline Ltd v Vowden Investments* [2011] UKUT 168, the concept of development marriage value is inconsistent with the reasoning of the House of Lords in *Earl Cadogan v Sportelli and another* [2008] UKHL 71.

6. The LVT gave both parties permission to appeal.

7. The appellant appeared in person and relied on submissions prepared by her solicitors, Bottrills solicitors, and on an expert's report prepared by Mr Bruce Maunder Taylor FRICS, who had represented her before the LVT. The respondents, who had been represented below by Mr Antony How FRICS, were represented before me by Mr Piers Harrison of counsel.

The issues in the appeal

8. The issues for consideration in the appeal and cross appeal are:

(1) Whether the LVT was entitled to determine a price which included development hope value or whether, as the appellant contends, it is impermissible; and

(2) Whether, as the respondents contend, the LVT should have determined a higher price by including development marriage value.

The statutory framework

9. Section 1 of the 1993 Act confers on qualifying tenants of flats in premises to which Chapter 1 of Part 1 applies on the relevant date the right to have the freehold of those premises acquired on their behalf by a nominee purchaser at a price determined in accordance with Chapter 1. Section 1 describes that right as "the right to collective enfranchisement".

10. By virtue of section 32 the price payable for the freehold of the premises is to be determined in accordance with Schedule 6. The relevant provisions of the schedule for the purpose of this appeal are as follows:

> "Price payable for freehold of specified premises
>
> 2.—
>
> (1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of
>
> > (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,

(b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and …

Value of freeholder's interest

3.—

(1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling for an estate in fee simple—

(i) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but

(ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser;

(b) 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); …

(1A) A person falls within this sub-paragraph if he is—

(a) the nominee purchaser, or

(b) a tenant of premises contained in the specified premises, or ...

(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the freeholder's interest in the specified premises might be expected to realise if sold as mentioned in that sub-paragraph."

11. The "relevant date" for the purpose of these provisions is the date on which the nominee purchaser gave notice under section 13 of its claim to exercise the right to collective enfranchisement.

12. The assessment of the freeholder's share of the marriage value is undertaken in accordance with paragraph 4 of Schedule 6 which (so far as relevant) provides:

> "4(1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent of that amount.
>
> (2) Subject to sub-paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value –
>
> (a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and
>
> (b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price."
>
> (2A) Where at the relevant date the unexpired term of the lease held by any of those participating tenants exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored."

The facts

13. The LVT did not find it necessary to deal in any detail with the facts, but to aid the Tribunal the parties helpfully agreed a statement of facts from which I largely take what follows as the basis of my consideration of the appeal.

14. The Building was constructed as a semi detached family dwelling house in or around the early 1900's. It is of traditional construction and typical of other houses in the immediate locality. The Building was converted in around 1972 to provide two self contained flats, known as numbers 11 and 11A. Number 11A comprises the ground and lower ground floors, while 11 is a maisonette on the first and second floors. Access to the maisonette is via an external staircase at the side of the Building, and each flat has the use of a separate garden. Despite its conversion the general appearance of the Building is still that of a single dwelling house. The ground floor flat has been improved by the appellant by the construction of a small side extension, the conversion of part of the lower ground floor into habitable accommodation and the construction of a new garden room.

15. Each of the two flats in the Building is let by a separate lease in substantially the same terms. The lease of 11A was granted on 6 June 1974 while that of 11 was granted on 27 March 1975, in each case at a ground rent and for a term of 99 years from 25 December 1973. The tenant covenants in each lease not to carry out structural alterations without the consent of the landlord (which, in the case of 11A but not 11, is not to be unreasonably withheld). The tenant also covenants not to use the demised premises other than as a private dwelling in the occupation of one family only.

16. The lease of 11 Lancaster Avenue was granted to the appellant herself, and she has occupied it as her home since 1975. In July 2011 the lease of 11A was purchased by the appellant, who therefore now holds both leasehold interests in the Building. The appellant's intention is to continue to live at 11 Lancaster Avenue for her lifetime and to let 11A.

17. The appellant gave notice of her desire to acquire the freehold of the Building and identified herself as nominee purchaser on 22 December 2011, at which time almost exactly 61 years of the term of each of her leases remained unexpired. The respondents admitted the appellant's right to collective enfranchisement under the 1993 Act. In due course the terms of a draft transfer were agreed and all that remained to be determined was the price payable by the appellant.

18. The form of transfer did not include any restriction on the appellant's entitlement to restore the Building to a single house, but shortly before the hearing of the appeal the appellant offered to modify it so that it included a freehold covenant restricting her from doing so. As that proposal was not accepted, its only significance is to confirm the appellant's stated intention not to carry out any development of the Building.

19. The appellant applied to the LVT for it to determine the disputed price and that application came on for hearing on 5 September 2012.

The agreed valuations

20. The day before the hearing before the LVT the parties' reached agreement on three alternative valuations which were recorded in a schedule signed by their respective valuers, a copy of which was annexed by the LVT to its decision. A further version of the schedule, taken by me from the signed copy, is annexed to this decision.

21. The parties first agreed that on the valuation date of 22 December 2011 the value of the house ready for conversion to a single residence was £1,050,000. The combined value of the two flats if let on leases for 999 years was agreed to be £765,000. The difference between those two figures, £285,000, was referred to as the development value.

22. The parties next agreed a figure which reflected the value of the landlord's interest in the Building on the valuation date assuming that no redevelopment of the two flats into a single house was possible until the expiry of the appellant's two leases in 61 years time. That figure was £85,000 which Mr Harrison referred to as including neither development hope value nor development marriage value. The sum did include a conventional marriage value calculation under paragraph 4 of Schedule 6 which excluded any prospect of development during the term of the leases. It was arrived at broadly in the manner adopted by the Tribunal (Judge Huskinson and Mr A J Trott FRICS) in *31 Cadogan Square Freehold Ltd v Earl Cadogan* [2010] UKUT 321 (LC) by aggregating three elements: (i) a sum representing the deferred value of the flats, (ii) a sum representing the opportunity to carry out a development by converting the Building to a house at the expiry of the leases in 61 years, and (iii) a sum referable to the capitalisation of ground rents. A valuation of this sort has been referred to in other contexts (although not by the parties in this case) as "development value on reversion". It was the valuation for which the appellant contended before the LVT, and which she invited me to substitute for the higher price which it determined.

23. The second agreed valuation produced a price of £194,000. That figure is described as including "development marriage value" and assumes that it is permissible to include in the marriage value determined in accordance with paragraph 4 of Schedule 6, a sum to reflect the ability of the appellant, as nominee purchaser, to convert the Building to a house at the valuation date. The valuation used to arrive at it includes the additional value which would be released by the conversion to a house at the valuation date rather than at the expiry of the term of the leases and shows the freeholder's share of that value as 50%. This is the valuation for which the respondents contend.

24. The third valuation which was agreed produced the figure of £150,000 which the LVT determined was the price payable for the freehold of the Building. That price is described as including "development hope value" and is based on two propositions of law: first, that it is impermissible to include any element of the development value in this case in the marriage value calculated under paragraph 4 of Schedule 6 to the 1993 Act; and secondly, that it is nonetheless permissible to include an element of development value in the calculation of the value of the freeholder's interest required by paragraph 3 of schedule 6. To reflect those propositions the calculation includes part only of the additional value which would be released by converting the Building to a house at the valuation date rather than at term. The development value figure employed in the second valuation has therefore been further reduced in this alternative calculation by applying a discount for risk. That discount reflects the fact that a hypothetical purchaser of the freehold who is not the nominee purchaser will acquire only the prospect of releasing the development value in the Building by further negotiation with the leaseholders of the two flats. That risk has been reflected by incorporating into the agreed value of the freehold interest only 30% of the development value capable of being released, rather than the 50% allowed in the previous calculation.

25. These three alternative agreed valuations are reproduced in the appendix to this decision.

The LVT's decision

26. In paragraph 12 of its decision the LVT held that it was bound to follow the decision of the Tribunal in *Themeline v Vowden Investments* and to hold that development marriage value was not recoverable under paragraph 4 of Schedule 6. The LVT also rejected as "not credible" an argument by the respondents that development marriage value could be brought within paragraph 4 not by postulating a surrender of the existing leases and the grant of a single new lease of the whole Building (an assumption rejected in *Themeline* as being inconsistent with *Sportelli)* but rather by assuming a variation of the appellant's existing leases to permit the re-ordering and occupation of the Building as a single dwelling.

27. In paragraph 13 of its decision the LVT nonetheless accepted the respondents' alternative contention that development hope value could be included in the price payable for the freeholder's interest under paragraph 3 of Schedule 6 on the basis that a hypothetical purchaser of the freehold would be prepared to pay a premium for the opportunity to release the development value before the end of the term by negotiation with the leaseholder. The LVT considered that this approach was sanctioned by the decision of the Tribunal in *Cravecrest Ltd v Duke of Westminster* [2012] UKUT 68.

28. In reaching that conclusion the LVT made the following observations:

> "14. Although the tribunal accepts that the Applicant herself has no intention of developing the property in the near future, her personal intentions are not relevant to this point.
>
> 15. The tribunal considers it extremely likely that a hypothetical purchaser would seize the opportunity to avail himself of the development potential in the subject property within a short time after acquisition of the freehold reversion and thus finds that it is appropriate to include development hope value in the price which the Applicant is to pay for the property."

Interpreting the 1993 Act

29. When considering any question of interpretation of the collective enfranchisement provisions of the 1993 Act, and in particular the complex and problematic directions for the ascertainment of the price to be paid in Schedule 6, it is necessary to have regard to several well known statements in the higher courts concerning the statutory purpose of the legislation.

30. The Court of Appeal first considered the proper approach to construing Part I of the 1993 Act in *Cadogan v McGirk* (1997) 29 H.L.R. 294, where Millett LJ said this:

> "It would, in my opinion, be wrong to disregard the fact that, while the Act may to some extent be regarded as expropriatory of the landlord's interest nevertheless it was passed for the benefit of tenants. It is the duty of the Court to construe the Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy."

31. That approach was endorsed by Lord Carnwarth in *Day v Hosebay* [2012] UKSC 41 at [6] where he added that:

> "By the same token, the court should avoid as far as possible an interpretation which has the effect of conferring rights going beyond those which Parliament intended".

32. Even more recently, and in point in this appeal, in *Cravecrest Ltd v Sixth Duke of Westminster* [2013] EWCA Civ 731, the Chancellor referred to these passages at [66], and commented that it was no obvious part of the social policy underlying the 1993 Act to confer on tenants a right to acquire the freehold and intermediate leases at a price which ignores completely the value attributable to development value.

Development hope value and development marriage value

33. In support of the respondent's cross appeal Mr Harrison relied on two decisions of the Tribunal in which, he suggested, development marriage value had been awarded.

34. In *Forty-five Holdings Ltd v Grosvenor (Mayfair) Estate* [2010] L & TR 21 the Tribunal (Judge Huskinson) held that the potential to add a further storey to a building consisting of two mews properties, could be taken into account when assessing marriage value on a collective enfranchisement by the leaseholder of both properties. The Tribunal rejected an argument by the nominee purchaser that the new leases contemplated under paragraph 4(2)(a) of paragraph 6 must be assumed to be on the same terms as the old leases save only as regards duration and premium (paragraph 27).

35. That conclusion was reached by the Tribunal after considering *Maryland Estates Ltd v Abbathure Flat Management Co Ltd* [1999] 1 EGLR 100, a decision of the Lands Tribunal (Anthony Dinkin QC and P H Clarke FRICS) which accepted that, following enfranchisement, the participating tenants would enjoy eight advantages or benefits which ought to be taken into account in assessing marriage value under paragraph 4 of Schedule 6. Those advantages included the ability to extend their leases at no premium, to vary the terms of their leases, to manage the property and to grant themselves new rights over the property. The Tribunal recorded a concession made by counsel for the nominee purchaser in that case (at p.102B-C):

> "As to the ability to vary the terms of the leases, [counsel] accepted that this factor could be taken into account because it is implicit that tenants have the right to correct any defects in title on the grant of the new leases …"

36. The correct approach in the Tribunal's view (in *Maryland Estates)* was to consider whether any of the benefits or advantages relied on as producing marriage value flowed from the participating tenants' "ability to have new leases unrestricted as to length of term" (p.102G-H). The essential fact was that the participating tenants would be in effective control of the freehold interest through the nominee purchaser and able to "secure the grant to themselves of new leases". What had to be determined was "the increase in value, if any, of the freehold interest when it passes into the tenants' control in that way". The Tribunal then added this (at p.102 H):

> "As we have pointed out, although certain assumptions are expressly to be made by virtue of paras 4(3) and 4(4), this does not prevent any other appropriate assumptions being made in order to determine the market value of the freehold under para 3(2)."

37. The jurisprudence of the Tribunal must now be read in the light of decision of the House of Lords in *Cadogan v Sportelli* in which the relationship between hope value and marriage value was considered in the context of Schedule 6. The decision in *Sportelli* was interpreted by the Tribunal (George Bartlett QC, President) in *Themeline* as being inconsistent with the inclusion of development marriage value in an acquisition price determined in accordance with Schedule 6. Mr Harrison seeks to distinguish *Themeline* and suggests that the outcome would have been different in that case if a less restrictive argument had been deployed; alternatively, he invites me not to follow *Themeline* and describes it as a "wrong turning" in the orderly development of the law in this area. Before coming to those aspects of the appeal it is first necessary to consider the issue decided in *Sportelli*.

38. In *Sportelli* the House of Lords had to consider whether on a collective enfranchisement the price payable by the nominee purchaser for the freeholder's interest could include "hope value" representing the possibility of non-participating tenants subsequently wishing to extend or renew their own leases. Lord Hope of Craighead (at [31]) expressed the view of the majority that paragraph 3 of Schedule 6 "permits hope value to be taken into account in the valuation in so far as it is attributable to the possibility of non-participating tenants seeking new leases of their own flats".

39. Lord Hoffmann began his (dissenting) speech by considering the relationship between hope value and marriage value (at paragraph 4):

> " … [The] value of the reversion to the tenant will be greater than to a third party who buys purely for the investment value of the rental stream and the right to possession on the expiry of the term. Furthermore, even if there is some reason (for example, lack of funds) why the particular tenant would not buy at the valuation date, the marriage value to him will be obvious to everyone in the

> market and it will, as I have said, cast a shadow in the form of hope value to other purchasers who take into account the possibility that sooner or later they may be able to sell to the tenant. It is, of course, impossible for both marriage value and hope value to form part of the same valuation. Marriage value represents the additional value to the tenant which supplies the reason why he would bid a sum higher than the pure investment value. Hope value represents that additional value to a third party who contemplates a future sale to the tenant. Taking into account marriage value assumes that the hypothetical purchaser is the tenant, while taking hope value into account assumes that the hypothetical purchaser is not the tenant. These two hypotheses cannot be entertained simultaneously."

40. Lord Hope noted (at [27]) that the absence from the statutory valuation criteria of any reference to "hope value", and the requirement to exclude the tenants from the market, did not mean that hope value had to be disregarded altogether when determining the value of the freeholder's interest under paragraph 3:

> "…The fact that any special, or enhanced, value that would otherwise be attributed to the fact that the tenant is the actual purchaser is to be disregarded does not seem to me to require the valuer to disregard any of the other elements that would normally be taken into account in a transaction with a third party purchaser."

41. Lord Walker's view was to similar effect (at [42]):

> "… Marriage value as between the freeholder and the participating tenants, so far as attributable to their control of the freehold and their ability to grant themselves advantageous leases (see Schedule 6, para 4(2) and especially para 4(2)(a)) is dealt with exclusively by para 4, as under Schedule 13. But there is to my mind no good reason why any hope value in respect of future deals that may possibly be negotiated between the freehold owner and non-participating tenants (other than those who have actually served section 42 notices before the valuation date) should be disregarded. The possibility of gain (whether large or small) from such negotiated deals will pass from the original freeholder to the nominee purchaser. It is not dealt with in para 4. …."

42. Lord Neuberger (with whom Lord Hope, Lord Walker and Lord Mance agreed) commented further on the influence which the possibility of future dealings with the tenant may exert on the price which would be agreed for the freehold in a market from which the tenant was excluded (at [66]):

> "… [Where] the landlord is selling his interest when the tenant is not in the market, a potential purchaser may well think that, in addition to its investment value, the freehold interest carries with it the potential benefit of a possible future sale of the freehold to the present tenant or a successor in title (or indeed the acquisition of the leasehold interest), thereby enabling a release of the marriage value in the future. In such a case, therefore, it can be said that, even though the tenant is not in the market at the time of the sale, the value of the freehold subject

to the lease is greater than the aggregate of the capitalised rental stream and the deferred right to possession at the end of the term, and that something should be added for the possibility of a purchaser benefiting from a release of the marriage value. That additional sum is known as "hope value"."

43. Lord Neuberger went on to comment further on the effect of paragraph 4 (at [96]):

> "It … seems clear from the wording of sub-paras (a) and (b) of para 2(1), the opening part of para 4(2), and the unambiguous terms of para 4(2)(a) that marriage value can only be taken into account in so far as it is attributable to the ability of the participating tenants, through the nominee purchaser, to grant new long leases of their respective flats to themselves. The way in which paras 2(1)(a) and (b) are worded also confirm that the only aspect of marriage value in respect of which the landlord can claim is that identified in para 4. But that does not necessarily exclude hope value: as I have explained, it may be similar to, and based on the existence of, marriage value, its inclusion may serve to reduce any marriage value and it may be assessed by reference to marriage value, but it is not marriage value."

44. Then at paragraph 108 Lord Neuberger said this:

> "Accordingly, para 3(1)(b) appears to me to indicate that, while the bracketed words in the opening part of para 3(1) are to be construed widely, they do not prohibit taking into account the possibility of non-participating tenants seeking to negotiate new leases of their respective flats. This view is reinforced by the contents of para 4, under which marriage value must be taken into account in relation to the participating tenants' ability to take new leases of their respective flats. On this basis, there would be a symmetry between para 4, which requires marriage value to be taken into account in relation to participating tenants, limited to their obtaining new leases of their respective flats, and para 3, which entitles the landlord to seek hope value in relation to the non-participating tenants, again limited to the prospect of their seeking new leases of their respective flats. Para 4 also explains why, under para 3, hope value can only be taken into account as against non-participating tenants: if the landlord is entitled to marriage value as against participating tenants, then he is not entitled to hope value as well…"

45. Finally in paragraph 112 of his opinion Lord Neuberger said this:

> "Where does the conclusion that hope value as against non-participating tenants in respect of their flats may be taken into account leave hope value in relation to participating tenants and their flats? If, as I have concluded, the bracketed words in the opening part of para 3(1) do not exclude the possibility of taking into account hope value arising from non-participating tenants seeking new leases of their flats, the same conclusion must apply to participating tenants. However, the effect of para 4 means that, for the reasons I have given when considering hope value under section 9(1A), it is not possible to include hope value in relation to participating tenants' flats under para 3, as it has already been subsumed into the

> marriage value exercise mandated by para 4. That is clear not only as a matter of commercial sense and justice, but also because para 2 envisages the purchase price consisting of the aggregate of the sums in sub-paras (a) and (b), and it cannot have been envisaged that the same sum be included under both sub-paragraphs."

46. In *Cravecrest Ltd v Sixth Duke of Westminster* [2013] 2 P & CR 16 (a case to which I will return below) the Chancellor said this, (at [74]):

> "The ratio of *Sportelli* …. is that schedule 6 to the 1993 Act does not exclude hope value from the enfranchisement price to the extent that the hope value reflects the hope of receiving marriage value from non-participating tenants; but hope value which can be taken into account has to be limited to the hope of transactions with non-participating tenants because there would otherwise be double counting. There cannot be both a right to marriage value under paragraph 4 of schedule 6 and the right to hope value as at the valuation date reflecting the potential release of the same marriage value in the future."

47. This aspect of the decision of the House of Lords in *Sportelli* has been considered by the Tribunal on at least three occasions. Two of those decisions were relied on by the LVT as prohibiting the inclusion of development marriage value in the price payable for the freehold of the Building, while permitting the inclusion of development hope value.

48. The LVT based its refusal of development marriage value on the Tribunal's decision in *Themeline*. *Themeline* concerned the collective enfranchisement of a building containing three flats, of which two were held by the headlessee and participating tenant. The third flat was held by Vowden Investments Ltd on an underlease with only a few days unexpired at the valuation date. Vowden also had an overriding lease of the same flat, which was to be acquired by the nominee purchaser together with the freehold. Because the underlease would expire shortly after the valuation date, it was common ground that the participating tenants would then be in a position to convert the premises into a single residence. If the potential for conversion had to be ignored, Vowden's share of marriage value as owner of the intermediate lease of one flat, was £49,544. If the potential for conversion could be taken into account, the only alternative valuation hypothesis which was suggested was that the nominee purchaser would grant itself a lease of the whole house on the expiry of Vowden's underlease; on that basis Vowden's share of the marriage value was £517,762.

49. Having set out the terms of paragraph 4 of Schedule 6 of the 1993 Act, the Tribunal said this:

> "The question is whether the potential ability of the participating tenant to have a new lease of the whole building granted to it is, in the terms of the provision, "the potential ability of the participating tenants…to have new leases granted to them." Under section 6(c) of the Interpretation Act 1978 the

use of the plural is no inhibition to a conclusion that it does, provided that it is not otherwise inappropriate to construe the provision in this way."

50. The nominee purchaser argued that paragraph 4 limited marriage value to value referable to the ability of participating tenants to obtain new leases of their respective flats, and that the hypothesis that a single lease of the whole building might be granted was impermissible. It relied on passages in the judgment of Lord Neuberger in *Sportelli* including paragraphs 96 and 108 of his speech which I have set out above. In response, counsel for the freeholder argued that Lord Neuberger could only have had in mind the "paradigm case" where the participating tenants are enfranchising so that they can acquire greater security in their own homes and was not considering whether development marriage value could be taken into account. (The freeholder does not appear to have argued that development hope value should be taken into account as an alternative to development marriage value).

51. Reluctantly the Tribunal felt compelled to dismiss the freeholder's contention. It may well be correct, as the freeholder's counsel had submitted, that the House of Lords did not have in mind a case in which the prospect of development would enhance the value of the freehold, but the Tribunal nonetheless considered (at paragraph 37) that "the decision is in terms authority for the proposition" under paragraph 4(2) of Schedule 6 to the 1993 Act marriage value can only be taken into account in so far as it is attributable to the ability of the participating tenants, through the nominee purchaser, to grant new long leases of their respective flats to themselves. It therefore excludes marriage value arising from the grant to the participating tenants of a lease of the whole building.

52. A rather narrower view of the ratio of *Sportelli* appears to have been taken by the Court of Appeal in the passage from its recent decision in *Cravecrest* which I have referred to in paragraph 46 above. The Tribunal's decision in *Cravecrest* (which was upheld on appeal to the Court of Appeal) was relied on by the LVT in this case as permitting development hope value to be taken into account.

53. In *Cravecrest* a property originally constructed as a house, but subsequently converted into three flats, was the subject of a collective enfranchisement by the underlessees of two of the flats whose nominee purchaser was Cravecrest. The underlease of the third flat was held by Vowden Investments, which also had an overriding lease which was to be acquired by Cravecrest, together with a headlease, on the acquisition of the freehold. The underleases of the three flats had only a few days left unexpired by the valuation date and it was common ground that an owner of the freehold, unencumbered by the leases, could realise significant development value by restoring the property for use as a single house. The freeholder argued that a purchaser of either of the intermediate interests, in a market from which the tenants of the individual flats were taken to be excluded, would pay an enhanced price for the prospect that it might at a later stage acquire the other intermediate interest and thus be able to realise the development opportunity. This development hope value was accepted by the Tribunal as a legitimate factor to be taken into account when valuing

the intermediate interests under paragraph 3 of Schedule 6 (as applied to intermediate leases by paragraph 9). It was common ground that development hope value did not fall within the scope of the marriage value calculation in paragraph 4 and there was no challenge to the Tribunal's earlier decision in *Themeline* (see the Court of Appeal's decision at [47]).

54. Cravecrest argued, unsuccessfully, that the development hope value, which it agreed would be payable if there were no intermediate interests, should not be taken into account in fixing the price to be paid for the two intermediate leases. Its contention was that this would offend the bracketed words in paragraph 3(1) that no tenant was "buying or seeking to buy" and that, on the basis of the speeches in *Sportelli*, those words should be interpreted to mean additionally that no tenant was "selling or seeking to sell".

55. The Chancellor rejected Cravecrest's contention, saying this at paragraph 73:

> "Generally, I do not consider that the Appellant can derive any assistance from *Sportelli*, in which the facts, the nature of the dispute and the arguments were so different from the present case. In particular, I do not accept that Lord Neuberger directed his mind to the type of hypothetical two stage purchase in issue in the present case, let alone that he expressed any view that it would fall to be excluded by the bracketed words in paragraph 3(1). None of the speeches in *Sportelli* includes any express conclusion that the bracketed words in paragraph 3(1) extend to marriage by sale. There is nothing in that case which clearly indicates that in paragraphs [65] and [66] of *Sportelli* Lord Neuberger was doing anything more than identifying theoretical circumstances in which hope value can arise. It is clear that, where the expression "marriage value" is mentioned in the speeches in *Sportelli*, including where there is reference to hope value reflecting possible future marriage value, the expression is used in its precise statutory context as defined in paragraph 4(2)(a) of schedule 6; namely, where one or more of the relevant interests (ie the interests whose marriage will generate value) is held by a participating tenant and where the additional value is a reflection of the ability of the participating tenants to procure the grant to themselves of new leases without payment of a premium or restriction of length of term. Neither of those elements applies in the present case."

56. Mr Harrison relies on that passage in support of his contention that the Tribunal's view in *Themeline* regarding the scope of the House of Lords' decision in *Sportelli* was mistaken and ought not to be followed in this case.

57. Mention may also be made of *Money v Cadogan Holdings Ltd* [2013] UKUT 211 (LC), a recent decision of the Tribunal (Sir Keith Lindblom, President and Mr N.J. Rose FRICS) concerning a collective enfranchisement under the 1993 Act. In that case there was potential, after the acquisition of the freehold, to achieve additional value in one flat in the building by the participating tenants releasing a covenant

restricting its use to use as a caretaker's flat. Because the lease of the basement flat was for an unexpired term of more than 80 years, it was common ground that it was not permissible to take the opportunity to release the covenant into account as marriage value under paragraph 4 of Schedule 6.

58. On behalf of the nominee purchaser it was argued that it was also impermissible to increase the enfranchisement price to reflect the prospect of covenant release as an element of the valuation of the freeholder's interest under paragraph 3. Relying on the Tribunal's decision in *Maryland Estates v Abbathure*, leading counsel for the nominee purchaser argued that the advantage to a participating tenant in his being able to remove onerous user provisions in his lease formed part of the marriage value generated by the collective enfranchisement. *Sportelli* was relied on in support of the contention that a value which was marriage value within paragraph 4 could only be taken into account under paragraph 4.

59. The Tribunal rejected those contentions, saying this at paragraph 69:

> "In any event we see nothing in the provisions relating to marriage value in paragraph 4 of Schedule 6 to exclude a potential benefit of this kind from the valuation of the freeholder's interest under paragraph 3 if it is truly germane to the value of that interest. As a matter of principle, no legitimate portion of value should be left out of account, and none should come in more than once. As Lord Neuberger stressed in paragraph 112 of his opinion in *Cadogan v Sportelli*, a component of value assessed as marriage value under paragraph 4 – in that case the potential ability of the participating tenants to have new leases granted to them once enfranchisement had occurred – cannot also be included in the assessment of value pertaining to the valuation of the freeholder's interest under paragraph 3. The same sum cannot be included under both paragraphs. If it comes into the valuation under paragraph 4 it cannot feature again under paragraph 3 – and vice versa."

60. At paragraph 73 the Tribunal dismissed the suggestion that *Sportelli* assisted the nominee purchaser's argument:

> "The majority in that case did not hold that, in principle, "hope value" lay beyond the bounds drawn for the valuation of the freeholder's interest in paragraph 3. The relevant discussion, which culminated in the conclusion expressed in paragraph 115 of Lord Neuberger's opinion, related to the acquisition of long leasehold interests in the specified premises, respectively by participating and non-participating tenants. It distinguished between the hope value that may arise when non-participating tenants are assumed to be seeking new leases of their flats in the open market – which was held to be properly an element of value within paragraph 3 – and hope value relating to new leases being sought by participating tenants – which, it was held, is subsumed into the marriage value exercise provided for in paragraph 4. That, however, is not the issue with which we are concerned in this appeal."

The appeal – development hope value and the appellant's own intentions

61. In the grounds of appeal for which the LVT gave the appellant permission she contended that the LVT had been wrong to proceed on the basis that her personal intentions were irrelevant to the valuation of the development opportunity. She pointed out that in reality there was no such opportunity available to be seized by a purchaser "within a short time after acquisition of the freehold", because as the LVT had accepted, she had no intention of cooperating in the development of the Building at all.

62. In my judgment the answer to this contention lies in the agreed basis on which the hearing before the LVT proceeded.

63. The evidence presented to the LVT by the appellant fully justified the conclusion at paragraph 14 of its decision that the appellant herself has no intention of developing the Building in the near future. Consistently with the appellant's evidence of her own intentions, her expert witness framed his valuation evidence on the assumption that the hypothetical purchaser of the freehold would allow only a modest uplift in the reversionary capital value to reflect the hope of development, taking into account that the two leases had 61 years to run before their expiry.

64. Notwithstanding that being the appellant's case until the day before the hearing, agreement was reached on the alternative valuations, which included a figure for development hope value.

65. The difference of £44,000 between the figures agreed for development marriage value and for development hope value lay in the discount to be applied in the latter case to reflect the uncertainties and risks which a purchaser of the freehold (who was not the appellant) would foresee in reaching agreement with the appellant for the release of the development opportunity. In the case of development marriage value it was agreed that, when regarded as an aspect of marriage value, the development value inherent in the freehold was to be apportioned equally between the parties. That approach was consistent with the direction in paragraph 4(1) of Schedule 6 that the freeholder's share of the marriage value is 50 per cent. In the case of development hope value it was agreed that, in a market from which the appellant is taken to be absent, the freeholder would not receive 50% of the development value, but would receive only 30%. That figure had been proposed by the respondents' valuer in his expert's report in which he had explained that it reflected "the risk that in the no-Act world the tenant might not deal with the freeholder to release development value either by negotiating a licence for alterations to allow use as a single house or by selling the leasehold interests to the freeholder."

66. Whether the freeholder's share of the development value was agreed at 30% because the appellant's valuer accepted the reasons given by the respondents' valuer in

his expert's report, or for some other reason, does not matter. As Mr Harrison pointed out, it is perfectly credible that a purchaser would be prepared to pay a premium to reflect the development value in a case such as this, even knowing that the lessee of both flats was not currently interested in participating in any scheme to realise that value, because her circumstances and intentions might change. Nonetheless, all that matters is that the parties agreed that if development hope value was to be included as a component of the valuation, the appropriate price would be £150,000.

67. The agreement annexed to the decision of the LVT did not spell out that the selection of the appropriate figure depended on the view the LVT took of the correct interpretation of paragraphs 3 and 4 of Schedule 6, but (viewed objectively) that was clearly the parties' intention. It cannot have been intended that the LVT would be left to decide issues which would otherwise have arisen such as whether, on the valuation date, the hypothetical purchaser of the freehold is to be assumed to have had knowledge of the appellant's intention to remain living in her flat for the rest of her life, or what that purchaser's reaction to that knowledge would have been. The parties had agreed that the hypothetical purchaser would modify his bid to reflect such risks by allowing only 30% of the development value to the freeholder. Having agreed the hypothetical purchaser's behaviour in response to the relevant risks, it cannot have been the parties' intention that the LVT would carry out any assessment of its own of the magnitude of those risks.

68. It also appears to have been common ground between the parties before the LVT that it was the intentions of the appellant herself (and not those of some hypothetical lessee) which were relevant to the determination of the value of the freeholder's interest under paragraph 3 of Schedule 6. Mr Harrison confirmed that was the respondents' approach. It was also presumably the reason for the appellant's own evidence of her intentions and why Mr Maunder Taylor recorded his separate enquiries of her in paragraph 3.12 of his expert's report. That assumption is clearly correct, since the interest being valued under paragraph 3 is the interest of the freeholder, not that of the participating tenants, and there is no direction which would require an assumption of a state of affairs different from those which really existed at the valuation date so far as the identity of the tenants is concerned (the determination of marriage value under paragraph 4 raises different considerations, as to which see paragraph 82 below). In light of that apparent agreement it is therefore a little surprising that, having accepted the appellant's statement of her own intentions in paragraph 14 of its decision the LVT also expressed the view that "her personal intentions are not relevant to this point". Her personal intentions were relevant, but the parties must be taken to have had them in mind when they reached their agreement on the appropriate discount to be incorporated in the calculation of development hope value.

69. I am therefore satisfied that it is not open to the appellant to challenge the decision of the LVT on the basis that it gave insufficient weight to her personal views, and I propose to dismiss the appeal.

The cross appeal

70. Mr Harrison submitted as his primary case in support of the cross appeal that the respondent is entitled to the higher purchase price of £194,000 based on development marriage value and he invited the Tribunal to distinguish or depart from its decision in *Themeline* which ruled out the valuation hypothesis that development potential might be realised by the grant of a single lease of an entire building. He relied on *West Midland Baptist (Trust) Association (Inc) v Birmingham Corporation* [1968] 2 QB 188 as authority for the proposition that the Tribunal's predecessor, the Lands Tribunal, was not bound by its own decisions and to more recent examples showing that the Tribunal regarded itself as entitled in an appropriate case to depart from a decision of its own. The appellant did not dispute those submissions and I indicated in the course of argument that I regarded them as well founded.

71. Mr Harrison submitted that *Themeline* was wrongly decided or should not be followed on two alternative bases. First, he accepted that the Tribunal had been right to decide that marriage value under paragraph 4(2) was limited to value released by the grant of new leases, and did not include value achieved by the grant of a single new lease, but nonetheless *Themeline* was wrongly decided because it should have been argued and accepted that the same development value could equally well have been released by the grant of new leases of the individual flats which allowed the premises as a whole to be used as a house. Alternatively, Mr Harrison submitted, the Tribunal had been wrong to decide that marriage value was limited to value released by the grant of separate leases to each of the participating tenants.

72. As to the first of these alternatives, Mr Harrison pointed out that in *Themeline* the only contention on behalf of the landlord was that development value would be released by the grant of a single lease of the whole house (see paragraph 27). That single lease hypothesis had not been accepted because the Tribunal considered that *Sportelli* was binding authority against it (paragraph 37). It had not been suggested in *Themeline* that, on enfranchisement, each participating tenant would acquire the potential ability to procure the grant of a new lease of his or her own flat which would allow the premises in question to be used as a single house. In the hands of a single individual the aggregate value of such leases would be equivalent, it was submitted, to a single lease of the whole house. The LVT's description of this approach as "fanciful" was not a reasoned basis for its rejection because paragraph 4 was concerned with "potential ability" as opposed to what may eventuate in reality. Once it was recognised that the development value could be unlocked by the grant of several leases with a relaxation of the covenants on user and alterations Mr Harrison submitted that the case falls into the same line of authority as *Forty-five Holdings v Grosvenor (Mayfair) Estate* and *Maryland Estates v Abbathure*. In both of those cases the ability of the participating tenants to vary the terms of their leases was identified as one of the advantages they would enjoy following enfranchisement which fell to be reflected in marriage value under paragraph 4.

73. In support of his alternative argument, that *Themeline* had been wrongly decided even on the basis on which it was argued, Mr Harrison submitted that Lord Neuberger clearly had not had development value in mind in *Sportelli* which was concerned only with the hope of transactions with non-participating tenants. That seems to have been accepted by the Court of Appeal in *Cravecrest* at paragraphs 73-74, and by the Tribunal in *Money v Cadogan Holdings* at paragraph 73. The Tribunal had therefore been wrong to conclude that *Sportelli* was "in terms authority for the proposition" that marriage value was not payable in this kind of case.

74. In response to the cross appeal the appellant relied on the statement of case provided by her solicitor and the expert's report provided by her valuer to the LVT. Neither of these engaged with the respondent's development marriage value argument which gained full expression only in the report of the respondent's valuer. At paragraph 8.5.14 of that report the respondent's expert had identified the respondent's intention to distinguish *Themeline* on the basis that substantial value would be released by the grant of a new lease of each existing flat with a licence for alterations which allowed the flats to be used jointly as a single house. The experts' agreement on a figure of £194,000 for development marriage value must therefore be taken to be contingent only on the availability of that approach as a matter of law.

75. In *Themeline* the Tribunal decided that *Sportelli* required that the marriage value to be taken into account under paragraph 4(2) must exclude value realised by the grant of a single lease of a whole building following its collective enfranchisement. In view of the observations made in the Court of Appeal in *Cravecrest* (paragraph 74) concerning the ratio of *Sportelli* and by the Tribunal in *Money* (paragraph 73) there seems to me to be scope for a reconsideration of the merits of the argument, rejected in *Themeline*, that *Sportelli* was concerned only with the "paradigm case" of conventional marriage value and said nothing about whether development marriage value could be taken into account under paragraph 4(2). I am satisfied, however, that it is neither necessary nor desirable for that reconsideration to be conducted in this appeal.

76. It is not desirable for *Themeline* to be reconsidered now because the argument presented by Mr Harrison on his cross-appeal has, in effect, been unchallenged. While the Tribunal is entitled to reconsider its own decisions and to depart from them, it should be slow to do so, especially where it has not had the benefit of full argument on both sides.

77. It is not necessary to reassess *Themeline* in order to determine this appeal because the Tribunal was not asked in *Themeline* to consider the argument advanced by Mr Harrison in this case. The only route for the release of development value which was considered in *Themeline* was the grant by the nominee purchaser of a single lease of the whole Building. If the same value could be achieved by a variation of the existing leases of the individual flats, or by the grant of new longer leases of the flats on different terms, there is nothing in *Themeline* which considers (let alone rules out) the

possibility of it being taken into account when assessing marriage value under paragraph 4.

78. As the Tribunal made clear in *Money*, when determining the price payable on collective enfranchisement: "As a matter of principle, no legitimate portion of value should be left out of account, and none should come in more than once". The agreed fact that the Building has greater value for occupation as a single house, rather than as two flats, means that there is a legitimate portion of the value of the Building, the development value, for which the nominee purchaser ought in principle to pay as part of the price of acquisition. If that value is capable of being realised in the manner described in paragraph 4(2)(a), by the grant of new leases to the participating tenants without payment of a premium or restriction as to length, and if it would be shared between the freeholder and the nominee purchaser in a sale on the open market as described in paragraph 4(2)(b), it would be wrong for the freeholder to be deprived of its share.

79. As matters stood before the valuation date, the Building could not be returned to use as a single house without breaching some of the covenants in the appellant's two leases. Each lease includes a covenant that the flat will not be used otherwise than as a private dwelling, and their use as part only of the larger dwelling created on their amalgamation would probably be a breach of that restriction. The alterations necessary to bring about the amalgamation would certainly be prohibited by the covenant against structural alterations without the consent of the landlord.

80. On acquiring the freehold the appellant will effectively be free of the restrictions in her leases and will be entitled to carry out any alterations she chooses, and use the Building as she likes. If she chose to create new longer leases there would be no reason for her not to include in them a covenant for use which did not prevent the flats from being occupied in conjunction with each other as a single private dwelling. The opportunity to do so would flow from the unification in her hands of all of the leasehold and freehold interests in the Building.

81. The slightly unusual feature of this case (which it shares with *Forty-five Holdings v Grosvenor (Mayfair) Estate*) is that the participating tenants and the nominee purchaser are one and the same person, the appellant. It is that feature which, in practice, would make it unnecessary for new leases to be granted at all to enable the Building to be used as a single dwelling. It may have been that consideration which prompted the LVT to describe the respondent's hypothesis of lease variations as "not credible". In the unusual circumstances of this case that may well be right if the hypothesis is treated as a prediction of what might happen in the real world; nonetheless the LVT's assessment seems to me rather to miss the point. Paragraph 4(2) is concerned with opportunity, with "the potential ability of the participating tenants ... to have new leases granted to them". The ability is "potential" because in the ordinary case its realisation will depend on the participating tenants reaching agreement amongst themselves (if they have not done so already) on how they are going to deal with their existing leases post-enfranchisement. In this case only the

appellant will be involved in decisions over the future of the Building, but the ability she will have to structure the leasehold interests in a way which permits the use of the Building as a single house is the same potential ability which would be available in a more conventional collective enfranchisement involving different individuals.

82. The appellant does not occupy the Building as a single house, and her preference following enfranchisement is to continue to occupy only part of it, and to let the remainder as she does at present. Her personal preference is not, however, a trump card depriving the freeholder of any share in the development potential. In the circumstances to be assumed under paragraph 4(2)(b), a sale of the freehold in the Building in the open market, it would be necessary for the appellant to agree to share the development value released by the marriage of the freehold and leasehold interests with the freeholder in order to reach agreement on the price. Whether she wished to convert the Building back to a house or not, she would acquire the ability to do so, or to sell to a third party who wished to do so; she would also deprive the freeholder of the opportunity to convert the Building at a later date, either by waiting until the expiry of the term or taking any opportunity which arose in the interim to purchase the leases of the flats themselves. Those features would be reflected in the price which she would have to pay in the open market, and it is not the policy of the legislation that they should be left out of account on a collective enfranchisement

83. There seems to me to be nothing in either *Sportelli* or *Themeline* to prohibit the marriage value to be determined under paragraph 4 from including value capable of being released by variations in the terms of the appellant's leases to facilitate the use of the Building as a house. The Tribunal's decision in *Forty-five Holdings v Grosvenor (Mayfair) Estate* proceeded on the same hypothesis as the respondent advances in this appeal, namely that development value could be realised or unlocked by a variation of the terms of the participating tenant's leases. The Tribunal accepted the argument of Mr Radevsky (paragraphs 19(2) and 22) that in those circumstances the fact that the same development value might be obtainable by the participating tenants in some other way, rather than through the granting of new leases, does not alter the fact that it is available through the potential ability to have new leases granted to them. I see no reason not to reach the same conclusion on this appeal.

Conclusion

84. For these reasons I dismiss the appeal and allow the cross appeal. The price payable for the freehold of the Building is the sum of £194,000 agreed by the parties' valuers.

Martin Rodger QC
Deputy President
31 December 2013

LRA/156/2012

AGREED VALUATION

Between Mr B Maunder Taylor acting for Applicant and Mr A How acting on behalf of the Respondent in respect of 11/11A Lancaster Avenue, Hadley Wood, Barnet

Valuations under Paragraph 3				
Values as Flats				
11A Lancaster Avenue			£ 415,000	
11 Lancaster Avenue			£ 350,000	
			£ 765,000	
Value as a House (ready to convert)			£1,050,000	
Difference i.e. "Development Value"			£ 285,000	
Discount for risks over 61 years		48%	£ 135,375	
			£ 149,625	
Plus Value as Flats			£ 765,000	
Deferred Development Value at Term			£ 914,625	
(Present Value in 61 years @ 5%)		0.051	£ 46,646	
Plus				
Capitalisation of Ground Rents			£ 1,040,00	
			£ 47,686	
Valuations under Paragraph 4				
Ordinary Marriage Value (MV) as 2 Flats		£765,000		
Current Lessees interest	£650,250			
Plus freeholders interest as Flats	£ 40,055	£690,305		
Marriage Value		£ 74,695		
Landlords share at 50%		£ 37,348	£ 37,348	
Total price to enfranchise with Ordinary Marriage Value			£ 85,033	£ 85,000
Development Marriage Value				
Development Value		£285,000		
Less planning risk, say	£20,000			
Less value of being able to develop at term	£47,686	£ 67,686		
Development Marriage Value		£217,314		
Landlords share at 50%		£108,657	£ 109,000	
Plus ordinary MV and Value under Par 3			£ 85,000	
Total price to pay including Development Marriage Value				£194,000
OR ALTERNATIVELY				
Development Hope Value payable under Para 3				
Additional value to a hypothetical purchaser		£285,000		
Less value to develop at term and risks		£ 67,686		
Development Hope Value		£217,314		
Landlords share of Development Hope Value at 30%		£ 65,194	£ 65,000	
Plus ordinary MV and Value above under Par 3			£ 85,000	
Total price to pay to include Development Hope Value				£150,000