

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL**

**DECISION AND REASONS**

**LEASEHOLD REFORM, HOUSING AND URBAN  
DEVELOPMENT ACT 1993 SECTION 24**

**Premises:** Park House  
1 Clarence Parade  
Southsea  
Hampshire  
PO5 3RJ

**Applicant:** Park House Freehold (Southsea) Limited

**First Respondent:** Portsmouth City Council

**Second Respondent:** Sinclair Gardens Investments (Kensington) Ltd

**Inspection and Hearing Date:** Tuesday, 8<sup>th</sup> July 2008

**APPEARANCES**

**For the Applicant:** Mr. Neil A. Hawkins FRICS  
Chandler Hawkins

**For the First Respondent:** Mr. C. P. Wetherall BSc, FRICS  
House and Son

**For the Second Respondent:** Mr. G. P. Holden, FRICS  
Parsons Son and Basley

**Tribunal:** Mr. K. M. Lyons, FRICS  
Mr. D. Lintot, FRICS  
Mr. T. Wakelin

**Date of Decision:** 13<sup>th</sup> August 2008

A record of the case and decision is set out below.

1. **Preliminary**

1.1. The Leasehold Valuation Tribunal received an application dated 29<sup>th</sup> January 2008 under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993. The application was made by the Applicants Representatives, Glanvilles, Solicitors.

The application sought a determination for

- (a) the price for the freehold interest of the Property referred to in paragraph 1 of the initial notice being the land edged red on the plan attached but excluding the area coloured green.
- (b) The price for the freehold interest of the Property referred to in paragraph 2 of the initial notice being the area coloured green within the red edging on the plan attached.
- (c) The price for the leasehold interest of the Property referred to in paragraph 5 of the initial notice being the entirety of the land edged red on the attached plan.

1.2. The Applicant served an initial notice on the First Respondent on the 25<sup>th</sup> May 2007 in which it proposed

- (i) a purchase price for the freehold interest referred to in paragraph 1 (see 1.1.(a) above) of £48,900.00.
- (ii) a purchase price for the freehold interest referred to in paragraph 2 (see 1.1.(b) above) of £6,100.00.
- (iii) a purchase price for the leasehold interest referred to in paragraph 5 (see 1.1.(c) above) of £91,000.00.

1.3. The First Respondent served a counter notice on the Applicant dated 3<sup>rd</sup> August 2007 which stated that the First Respondent did not accept the Applicant's offer and proposed a price of :

- (i) £317,022.00 for the freehold interest referred to in paragraph 1 (see 1.1.(a) above).
- (ii) £5,000.00 for the freehold interest referred to in paragraph 2 (see 1.1.(b) above).
- (iii) £120,823.00 for the leasehold interest referred to in paragraph 5 (see 1.1.(c) above).

1.4. Provisional directions were issued by the Tribunal on 5<sup>th</sup> February 2008.

1.5. By a joint statement dated 26<sup>th</sup> March 2008 signed by Mr. C. P. Wetherall, Mr. G. Holden, 31<sup>st</sup> March 2008 and Mr. N. H. Hawkins, 27<sup>th</sup> March 2008, it was recorded that the following items had been agreed:

1. The valuation date shall be 25 May 2007.
  2. The rent payable by the owner of the Intermediate Lease is £5 per annum, fixed for the duration of the Lease.
  3. The current rent received by the Head Lessor is £3,660.
  4. The deferment rate to be applied to the reversionary value is 5%.
  5. The value of each garage is £10,000.
- 1.6. By a joint statement dated 19<sup>th</sup> June 2008 signed by Mr. C. P. Wetherall, (23<sup>rd</sup> June 2008), Mr. G. Holden and Mr. N. Hawkins, (20<sup>th</sup> June 2008), it was recorded that the following items had been agreed:
1. The aggregate value of the flats, ignoring improvements, with their existing Leases is £5,241,000.
  2. The aggregate value of the flats ignoring improvements, with 999 years Leases, is £5,709,000.

**2.0. The Leases**

- 2.1. The Head lease is dated 16<sup>th</sup> February 1979 for a term of 99 years from 1<sup>st</sup> January 1979 at a ground rent of £5.00 per annum payable annually in advance.
- 2.2. The Underleases are for a term of 95 years from 1<sup>st</sup> February 1979 at ground rents as set out in the Third Schedule of the Underleases.
- 2.3. There are Deeds of Variation relating to Flats 3, 14, 34 and 36.
- 2.4. The lessees pay a service charge based on rateable proportion of the Head Lessors cost of maintaining and running the property, insurance, the cost of managing agents and accountants and the amount of a reserve fund, by half yearly instalments paid in advance. The cost of repair maintenance and upkeep of the garages, access way and forecourt is shared equally by the owners of the garages and those persons entitled to use the access way and forecourt.

**3.0. The Inspection**

- 3.1. The Tribunal visited the property on Tuesday, 8<sup>th</sup> July 2008. The property comprises a former office building which has been converted into 36 flats arranged over 5 storeys. The original building was constructed approximately 150 years ago. The walls are constructed of masonry under pitched and mansard roofs with some areas of flat roof. On the right hand side a two storey extension has been built of masonry walls under a slated pitched roof.

- 3.2. The property is located on the corner of Clarence Parade and Auckland Road West and overlooks Southsea Common. Bus routes and local shopping facilities are close by.
- 3.3. The Tribunal accompanied by Mr. Hawkins carried out an inspection of the interior of Flats 11, 15, 17, 21, 27 and 31.
- 3.4. Flat 11 situated on the second floor comprised hall, two bedrooms, lounge with a well-fitted kitchen off and a bathroom and w.c. There was also a room adjacent to the bathroom which was the equivalent size of a small double bedroom but which had no natural ventilation or window. The flat had been improved. The lessee referred to damp staining on the ceiling of the lounge and bathroom. The views to the south and west from the flat over the common were spectacular
- 3.5. Flat 15 – A lower ground floor flat comprising hall, three bedrooms, lounge, well-fitted kitchen and a good sized bathroom and w.c. Being on the lower ground floor natural lighting was slightly limited.
- 3.6. Flat 17 – A ground floor flat, which the lessee complained was damp, comprising two bedrooms (1 being a modest single bedroom), large well-fitted kitchen and a bathroom and w.c. which had original fittings. There was limited natural light in the flat due to the high level of the window sills.
- 3.7. Flat 21 – A two bedroom flat at ground floor level with a lounge with excellent views overlooking the common, a kitchen and a bathroom and w.c. The lessee referred to damp penetration around the lounge window.
- 3.8. Flat 27 – A first floor flat comprising one bedroom, a lounge (overlooking the extension) with a small store room off, a kitchen (somewhat dark as there was a large tree opposite the kitchen window) and a large bathroom and w.c.
- 3.9. Flat 31 – A one bedroom second floor flat which was unimproved having original aluminium windows and bathroom and kitchen fittings, lounge, kitchen overlooking the mews at the rear and somewhat dark due to a large tree in front of the window, bathroom and w.c.
- 3.10. The Tribunal were also shown the common hallways at the third floor where there were storage rooms under the sloping ceiling of the main roof. Two flats (Nos. 14 and 32) have been created at this level which access the balcony/walk way by patio doors.
- 3.11. The Tribunal noted that the flats had independent gas central heating systems. The common part hallways and landings are generally wider than would be found in a modern equivalent block of flats and there are steps leading down to the lower ground and changes of level both in the flats and the hallways at this level. The common part areas were generally in good condition. There are no lifts.
- 3.12. The inspection emphasised the considerable variety in the flats of the size and layout of the accommodation, the outlooks, the level of natural lighting and the standard of fittings.

4.0. **The Law**

The Enfranchisement Price in accordance with Schedule 6 of the Leasehold Reform and Urban Development Act 1993 is the aggregate of:

1. The value of the Freeholder's interest and the value of any Intermediate Lessor's interest. These valuations are on the basis of Open Market sales subject to all Leases and disregarding improvements and the right of Enfranchisement.
2. The Freeholder and any Intermediate Lessor's share of the marriage value. This is now limited by the Commonhold and Leasehold Reform Act 2002 to 50%. In the case of Leases with an unexpired term greater than 80 years, no marriage value is payable.
3. Any compensation for loss is suffered by the Freeholder of any Intermediate Lessor, particularly diminution in the value of other property or loss of development value.

5.0. **The valuation evidence of Mr. Neil Hawkins, FRICS (for the Applicant – Park House Freehold (Southsea) Limited).**

- 5.1. Mr. Hawkins had included in his evidence a schedule showing the existing market value unimproved and the market value on the basis of a 999 year lease unimproved which values had been agreed.
- 5.2. For the capitalisation of the freehold income adopted a rate of 10% because the ground was fixed at £5.00 for the entire term.
- 5.3. Having no evidence of recent auction rates based his assessment on his experience.
- 5.4. Referred to a determination of the Southern Rent Assessment Panel in regard to the sale of the freehold of 1 Shaftesbury Road, Southsea, which fixed a capitalisation rate of 8% for a ground rent income of £200.00 per annum increasing by £100.00 per annum every 25 years.
- 5.5. The aggregate capital value of the 36 flats with the existing leases ignoring improvements has been agreed at £5,241,000.00.
- 5.6. The aggregate capital value of flats owned by 24 participating leaseholders has been agreed at £3,661,000.00.
- 5.7. The aggregate value of the 36 flats on the basis of 999 years leases, excluding improvements has been agreed at £5,709,000.00.
- 5.8. Mr. Hawkins deducted 10 per cent from the sum of £5,709,000.00 "to reflect the hassle value and costs associated with a collective purchase." His adjusted figure was therefore £5,138,100.00.

- 5.9. The underleases would expire on 31<sup>st</sup> January 2074. The head lease will expire on 31<sup>st</sup> December 2077. There is therefore a reversionary period of 3 years 11 months to the head leaseholders. Mr. Hawkins considered that the head leaseholder would attempt to let the flats for this period on assured shorthold tenancies. Mr. Hawkins based on his local knowledge and of three lettings in the property calculated that the net annual income allowing 30 per cent deduction for voids/maintenance, buildings insurance and letting costs would be £181,440.00. (Mr. Hawkins had taken into account the special circumstances in regard to the rent paid for Flat 22).
- 5.10. Mr. Hawkins helpfully included a schedule of annual service charges for the years 2003/04 to 2008/09 ranging from £31,373.92 to £39,949.83 and also an analysis of repairs and maintenance costs from 2000/01 to 2007/08.
- 5.11. Using a rate of 10 per cent for both the capitalisation and deferment rates Mr. Hawkins valued the Freehold Interest in the sum of £164,058 (Schedule 6.2.(1)(a)).
- 5.12. Using a rate of 8 per cent and incorporating the rent review provisions for Flats 19, 3 and 36 together with the reversion to market rent deferred 66.7 years Mr. Hawkins valued the head leasehold interest in the sum of £51,038.00. (Schedule 6.2.(1)(d)).
- 5.13. The assessment of the marriage value made by Mr. Hawkins is (Item C). Schedule 6.2.(1)(b).

Freehold value 24 flats with 999 year leases	£3,987,927
Less: Current value 24 flats unimproved	£3,661,000
Less: Freehold interest (24 flats)	£127,295
Less: Head lease (24 flats)	<u>£36,188</u> £163,444
Shared equally (50:50)	£81,722

- 5.14. Mr. Hawkins assessed the compensation under Schedule 6.2.(1)(c) at nil.
- 6.0. **In reply to questions from Mr. Wetherall, Mr. Hawkins:**
- 6.1. Acknowledged that there were approximately 1600 cases on the Lease website.
- 6.2. Acknowledged that in Mr. Wetherall's proof of evidence there were details of recent auction sales of ground rent reversionary investments but pointed out that these did not relate to situations where the ground rent was fixed throughout the term at such a low value – the ground rent under the head

lease for the subject property being fixed at £5.00 per annum without review throughout the term.

- 6.3. Agreed that the details of the determination by the Southern Rent Assessment Panel (Item 2.04 of his proof) related to 11 Nightingale Road and not 1 Shaftesbury Road but confirmed that the capitalisation rate for a freehold ground rent income in this case of £200.00 per annum increasing by £100 per annum every 25 years was 8 per cent. The case had been determined in 2006.
- 6.4. Accepted that the remainder of the evidence of his proof was based on his own extensive personal experience of valuation evidence in the local market.
- 6.5. Accepted that the analysis of the sale price of the leasehold interest in 1/62 Blue Canary Wharf/Appendix B in Mr. Wetherall's proof) capitalised the income at 8.91 per cent.
- 6.6. Accepted that the rate of 7 per cent which was calculated by making a 1 per cent deduction from the value of 8 per cent determined by the Southern Rent Assessment Panel in the case of 11 Nightingale Road was based on his market knowledge.
- 6.7. Acknowledged that he could not provide evidence to support his contention that it was correct to make a 10 per cent deduction from the aggregate value of the flats with 999 year leases, excluding improvements as referred to in 5.07 of his proof.
- 6.8. Acknowledged that there may be some element of development value in carrying out alterations to the top floor store rooms but maintained that this was highly speculative and that no evidence had been put forward to support any development value which he considered was unlikely due to planning restrictions and likely high development costs.
- 6.9. Acknowledged that the estimated rentals used to establish the potential rental income at the end of the underlease term (31<sup>st</sup> January 2074) was lower in regard to one bedroom flats than the evidence of the actual rental income shown in 6.03 for Flat 4.
- 6.10. He emphasised that in assessing the rentals he had had regard to the fact that the absence of a lift would restrict the rental values of the upper floor flats and that there was an insufficiency of car parking.
- 7.0. **In reply to questions from Mr. Holden, Mr Hawkins:**
- 7.1. In regard to the capitalisation rate applied to leasehold income (Item 3.00) in which he had adopted a rate of 8.00 per cent advised that in regard to the signed agreement (Item 2 of the first statement of agreed facts) agreeing that the deferment rate to be applied to the reversionary value is 5 per cent had intended that this was to apply only to the freehold income and not to the leasehold income. He acknowledged that the wording of the agreement was not qualified. He also acknowledged that the Sportelli decision had adopted a rate of 5 per cent but said that this related to the freehold income.

- 7.2. Accepted Mr. Holden's evidence in regard to 11 Nightingale Road that this case involved an absentee landlord and that the Tribunal had done its best with the case which related to the Leasehold Reform Act 1967 which provided for a different basis of assessment to that within the Leasehold Reform Housing and Urban Redevelopment Act 1993 insofar as the 1967 Act could include for 'hope value' but not marriage value.
- 7.3. Acknowledged that the underlease required the head lessee to insure the property (Clause 3(g)(i)) and that the head leaseholder would be entitled to receive the commission.
- 7.4. Acknowledged that all tenants would not necessarily vacate their flats at the end of the occupational leases and some would opt to remain in occupation under the Housing Act 1988
- 7.5. Also acknowledged that in the Non-Act world it would be possible to negotiate new terms as had been done by tenants prior to the Leasehold Reform, Housing and Urban Development Act 1993 taking into account their rights under the Housing Act 1988 and there being no restrictions on sharing marriage value 50/50.
- 7.6. Acknowledged that the Freeholder might make an offer to achieve an early surrender of the lease.
- 7.7. Accepted that the Freeholder would require the head leaseholder to return the property in the condition required in the lease and that similarly the head leaseholder would require the underlessees to comply with their repairing covenants.
- 7.8. He acknowledged that the head lease would require the tenant to decorate the outside of the buildings in the fourth year reversionary period (Clause 2.(vi)), to insure, deal with security and pay rates on empty flats.
- 8.0. **The valuation evidence of Mr. C. P Wetherall BSc., FRICS (For the First Respondent Portsmouth City Council)**
- 8.1. Mr. Wetherall helpfully provided a flat layout plan and a schedule of accommodation of the flats identifying those flats that he had inspected. Mr. Wetherall also made reference to the Deeds of Variation in respect of Flats 3, 14, 34 and 36.
- 8.2. In considering the capitalisation rate for the present and future income streams Mr. Wetherall had regard to the sale prices of:
  - i) Blue Granary Wharf, 3 Little Neville Street, Leeds, a leasehold development of 60 apartments each held on 125 year leases from 1<sup>st</sup> January 2002 with a total ground rent of £13,020.00 per annum, increasing by the same amount every 25 years. The sale price was £177,50 in June 2007. He analysed the yield at 7.3% on initial income or 8.91% on all income streams.



- ii) Sun House, 9 Bennetts Hill, Birmingham, a leasehold ground rent investment of 31 flats each held on a 150 year lease at a ground rent of £200.00 doubling every 20 years. The sale price was £78,000.00 in November 2006. He analysed the yield at 7.9% on the initial income or 10.25% on all income streams.

He concluded that the all risks yield basis is 9% to 10%.

- 8.3. In regard to the 3.9 year reversion in the case of Park House, Mr. Wetherall believed an investor would seek to let out the flats on Assured Shorthold Tenancies. He assessed the rental value of all flats at £324,000.00 which he reduced by 30% to reflect the Head Lessors costs of maintenance, insurance, letting costs and voids and profit. The net rental figure was £226,800.00 per annum.
- 8.4. Mr. Wetherall did not consider that the rate in the judgment in the case of Cadogan v. Sportelli of 5% is appropriate as that case was in respect of vacant possession of a freehold building.
- 8.5. Mr. Wetherall had considered two leasehold reversionary investments.
  - i) Leigh Court, 2/3 Lewisham Way, Brockley, London, comprising 18 apartments each held on 125 year leases from 1<sup>st</sup> January 1989 with a fixed ground rent of £900.00 sold with a new 999 year Head Lease at a peppercorn, for £8250 in September 2006 equating to an initial yield at 10.9% and a yield of 10.97% on income and reversion.
  - ii) Weldon Court, 2 Lucas Street, Deptford, London, comprising 12 flats each held on 99 year leases from 1<sup>st</sup> September 1986 with a total fixed ground rent of £600.00 per annum was sold with a new 999 year Head Lease at a peppercorn for £6,250.00 in September 2006 equating to an initial yield of 9.6% and a yield of 10.5% on income and reversion.
- 8.6. Mr. Wetherall concluded that in both cases the Head Lessor's reversion is deferred over 100 years and that there is no extra benefit to a Head Lease reversion.
- 8.7. Mr. Wetherall, after considering the length of lease of Park House, said that the comparable evidence was based on a virtual freehold basis, the liability for dilapidations and the existence of Deeds of Variation and the possibility of further Deeds concluded that the appropriate rate is in the region of 9% on an all risks basis.
- 8.8. Mr. Wetherall in applying the criteria to the Freehold Income of £5.00 per annum increased the rate to 10% to reflect the inconvenience of collecting such a small annual sum.
- 8.9. Taking all factors into consideration Mr. Wetherall assessed the purchase price in the sum of £311,377.00 apportioned as to Freeholder £250,569.00 and as to Leaseholder £60,808.00.

9.0. **In reply to questions from Mr. Holden, Mr. Wetherall:**

- 9.1. Advised that in regard to the comparables identified in his report he had not seen the relevant leases but had spoken to the selling agents, had seen office copies and investigated the prices.
- 9.2. Acknowledged discrepancies in the rents shown on the particulars for Blue Granary Wharf (Appendix B) which ranged from £13,140.00 to £13,725.00.
- 9.3. Acknowledged that 7.95 per cent is the initial yield for Sun House (Appendix C) and confirmed he had not verified the leases.
- 9.4. Acknowledged that there were other options in regard to the reversionary period at the end of the head lease but pointed out that the head leaseholder could not compel the Freeholder to negotiate.

10.0. **The valuation evidence of Mr. G. P. Holden FRICS (For the Second Respondent Sinclair Gardens Investments (Kensington) Limited**

- 10.1. In valuing the freehold used a capitalisation rate of 6.5%.
- 10.2. Considered that most valuers adopt 5% as being the starting point to determine the appropriate deferment rate. He along with many other valuers started at 7%.
- 10.3. The income is fixed but secure and 6.5% is therefore appropriate.
- 10.4. The valuers have agreed a deferment rate of 5%.
- 10.5. In valuing the head lease has used a single rate rather than dual rate to reflect the real world situation.
- 10.6. Adopted a capitalisation rate of 7% which is slightly higher than the 6.5% freehold rate because the income is slightly less secure and more expensive to collect.
- 10.7. Took into account the increasing likelihood of applications for lease extensions and Deeds of Variation.
- 10.8. The total value of the profit rent for all flats is £54,050.72.
- 10.9. The value of the existing leasehold value, ignoring improvements, is £5,241,000.00 participating flats - £3,661,000.00 and non participating flats £1,580,000.00.
- 10.10. The virtual freehold value, ignoring improvements, is £5,709,000.00 (participating flats £3,987,914.00, non participating flats £1,721,086.00).
- 10.11. These figures do not reflect the 'Non Act' world.
- 10.12. Discounts the existing leasehold value by 5% to comply with paragraph 3(1) of Part II or Schedule 6.

- 10.13. An allowance has already been made for improvements. Mr. Holden makes a further allowance of 2½% to reflect the Non Act world : which adjusts the values : existing leasehold value (ignoring improvements in the Non Act world) £5,109,975.00  
(Participating flats £3,569,475.00, non participating flats £1,540.500).
- 10.14. Virtual freehold value (ignoring improvements in Non Act world £5,566,275.00  
(Participating flats £3,888,216.00, non-participating flats £1,678,059.00).
- 10.15. That the provisions of paragraph 3(1)(c) of Part II of Schedule 6 stipulates – “On the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his expense by the tenant or by any predecessor in title is to be disregarded.” This clause does not refer to the non-participating flats, therefore the value of the 12 non-participating flats should be adjusted by adding the value of improvements.
- 10.16. Assessed sum of £3,000.00 per flat for improvements, i.e. a total of £36,000.00
- 10.17. The revised calculations are:  
  
Existing leasehold value £5,145,975.00 (participating £3,569,475.00, non-participating £1,576,500.00).  
Virtual freehold value - £5,602,275.00 (participating £3,888,216.00, non-participating £1,714,059.00).
- 10.18. The value of the head lease reversion of 3.9 years is assessed by deducting the present value on reversion to the freeholder from the present value when the flat leases expire and applying the difference to the adjusted vacant possession value of the premises.
- 10.19. Before the 1993 Act lease extensions were still negotiated and in the ‘Non-Act world’ lease extensions would continue to be negotiated before expiry.
- 10.20. Tenants whose lease expires would have a right to remain in possession under Part 1 of the Housing Act by holding over as assured tenants paying a full market rent.
- 10.21. There is potential for the head lessee to negotiate with the freeholder either to negotiate a lease extension or a surrender of the head lease.
- 10.22. Assessed the value that the freeholder could afford to pay the head lessee to gain control of the premises 3.9 years early.
- 10.23. Assess’s the value of the freehold interest at £336,178.00 and the split between the freeholder and head lessee as follows:

<u>Freehold</u>	<u>Head Lease</u>
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	£178,889.00	£91,634.00
Marriage Value	43,418.00	22,237.00
	<u>£222,307.00</u>	<u>£113,871.00</u>

**11.0. After the lunch break in response to questions from the Chairman, Mr. Hawkins advised:**

- 11.1. 1. He had advised when agreeing the reversionary rate of all flats ignoring improvements that he would adjust the sum of £5,709,000.00 by 10 per cent .
2. That he had believed the agreement in regard to reversionary rates referred only to the freehold income. He was unable to assist in suggesting what would be a fair basis for varying that agreement.
3. Advised that whilst he acknowledged the repairing obligations in the lease he believed that the head leaseholder would seek to maximise his income by letting the vacant flats on Assured Shorthold Tenancies.
- 11.2. The Chairman expressed his concern that having signed statements of agreed facts Mr. Haswkins and Mr. Wetherall were now stating that they had not appreciated the import of the agreement in respect of the reversionary rate in so far as it applied to the leasehold rent. They confirmed that no misrepresentation of the facts had occurred but that in relation to contract law they had made a mistake!
- 11.3. The Chairman advised the parties that the Tribunal would seek to fix the correct amounts for the freehold and leasehold interests and that they would not allow an incorrect agreed fact to alter their judgment if in the Tribunals opinion this would otherwise result in the Tribunal coming to the wrong conclusion. He stressed that the rate of capitalisation in regard to the leasehold interest must reflect the various possibilities that had been considered particularly in regard to the possibility of further Deeds of Variation and an early surrender of the Head Lease.
- 11.4. After a recess the parties advised that they had reached agreement that the value of the head leasehold interest is £60,000.00 and that the capitalisation rate for the leasehold rent is 6.35 per cent.
- 12.0. Following the further discussion Mr. Holden referred to two further issues:**
- 12.1. a) He conceded that the deduction of 2½ per cent to take account of the Non-Act world was not appropriate.
- b) He calculated that the value of improvements for the non-participating flats was fairly represented in the sum of £3,000.00 per

flat (i.e. 2½ per cent of the average value per flat) totalling £36,000.00.

12.2. The adjusted value of the flats ignoring improvements (of the participating flats) is £5,709,000.00 plus £36,000.00 is £5,745,000.00.  
The value for non-participating is £1,750,059.00.

12.3. The Chairman thanked the parties for their efforts to resolve matters relating to the value of the leasehold interest.

### 13. **Decision**

13.1 In considering the evidence the Tribunal determined

- (a) That the prospect of further development of the site was negligible taking into account the need to vary the leases to release covenants over reserved property, the lack of parking, the likelihood that further development may be uneconomic and the anticipated planning difficulties.
- (b) That the possibilities for dealing with the reversion of 3 years 11 months at the end of the Head lease would include not only letting the flats on assured shorthold tenancies but also negotiating an early surrender with the freeholder or negotiating a lease extension.
- (c) That the long leasehold tenants will have a right to remain in occupation as assured tenants.
- (d) That the value attributable to improvements for non-participating flats is not to be disregarded. The tribunal recorded that no objection was made to the figure proposed by Mr Holden of £3,000.00 per flat. Total £36,000.00.
- (e) That there is no basis for the proposition by Mr. Hawkins for a 10% deduction in calculating the aggregate value of the flats with 999 year leases to reflect the hassle value and costs associated with a collective purchase.
- (f) In regard to the valuation of the leasehold interest, the tribunal acknowledged that the parties had agreed the sum of £60,000.00 based on a capitalisation of 6.35%. The tribunal notes, however, that capitalising the income at 6.35% and using the suggested rental in the valuation of Mr Wetherall by way of illustration produces a value in the order of £71,000.00 as shown below:-

Flat 19			£1,444.00
Flats 3 and 36			£7,128.00
Profit rental all flats	£3,295.00		
66.7 YP @ 6.35%		15.468	£50,967.00

Reversion to full net rental value		£226,800.00	
3.9 YP @ 6.35%	3.344		
PV of £1.00 for 66.7yrs @ 6.35%	0.001700	0.05684	<u>£12891.00</u>
			£70,986.00

say £71,000

#### 14.0 The Valuation

##### 14.1. Value of Freehold Interest.

Ground rent	£5.00 p.a.		
YP 70.6yrs @ 10%	<u>9.9880</u>	£50.00	
Reversion to:			
Agreed aggregate value	£5,745,000.00		
PV in 70.6 yrs @ 5%	<u>0.0322401</u>	<u>£185,219.00</u>	£185,219.00

##### Value of Freehold Interest in Participating Flats. (PF)

Ground rent	£3.33 p.a.		
YP 70.6 yrs. @ 10%	<u>9.9880</u>	£33.00	
Reversion to:			
Agreed PF aggregate value	£3,987,927.00		
PV in 70.6 yrs @ 5%	<u>0.0322401</u>	<u>£128,571.00</u>	£128,604.00

##### Value of Head Leasehold Interest.

Agreed at £60,000.00

##### Value of Head Leasehold Interest in Participating Flats

Profit rent (flat 19)		75.00	
18.7 YP @ 6.35%		10.70	802.00
Reversionary Profit Rent (flat 19)		132.00	
48 YP @ 6.35%	14.950		
PV of £1 18.7 yrs @ 6.35%	<u>0.3255</u>	4.866	642.00
Profit Rent (flats 3 & 36)		290.00	
13.7 YP @ 6.35%		8.87	2,572.00
Reversionary Profit Rent (flats 3 & 36)		675.00	
53 YP @ 6.35%	15.45		
PV of £1 13.7 yrs @ 6.35%	<u>0.437</u>	6.751	4,556.00

Profit Rent All Flats	2100.00		
66.7 YP @ 6.35%	15.468		32,484.00
Reversion to Sub Lease Interests	181,000.00		
Estimated net profit from AST lettings			
3.9 YP @ 6.35%	3.344		
PV of £1 66.7 yrs @ 6.35	0.01700	0.05684	10,288.00
			<u>51,344.00</u>

### Marriage Value

Freehold PF Value (ignoring improvements) Agreed at £3,987,927.00

Less: (Participating Flats)

1. Existing unimproved value (No-Act world) Agreed at	£3,661,000.00		
2. Freehold value	£ 128,604.00		
3. Head Lease interest	£ 51,344.00		<u>£3,840,948.00</u>

Marriage Value £146,979.00

Shared equally between Participants £ 73,489.00

Principal interests:

Freehold existing value	£185,219.00	=	75.5%
Head Lessor existing value	£ 60,000.00	=	24.5%

### Determination of Values:

#### Freehold Interest:

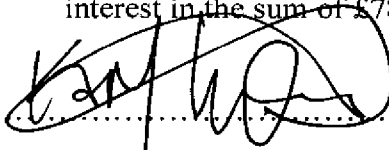
Existing Value	£185,219.00		
Share of Marriage Value	£ 55,484.00		<u>£240,703.00</u>

#### Head Leasehold Interest:

Existing Value	£ 60,000.00		
Share of Marriage Value	£ 18,004.00		<u>£ 78,004.00</u>

14.2 The tribunal assessed the compensation under Schedule 6.2(1)(c) at nil.

14.3 The Tribunal determines accordingly the value of the freehold interest in the sum of £240,703.00, say £240,700.00 and the value of the head leasehold interest in the sum of £78,004.00, say £78,000.00.

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K M Lyons, FRICS