

UPPER TRIBUNAL (LANDS CHAMBER)



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LT Case Number: LRA/167/2009

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – terms of contract – whether term requiring transfer of property in same physical state as at the date of valuation should be imposed – held it should not – intermediate leasehold interest – whether owner entitled to share in marriage value – held it was – whether enhancement of value of property through prospective grant of lease of whole to participating tenant could be taken into account in assessing marriage value – held it could not – Leasehold Reform, Housing and Urban Development Act 1993, Sch 6, para 4(2)*

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

BETWEEN  
**THEMELINE LIMITED** Appellant  
and  
**VOWDEN INVESTMENTS LIMITED** Respondent  
(in administration)

Re: 39 Wilton Crescent,  
London,  
SW1X 8RX

Before: The President

Sitting at 43-45 Bedford Square, London WC1B 3AS  
on 14 February 2011

*Thomas Jefferies* instructed by Maxwell Winward for the appellant  
*T C Dutton* instructed by Walker Morris solicitors of Leeds for the respondent

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The following cases are referred to in this decision:

*Englewood Properties Ltd v Patel* [2005] EWHC 188

*Topfell Ltd v Galley Properties Ltd* [1979] 1 WLR 446

*Donnelly v Weybridge Corpn* [2006] EWHC

*Cadogan v Sportelli* [2010] AC 226

*Forty-five Holdings Ltd v Grosvenor (Mayfair) Estate* [2010] L & TR 21

*Maryland Estates Ltd v Abbathure Flat Management Co Ltd* [1999] 1 EGLR

The following further cases were referred to in argument:

*Cadogan v 2 Herbert Crescent Freehold Ltd* LRA/91/2007

*McHale v Cadogan* [2010] EWCA Civ 1471

*Howard de Walden Estates Ltd v Aggio* [2009] 1 AC 39

*Cadogan v Search Guarantees plc* [2004] 1 WLR 2768

## DECISION

### Introduction

1. This case concerns a collective enfranchisement claim relating to a building, 39 Wilton Crescent, SW1, divided into three flats. Two of the parties, Themeline Ltd, the nominee purchaser, and Vowden Investments Ltd (in administration), an intermediate leaseholder, appeal against a decision of a leasehold valuation tribunal given on 24 November 2009. The two appeals were consolidated by order of this Tribunal, with Themeline as the appellant and Vowden as the respondent.

2. The three flats into which the building is divided are Flat 1 on the ground and lower ground floors, Flat 2 on the first floor and Flat 3 on the second and third floors. The claim was made by notice dated 30 April 2007. There was a single participating tenant, a company called Marlin Ltd, which was entitled to possession of flats 2 and 3 under a lease of the whole building. The notice named Themeline as the nominee purchaser. Vowden was a non-participating tenant, holding an underlease of Flat 1, which was due to expire on 22 March 2009. It also held a lease of Flat 1, superior to Marlin's interest, which had been granted to it on 23 December 2005 for a term expiring on 21 March 2130. It is in respect of that intermediate interest that Vowden's entitlement to a share of the price payable by the nominee purchaser arises.

3. The building, which stands on the Grosvenor Belgravia estate, was the subject of a very complex ownership structure arising under six leases, three of which related to the whole building and three of which were of individual flats. It is set out schematically in the following table prepared by counsel:

Flat 1	Flat 2	Flat 3
Freehold Estate		
GEB Lease dated 27.03.1984 (exp.25.iii.2184)		
Flat 1 Overriding Lease dated 23.12.2005 (exp.21.iii.2130)		Flat 3 Overriding Lease Dated 20.04.2007 (exp 21.iii.2130)
"Enforcer" lease dated 22.12.2005 (exp 26.iii.2009)		
Headlease dated 20.05.1966 (exp 25.iii.2009)		
Flat 1 underlease Dated 15.03.1967 (exp.22.iii.2009)		

4. At the date of the notice the freehold was owned by the Duke of Westminster, but it was transferred on 13 May 2008 to Famebridge Ltd. The basic structure of the leasehold interests is as follows:

- (a) A headlease of the entire building granted on 20 May 1966; and

- (b) an underlease of Flat 1, carved out of the headlease on 15 March 1967.

This structure has been complicated by the granting of four overriding leases. In chronological order these are:

- (c) an overriding lease of extensive lands in Belgravia granted by the freeholder, the Duke of Westminster, to Grosvenor Estate Belgravia Ltd on 27 March 1984 (the GEB lease);
- (d) an overriding lease of the building granted on 22 December 2005 (the “Enforcer lease”), which was interposed between the GEB lease and the headlease;
- (e) an overriding lease of Flat 1 granted on 23 December 2005, which was interposed between the GEB lease and the Enforcer lease and, under its provisions, had to remain in the same ownership as the Flat 1 underlease; and
- (f) an overriding lease of Flat 3 granted on 20 April 2007, which was interposed between the GEB lease and the Enforcer lease.

5. On the claim date, 30 April 2007, the leases were due to fall in as follows:

- (b) (the Flat 1 underlease) on 22 March 2009;
- (a) (the headlease) on 25 March 2009;
- (d) (the Enforcer lease) on 22 December 2009;
- (e) and (f) (the overriding leases of Flats 1 and 3) on 21 March 2130;
- (c) (the GEB lease) on 25 March 2184.

Thus on the claim date, 30 April 2007, the Flat 1 underlease (a) and the headlease (b) had less than 2 years to run; the Enforcer lease (d) had a reversion expectant in possession of a single day; and the GEB lease (c) was not due to fall into possession for 123 years. The Enforcer lease, the Flat 1 and Flat 3 overriding leases and the GEB lease were all intermediate leasehold interests that fell to be acquired by the nominee purchaser under the collective enfranchisement.

6. After the notice had been served the freehold interest, the GEB lease and the Enforcer lease were transferred to a company called Famebridge Ltd, and the Flat 3 overriding lease was transferred to a company called Framechoice Ltd. Marlin Ltd, Famebridge Ltd and Framechoice Ltd are not under common ownership, but are all represented by the same solicitors, valuers and counsel as Themeline. Themeline and Famebridge shared the same representation before the LVT. Vowden was separately represented.

7. The LVT’s decision was given on 24 November 2009. On 18 June 2010 Vowden went into administration. The Flat 1 overriding lease is charged to the Bank of Scotland, and it

appears that the debt served by the charge will be considerably greater than Vowden's share of the price under any of the alternative prices that have been agreed.

## **The issues**

8. There are three issues that require to be determined. The first (issue 1) concerns a term that Themeline wish to have inserted into the contract and which Vowden say would be inappropriate. It arises because of works, adversely affecting the fabric of Flat 1, that were carried out after the valuation date. The flat was superficially in good condition as at the valuation date. It had recently undergone refurbishment and was finished to a high specification. However, the LVT found that there was in fact a damp problem in the basement and that a reasonable purchaser would have identified the need for extensive damp proofing works. On that basis the LVT determined that the freehold value of Flat 1 in good repair was £2,600,000 but that the price needed to be discounted by £375,000 to reflect the need for remedial works.

9. Issue 1 arises because Flat 1 was stripped out after the valuation date. Vowden removed all fixtures and fittings in the lower ground floor of the flat, reducing it to a shell. The plaster was stripped off up to a height of 1.5 metres, apparently for the work required to cure the damp problem. Appliances and fittings were removed from the kitchen, and other fittings in the ground floor were removed or damaged. The remedial work was not carried out.

10. The value of the flat, under Schedule 6 to the Leasehold Reform, Housing and Urban Development Act 1993, had to be made as at the date of the section 13 notice. So the destructive works had to be ignored for this purpose. There is no disagreement about this. Themeline says that unless an appropriate term is included in the contract it will be paying for a flat in good condition (apart from the damp) but will be receiving a flat that has been gutted. It draws attention to the Standard Conditions of Sale, 4<sup>th</sup> Edition, which provide at 5.1.1:

“The seller will transfer the property in the same physical state as it was in at the date of the contract (except for fair wear and tear).”

11. Themeline contends that this provision should be adapted so that it relates to the valuation date and provides for a set-off against the purchase price for breach of the obligation, thus:

“17. The Fourth Seller will transfer the Fifth Property in the same physical state as it was in at the valuation date (except for fair wear and tear) and on completion the Buyer shall be entitled to set off any loss suffered as a result of breach of this obligation against the price payable for the Fifth Property by way of abatement of the price.”

Vowden says that such a term is not appropriate.

12. Issue 2 is simply stated. It is whether Vowden is entitled to a share of the marriage value, however that may be calculated. The LVT held that it was not entitled to a share, and Vowden says that it was wrong to do so.

13. Issue 3 concerns the method of calculating marriage value, if issue 2 is determined in Vowden's favour. The building, now divided into three flats, would be worth substantially more if it was converted back into the house that it once was. With vacant possession the value would be £9.405m. The aggregate value of the flats with vacant possession would be only £6.125m. Vowden's contention is that marriage value should be assessed on the basis that, after enfranchisement and the expiry of the Flat 1 underlease in April 2009, Marlin, the participating tenant, would be able to realise the value of the building as a house by granting itself a lease of the whole house. Themeline say that the Act precludes an assessment on this basis.

14. Values are agreed on the three alternative bases, and the valuations are appended to this decision. The amount of marriage value to which Vowden would be entitled on the assumption that the potential for conversion into a house is to be ignored is £49,544. On the alternative assumption, that Marlin would grant itself a lease of the whole house on the expiry of the Flat 1 underlease in April 2009 Vowden's share of the marriage value would be £517,762.

## **Issue 1**

15. The LVT, having recorded shortly the substance of the parties' contentions on issue 1, expressed its conclusion as follows:

“96. In the view of this Tribunal the proposed clause is vague and has not been time limited. In addition, the Tribunal considers that the Applicant has adequate protection under the National Conditions of Sale.”

16. The contention of Themeline was that clause 17 did not give the nominee purchaser adequate protection and that the additional words proposed were necessary to achieve that objective. Mr Thomas Jefferies said that it was accepted that under Schedule 6 of the Act the valuation should ignore the gutting of the flat, because it was carried out after the valuation date. The nominee purchaser would suffer loss on completion as a result of the stripping out work for two reasons. Firstly the cost of remedial works would be greater (by over £200,000) than they would have been if flat 1 had remained in the condition that it was in at the date of valuation because, for example, services had been cut and consequential remedial work was required. Secondly the nominee purchaser would not have any beneficial use of flat 1 following completion until the remedial works had been carried out, whereas if it had been left in the condition it was in at the valuation date it could have been let on a short term basis. (Although at the date of valuation Vowden's underlease had 1.92 years to run, at the time of the LVT hearing it had already expired, so that on completion Themeline would gain vacant

possession of the flat.) There was a need for the suggested clause in order to ensure that the nominee purchaser got what it was paying for.

17. In an ordinary contract for the sale of land, Mr Jefferies said, the price was agreed based on the condition of the property as it stood at the date of the contract, and this is what the Standard Conditions of Sale, 4<sup>th</sup> Edition, provided for at 5.1.1. This reflected the duty under the general law to preserve the property in its state as at the time of the contract: see *Englewood Properties Ltd v Patel* [2005] EWHC 188 at para 5A. That provision needed to be adapted in the present case because the valuation date was not the date of contract but the date of valuation.

18. It was not sufficient, however, to adapt the standard condition by substituting “the valuation date” for “the date of the contract”. The nominee purchaser would not agree, and should not be required to pay, a premium based on the value as at the valuation date and be left to bring a subsequent claim for damages. Vowden was a company in administration, registered in the British Virgin Islands, and a claim for damages against it would be worthless. The nominee purchaser should be entitled under the contract to set off against the purchase price the damages payable by Vowden for failure to transfer the property in the state that it was in at the valuation date. A set-off was available where there was a close connection between the price and the damages claimed, and damages for breach of an obligation to deliver the property in the same physical state were closely connected to the price. Mr Jefferies referred to *Topfell Ltd v Galley Properties Ltd* [1979] 1 WLR 446, where the price payable was reduced because the vendor was in breach of an obligation to deliver vacant possession on completion and to *Donnelly v Weybridge Corpn* [2006] EWHC 2678, where a vendor who, in breach of contract failed to provide limestone floors, was held not to be entitled to serve notice to complete until an abatement had been determined or agreed.

19. For Vowden, Mr T C Dutton said that there was an element of unreality about the proposed term, so far as it concerned the condition of the flat. It was drafted on the (implicit) assumption that it was guarding against the risk of future changes to the flat’s condition. But it was clear that Themeline’s reason for wanting the term was that there had already been a change in that condition. In reality, therefore, what was being proposed was that Vowden should covenant to carry out remedial works – ie works to return the flat to the condition it was in at the time the section 13 notice was given.

20. The LVT was right to say that the term was too vague to be acceptable. If Themeline wanted the contract to require Vowden to do works, the term it proposed should spell out what those works were. Otherwise there was scope for confusion and argument. The language of the proposed term suggested that the flat should be restored to its 2007 condition (replete with apparent damp problems) – but the commercial absurdity of such an interpretation left it open to Themeline to say that the only sensible way of putting the flat back into its 2007 condition would be by remedying the damp problems. It was submitted that either interpretation would impose an unreasonable obligation upon Vowden: either because it was being required to do something that was pointless, or because it was being

required to put flat 1 into a condition which would make the flat worth £2.6m rather than the £2.25m determined by the LVT.

21. Mr Dutton said that the LVT was right to say that Marlin (and its nominee) were already adequately protected: firstly they had the protection of the tenant covenants in the flat 1 underlease (ie the Lease by right of which Vowden was entitled to possession of the flat); secondly, they had the protection of the standard term which (it was accepted) should be included in the contract; and thirdly, since the works were part of the solution to the damp problem, neither Marlin nor its nominee needed any further protection.

22. There was another reason, Mr Dutton said, for rejecting the proposed term, which arose by reason of Vowden's having gone into administration. If the contract was executed by the administrator, any debt (or damages) arising under it would rank in priority ahead of Vowden's other unsecured creditors. The weight of this point would depend (to some extent at least) on whether Vowden had any assets available to pay its unsecured creditors – a matter which might be in some doubt. The Flat 1 overriding lease was charged to the Bank of Scotland. Unless a miracle happened, the debt secured by that charge would be considerably greater than any of the prices for the lease identified in the three agreed valuations. Thus there was a real risk that – subject to the provisions of the 1993 Act – the proceeds of sale would not be sufficient to redeem the charge. The 1993 Act (by section 35(1)) provided a mechanism for the release of charges in such cases. But that mechanism only applied if the amount paid to the bank was the whole of the consideration payable for the relevant superior interest – ie the “price payable” for that interest as identified by Schedule 6, para (6(1)).

23. It would be wholly inappropriate for the contract to include the proposed provision, said Mr Dutton. It was non-standard, and on the evidence it could not be said that it was a term which made the contract “as nearly as may be” like one that would have been negotiated in the open market, as provided by section 98(1) of the Act. The proposed provision was a blatant attempt to reduce the amount of the purchase price, which would affect not merely Vowden but also the Bank of Scotland. Such a reduction was not permitted: the 1993 Act identified the sum to which the Bank of Scotland was entitled, and the contract could not properly seek to reduce the amount of that entitlement.

24. It does not seem to me that the proposed clause is inappropriate as being too vague – because, as it is put, it does not spell out the works of restoration required. The state of the flat at the valuation date would no doubt be ascertainable, and indeed such state would have to be ascertained in any event in an action for breach of the relevant covenant in the lease. The reason such a clause is inappropriate, in my judgment, is simply this. Up to the time of contract the relationship between those with interests in the building in relation to the physical state of the building is determined by the terms of the leases. It is unnecessary to impose a covenant that provides a landlord with the same protection as he has under the relevant lease. Moreover it must be borne in mind that the nominee purchaser is not obliged to proceed with the purchase and may not do so. It would therefore be inappropriate to provide for the inclusion in the prospective contract of a term designed either to go further than the covenants in the lease in inhibiting what the tenant might do with the property up to

the time of the contract or to impose a penalty upon him, independently of the lease, for things that he might already have done. It is not the function of the contract to modify the duties and liabilities of the parties as they exist before the date of the contract. And in any event it would be inconsistent with the valuation process to do so since the value of the lease and reversion as taken into account in the determination of the purchase price will reflect the adequacy or otherwise of the covenants in the lease.

## **Issue 2**

25. Issue 2 is whether Vowden is entitled to a share of the marriage value, however that may be calculated. The LVT concluded that it was not so entitled. It expressed its conclusions and reasoning on this point as follows:

“87. In a simple case, marriage value in a block of flats consists of the value of the freeholder’s interest and a share of the marriage value which is restricted to the participating flats (leaving aside any issue of hope value for the non-participants).

88. The Act specifically excludes bids from other tenants or the merger of interests in valuing the freehold. The marriage value of the flats is restricted to the ability of the participating tenants to grant themselves new leases. Thus, the marriage value of the non-participating tenants is specifically excluded from the compensation payable.

89. Accordingly in this case the Tribunal accepts Mr Jefferies’ interpretation of the law. Vowden/Bank of Scotland are non-participating tenants and are excluded.

90. The Tribunal considers the schedule of interests provided to be of assistance and this is set out below. From this schedule it can be seen that the overriding lease for Flat 1 has no bargaining powers to prevent or be involved in the ability of Flats 2 and 3 to grant themselves new leases and the Tribunal finds it difficult to conceive that the legislation is or was intended to have the result contended for by Mr Dutton.”

26. The conclusion that Vowden is excluded from an entitlement to a share of the marriage value because it is a non-participating tenant is, in my judgment, manifestly wrong. Its claim to a share of the marriage value arises in relation to its interest in the Flat 1 overriding lease, and the fact that it is also the tenant under the Flat 1 underlease is irrelevant for this purpose. It is the Flat 1 overriding lease that will be acquired on enfranchisement (see section 2(1) and (2)). That lease is an intermediate leasehold interest for which Vowden is entitled to be paid a separate price (see paragraph 6(1) of Schedule 6); and under paragraph 9 of Schedule 6 as owner of an intermediate leasehold interest Vowden is entitled to part of the marriage value.

## **Issue 3**

27. Issue 3 arises because, although currently arranged as three flats, the building is ripe for reconversion to a house, and after enfranchisement and with the expiry of the Flat 1 underlease Marlin is able to achieve this by having a new lease of the whole house granted to

it. At the date of the notice the Flat 1 underlease had 1.92 years to run, so that the valuation assumes the grant of a long lease of the whole building at the end of that time with its value deferred for that period. The total marriage value would be £2,863,790; and 50% of this (£1,431,395) would fall to be divided between the freeholder and the owners of the intermediate leasehold interests. Vowden's share would be £517,762. It is, I have to say, hard to discern any reason in principle why Vowden should not share to this extent in the uplift in value that is only made possible by the compulsory purchase of its interest. Indeed it would seem to me patently unfair if it were not able to do so.

28. Whether the prospect of a lease of the whole building can be taken into account for the purposes of assessing marriage value depends on the way in which marriage value is defined. Paragraph 4(2) of Schedule 6 provides as follows:

“(2)...the marriage value is any increase in the aggregate value of the freehold and every intermediate 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 interest 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 agreed to share with the sellers in order to reach agreement as to price.”

29. 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. Mr Jefferies' contention is such a construction is not appropriate and that marriage value is limited to the ability of participating tenants to obtain new leases of their respective flats. He relies on certain passages in the judgment of Lord Neuberger of Abbotsbury in *Cadogan v Sportelli* [2010] AC 226.

30. At paragraph 78 Lord Neuberger noted that it was “quite rightly” common ground between the parties that:

“...(4) Under Schedule 6, no tenant of any part of the building is assumed to be in the market for the building under para 3, but at the para 4 stage marriage value is to be taken into account, to the limited extent of the participating tenants being able to enjoy the marriage value through the medium of being granted new leases of their flats.”

31. At paragraph 96 appears the first of the passages relied on by Mr Jefferies, in which Lord Neuberger said:

“It is clear from the bracketed words in para 3(1), ‘with no person who falls within subparagraph (1A) buying or seeking to buy’, and the provisions of para 3(1A), with its reference to ‘a tenant of premises contained in the [building]’, that every tenant of a flat in the building, whether or not participating in the proposed purchase, is deemed to be out of the market. It is also 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.”

32. Then at paragraph 108 Lord Neuberger said:

“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...”

33. There were thus references to the effect of para 4(2) being that: “marriage value is to be taken into account, to the limited extent of the participating tenants being able to enjoy the marriage value through the medium of being granted new leases of their flats” (paragraph 78); “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” (paragraph 96); and “marriage value must be taken into account in relation to the participating tenants' ability to take new leases of their respective flats” (paragraph 108). Mr Jefferies submitted that these statements on Lord Neuberger’s part as to the effect of paragraph 4(2) formed part of the ratio of the case because they were reasons why he reached the conclusion that hope value could be claimed in respect of the non-participating tenants. Thus the only assumption permitted under paragraph 4(2) was of the grant of new individual leases of their respective flats to each participating tenant.

34. Moreover, Mr Jefferies said, the assumption of a single lease of the whole building would be contrary to the requirement in paragraph 4(4)(b) that “any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser” is to be disregarded.

35. Mr Dutton submitted that in *Sportelli* Lord Neuberger was dealing with the paradigm case where (i) the participants are enfranchising so that they can acquire greater security in their home, and (ii) as a by-product they also acquire an “investment part” for which they should pay a fair price. He said that this was clear from paragraph 98, where Lord Neuberger said:

“98. It would be both arbitrary and unfair, in my judgment, if a landlord, who can recover marriage value in relation to the participating tenants' flats, could not recover hope value in respect of the non-participating tenants' flats. It would be arbitrary because, in so far as they are purchasing the reversion to non-participating tenants' leases, the participating tenants are acquiring an investment, whereas, in so far as they are purchasing the reversion to their own leases, they are acquiring greater security in their homes. They are plainly anxious to enhance the value of their interests in their respective flats, as otherwise they would not be exercising their chapter I rights. It is therefore quite logical to oblige them to pay a share of the resultant marriage value, as envisaged by para 4: Parliament could have decided to release them from that obligation, as it did to tenants under section 9(1) of the 1967 Act, but it did not do so. Given that it was thought to be fair to make the participating tenants pay a true market price for the reversion to their own flats, it would be surprising if they did not have to pay a true market price for the investment part of their purchase, and that would include paying for any hope value in respect of the prospect of negotiating new leases of their flats with non-participating tenants. By the same token, it would be unfair on the landlord.”

36. Mr Dutton also drew attention to a decision of this Tribunal and one of the Lands Tribunal. 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 houses, which was the subject of a collective enfranchisement, could be taken into account when assessing marriage value. In *Maryland Estates Ltd v Abbathure Flat Management Co Ltd* [1999] 1 EGLR 100 the Lands Tribunal (Anthony Dinkin QC and P H Clarke FRICS) accepted that, following enfranchisement, the participating tenants would enjoy particular advantages which counsel (Mr Fancourt) had identified and that these could be taken into account in assessing market value. They 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. Mr Dutton said that the appellant's arguments were incompatible with these decisions.

37. I feel compelled, however, to accede to the appellant's contentions. While the decision in *Sportelli* concerned the entitlement of the landlord to hope value in relation to the non-participating flats (the value of the hope of doing a deal with tenants for the extension of their leases), an essential part of the reasoning, it is clear, was contained in the passages I have quoted from the judgment of Lord Neuberger. The other law lords (except Lord Hoffman) concurred in this reasoning. The decision is therefore binding authority that under paragraph 4(2) 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.

38. Mr Dutton is of course right when he draws attention to the fact that *Sportelli* was concerned with the typical collective enfranchisement, in which the gain to the participating tenants lies in their ability to extend their own leases without the payment of any premium and in their acquisition of an investment in the property, rather than a case such as the present in which the legislation enables the compulsory acquisition of the freehold and intermediate freehold interests so as to permit the reconversion of the property to a single house. It may well be that the House of Lords did not have in mind this sort of a case, but speculation about this is inappropriate and unnecessary. The decision is in terms authority for the proposition stated above.

39. I should add for completeness, firstly, that I do not see that paragraph 4(4)(b) would operate so as to preclude the assumption of a lease of the whole property; and, secondly, that I do not see the decisions in *Forty-five Holdings* and *Maryland Estates* to be in any way in conflict with the proposition in *Sportelli* that I conclude is determinative of Issue 3.

40. The LVT determined the enfranchisement price at £5,791,693 and Vowden's share at £2,002,359. I have concluded that it was wrong to determine that Vowden was not entitled to a share of the marriage value, and I have rejected Vowden's claim to be entitled to a share of a marriage value assessed on the assumption of the grant of a long lease of the whole building to the participating tenants. On this basis the agreed valuation (Valuation 2) is that the enfranchisement price is £5,622,394 and Vowden's share is £2,033,723. Vowden's appeal is allowed to this extent. Themeline's appeal is dismissed.

Dated 20 April 2011

George Bartlett QC, President

**39 Wilton Crescent, London SW1 - Valuation 1****INPUT INFORMATION**

Valuation Date	30th April 2007						
Possession Date	- 25th March 2009						
Headlease number of years unexpired	1.92						
Number of yrs. to sub lease reversion to Flat 2	1.92						
Number of yrs. to sub lease reversion - Flats 1 & 3	122.92						
Freehold Deferment Rate	5.00%						
Deferment Rate - Flat 1 & 2 1.92 yrs	5.50%						
Freehold Reversion	176.92						
Sub-lease number of years unexpired	1.92						
Headlease Capitalisation Rates	8.00%						
Sinking Fund Rate	2.50%						
Tax @	30.00	p in £					
	FH Value	GIA sq.ft.	£ per sq ft	LVT cond adj.	Adj. FH Value	LH Value	Adj. LH Value
Flat 1 - Lower Ground/Raised Grd Flat	£2,600,000	1,984	£1,310	£375,000	£2,225,000	£2,574,000	£2,199,000
Flat 2 - First Floor/Second Floor Flat	£2,050,000	1,188	£1,726				
Flat 3 - Third/Fourth	£1,850,000	1,234	£1,499				

**FREEHOLDERS EXISTING INTEREST**

<i>Capital Value of rental income</i>	No loss of ground rent						
<i>Capital Value of Reversion</i>							
	1 Lower Grd/Grd			£2,225,000			
	2 First/Second			£2,050,000			
	3 Third/Fourth			£1,850,000			
				£8,125,000			
Reversion to FHVP value x PV of £1 until end of term	176.92 yrs			0.0002	£1,092		
						£1,092	

**INTERMEDIATE LEASEHOLD INTERESTS****GROSVENOR ESTATE BELGRAVIA ("GEB")**

<i>Capital Value of rental income</i>							
Rent Reserved (payable by BLP years)			£515				
YP Dual Rate to reversion			16.5403				
				£8,518			
<i>Capital Value of Reversion</i>							
		FHVP	Relativity				
Reversion to Flat 1 54 years x PV of £1 122.92 yrs	1 Lwr Grd/Grd	£2,225,000	77.2%	£1,717,700	0.0025		
				£4,269			
Reversion to Flat 2 175 year lease x PV of £1 1.92 yrs	2 First/Second	£2,050,000	99%	£2,029,500	0.0023		
				£1,831,236			
Reversion to Flat 3 54 year lease x PV of £1 122.92 yrs	3 Third/Fourth	£1,850,000	77.2%	£1,428,200	0.0025		
				£3,550			
				£1,847,573			

**BELGRAVIA LEASEHOLD PROPERTIES ("BLP") ("Enforcer")**

Agreed Nil Value							
	£0						

**MARLIN SECURITIES LIMITED ("Marlin")**

Reversionary Value in respect of Flat 1 (agreed)							
	£1						

**VOWDEN INVESTMENTS ("Vowden")**

<i>Capital Value of rental reserved</i>							
Agreed							
	£1						
<i>Value of Intermediate Lease (Flat 1)</i>							
x PV of £1 until end of term	1.92 yrs			£2,189,000	0.0023		
				£1,984,177			
				£1,984,178			

**FRAMECHOICE LIMITED ("Framechoice")**

<i>Capital Value of rental income</i>							
Agreed							
	£1						
<i>Value of Intermediate Lease (Flat 3)</i>							
x PV of £1 until end of term	1.92 yrs			£1,831,500	0.0023		
				£1,652,579			
				£1,652,580			

MARRIAGE VALUE

Nominee purchaser's FHVP	Flat 2	£2,050,000	
	Flat 3	£1,850,000	

£3,900,000

less existing interests in flats

Freeholders interest £695

Intermediate Leaseholder's Interests

GROSVENOR ESTATE BELGRAVIA ("GEB") £1,834,786

MARLIN SECURITIES LIMITED ("Marlin")

Value of interest in Flat 1 £1  
 Value of Existing Lease (Flats 2 & 3) £138,000  
 £138,001

VOWDEN INVESTMENTS ("Vowden")

No interest in participating flats £0

FRAMECHOICE LIMITED ("Framechoice")

£1,652,580

£3,026,062  
 £273,938

total marriage value

half share of marriage value

x 50%

£136,969

PREMIUM

£5,622,394

value of FH & Intermediate Leasehold interests

Freehold			£1,092	
Headlessee	GEB		£1,847,573	
	BLP		£0	
	MARLIN		£1	
	VOWDEN		£1,984,178	
	FRAMECHOICE		£1,652,580	£5,485,425

Apportionment of Marriage Value

Freehold		0.03%	£43	
Headlessee	GEB	52.77%	£72,277	
	MARLIN	0.00%	£0	
	VOWDEN	0.00%	£0	
	FRAMECHOICE	47.20%	£64,649	£136,969
		100%		

Premiums Payable

Freehold			£1,135	
Headlessee	GEB		£1,919,851	
	MARLIN		£1.02	
	VOWDEN		£1,984,178	
	FRAMECHOICE		£1,717,229	£5,622,394

### 39 Wilton Crescent, London SW1 - Valuation 2

#### INPUT INFORMATION

Valuation Date	30th April 2007
Possession Date	25th March 2009
Headlease number of years unexpired	1.92
Number of yrs. to sub lease reversion to Flat 2	1.92
Number of yrs. to sub lease reversion - Flats 1 & 3	122.92
Freehold Deferment Rate	5.00%
Deferment Rate - Flat 1 & 2 1.92 yrs	5.50%
Freehold Reversion	176.92
Sub-lease number of years unexpired	1.92
Headlease Capitalisation Rates	6.00%
Sinking Fund Rate	2.50%
Tax @	30.00 p in £

	FH Value	GIA sq.ft.	£ per sq ft	LVT cond adj.	Adj. FH Value	LH Value	Adj. LH Value
Flat 1 - Lower Ground/Raised Grd Flat	£2,600,000	1,884	£1,310	£375,000	£2,225,000	£2,574,000	£2,199,000
Flat 2 - First Floor/Second Floor Flat	£2,050,000	1,188	£1,726				
Flat 3 - Third/Fourth	£1,850,000	1,234	£1,499				

#### FREEHOLDERS EXISTING INTEREST

<i>Capital Value of rental income</i>	No loss of ground rent						
<i>Capital Value of Reversion</i>							
		1 Lower Grd/Grd		£2,225,000			
		2 First/Second		£2,050,000			
		3 Third/Fourth		£1,850,000			
					£6,125,000		
Reversion to FHVP value x PV of £1 until end of term	176.92 yrs				0.0002	£1,092	
							£1,092

#### INTERMEDIATE LEASEHOLD INTERESTS

##### GROSVENOR ESTATE BELGRAVIA ("GEB")

<i>Capital Value of rental income</i>							
Rent Reserved (payable by BLP years)			£515				
YP Dual Rate to reversion			18.5403			£8,518	
<i>Capital Value of Reversion</i>							
			FHVP	Relativity			
Reversion to Flat 1 54 years x PV of £1 122.92 yrs	1 Lwr Grd/Grd	£2,225,000		77.2%	£1,717,700		
					0.0025		
						£4,269	
Reversion to Flat 2 176 year lease x PV of £1 1.92 yrs	2 First/Second	£2,050,000		99%	£2,020,500		
					0.9023		
						£1,831,236	
Reversion to Flat 3 54 year lease x PV of £1 122.92 yrs	3 Third/Fourth	£1,850,000		77.2%	£1,428,200		
					0.0025		
						£3,550	
							£1,847,573

##### BELGRAVIA LEASEHOLD PROPERTIES ("BLP" "Enforcer")

Agreed Nil Value							£0
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##### MARLIN SECURITIES LIMITED ("Marlin")

Reversionary Value in respect of Flat 1 (agreed)							£1
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##### VOWDEN INVESTMENTS ("Vowden")

<i>Capital Value of rental reserved</i>							
Agreed						£1	
Value of Intermediate Lease (Flat 1) x PV of £1 until end of term	1.92 yrs				£2,199,000		
					0.9023		
						£1,984,177	
							£1,984,176

##### FRAMECHOICE LIMITED ("Framechoice")

<i>Capital Value of rental income</i>							
Agreed						£1	
Value of Intermediate Lease (Flat 3) x PV of £1 until end of term	1.92 yrs				£1,831,500		
					0.9023		
						£1,652,579	
							£1,652,580

**MARRIAGE VALUE**

Nominee purchaser's FHVP	Flat 2	£2,050,000		
	Flat 3	£1,850,000		
				£3,900,000
less existing interests in flats				
<u>Freeholders interest</u>			£695	
<u>Intermediate Leaseholder's Interests</u>				
GROSVENOR ESTATE BELGRAVIA ("GEB")			£1,834,786	
MARLIN SECURITIES LIMITED ("Marlin")				
Value of interest in Flat 1		£1		
Value of Existing Lease (Flats 2 & 3)		£138,000		
			£138,001	
VOWDEN INVESTMENTS ("Vowden")				
No interest in participating flats			£0	
FRAMECHOICE LIMITED ("Framechoico")			£1,652,580	
				£3,626,062
total marriage value				£273,938
half share of marriage value		x 50%		£136,969
				£5,622,394

**PREMIUM**

value of F/H & Intermediate Leasehold Interests

Freehold			£1,092	
Headlessee	GEB		£1,847,573	
	BLP		£0	
	MARLIN		£1	
	VOWDEN		£1,984,178	
	FRAMECHOICE		£1,852,580	£5,485,425

Apportionment of Marriage Value

Freehold		0.02%	£27	
Headlessee	GEB	33.68%	£46,133	
	MARLIN	0.00%	£0	
	VOWDEN	36.17%	£49,544	
	FRAMECHOIC	30.13%	£41,264	£136,969
		100%		

Premiums Payable

Freehold			£1,119	
Headlessee	GEB		£1,893,707	
	MARLIN		£1.02	
	VOWDEN		£2,033,723	
	FRAMECHOICE		£1,893,844	£5,822,394

**39 Wilton Crescent, London SW1 - Valuation 3**

**INPUT INFORMATION**

Valuation Date	30th April 2007
Possession Date	26th March 2009
Headlease number of years unexpired	1.92
Number of yrs. to sub lease reversion to Flat 2	1.92
Number of yrs. to sub lease reversion - Flats 1 & 3	122.92
Freehold Deferral Rate	5.00%
Deferral Rate - Flat 1 & 2 1.92 yrs	5.50%
Freehold Reversion	176.92
Sub-lease number of years unexpired	1.92
Headlease Capitalisation Rates	6.00%
Sinking Fund Rate	2.50%
Tax @	30.00

p in £

	FH Value	GIA sq.ft.	£ per sq ft	LVT cond adj.	Adj. FH Value	LH Value	Adj. LH Value
Flat 1 - Lower Ground/Raised Grd Flat	£2,600,000	1,984	£1,310	£375,000	£2,225,000	£2,574,000	£2,199,000
Flat 2 - First Floor/Second Floor Flat	£2,050,000	1,188	£1,726				
Flat 3 - Third/Fourth	£1,850,000	1,234	£1,499				

**FREEHOLDERS EXISTING INTEREST**

<i>Capital Value of rental income</i>	No loss of ground rent						
<i>Capital Value of Reversion</i>							
	1 Lower Grd/Grd		£2,225,000				
	2 First/Second		£2,050,000				
	3 Third/Fourth		£1,850,000				
					£6,125,000		
Reversion to FHVP value x PV of £1 until end of term	176.92 yrs				0.0002	£1,092	
							£1,092

**INTERMEDIATE LEASEHOLD INTERESTS**

**GROSVENOR ESTATE BELGRAVIA ("GEB")**

<i>Capital Value of rental income</i>							
Rent Reserved (payable by BLP years)			£515				
YP Dual Rate to reversion			16.5403			£8,518	
<i>Capital Value of Reversion</i>							
			FHVP	Relativity			
Reversion to Flat 1 54 years x PV of £1 122.92 yrs	1 Lwr Grd/Grd	£2,225,000		77.2%	£1,717,700 0.0025		
						£4,269	
Reversion to Flat 2 175 year lease x PV of £1 1.92 yrs	2 First/Second	£2,050,000		99%	£2,029,500 0.9023		
						£1,831,236	
Reversion to Flat 3 54 year lease x PV of £1 122.92 yrs	3 Third/Fourth	£1,850,000		77.2%	£1,428,200 0.0025		
						£3,550	
							£1,847,673

**BELGRAVIA LEASEHOLD PROPERTIES ("BLP") ("Enforce")**

Agreed Nil Value							£0
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**MARLIN SECURITIES LIMITED ("Marlin")**

Reversionary Value in respect of Flat 1 (agreed)							£1
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**VOVDEN INVESTMENTS ("Vovden")**

<i>Capital Value of rental reserved</i>							
Agreed							£1
Value of Intermediate Lease (Flat 1) x PV of £1 until end of term	1.92 yrs				£2,199,000 0.9023		
						£1,084,177	
							£1,984,178

**FRAMECHOICE LIMITED ("Framechoice")**

<i>Capital Value of rental income</i>							
Agreed							£1
Value of Intermediate Lease (Flat 3) x PV of £1 until end of term	1.92 yrs				£1,831,500 0.9023		
						£1,652,579	
							£1,652,580

**MARRIAGE VALUE**

VP value of 'developable' long lease over whole building (at 99% of agreed FH value)  
 x PV of £1 1.92 yrs (deferred until expiry of Vowden's occupational lease)

0.9023 £9,405,000  
 £8,486,216

loss existing interests in flats

Freeholders Interest

£1,092

Intermediate Leaseholder's Interests

GROSVENOR ESTATE BELGRAVIA ("GEB")

£1,847,573

MARLIN SECURITIES LIMITED ("Marlin")

Value of Interest in Flat 1  
 Value of Existing Lease (Flats 2 & 3)

£1  
 £138,000  
 £138,001

VOWDEN INVESTMENTS ("Vowden")

£1,984,178

FRAMECHOICE LIMITED ("Framechoice")

£1,652,580

total marriage value

£5,623,426

half share of marriage value

x 50% £2,862,791  
 £1,431,395

PREMIUM

£6,916,820

value of FH & Intermediate Leasehold Interests

Freehold			£1,092	
Headlessee	GEB		£1,847,573	
	BLP		£0	
	MARLIN		£1	
	VOWDEN		£1,984,178	
	FRAMECHOICE		£1,652,580	£5,485,425

Apportionment of Marriage Value

Freehold		0.02%	£265	
Headlessee	GEB	33.68%	£482,115	
	MARLIN	0.00%	£0	
	VOWDEN	38.17%	£517,762	
	FRAMECHOIC	30.13%	£431,233	£1,431,395
		100%		

Premiums Payable

Freehold			£1,377	
Headlessee	GEB		£2,329,689	
	MARLIN		£1.26	
	VOWDEN		£2,601,940	
	FRAMECHOICE		£2,083,813	£6,916,820