2583

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

Case reference: LON/00AW/OCE/2007/0058

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION TO DETERMINE THE PRICE AND TERMS OF TRANSFER OF AN INTEREST TO BE ACQUIRED UNDER CHAPTER I OF PART I OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Property:	**Durrels House, Warwick Gardens, London W14 8QB**
Applicants:	Hemphurst Limited Grovehurst Properties Limited
Respondent:	Durrels House Limited
Date heard:	3, 4, 5, 6 and 7 September and 8 October 2012 (inspection 5 October; draft schedules submitted 22 October)
Appearances:	Edwin Johnson QC, instructed by Pemberton Greenish, solicitors, for the applicant Philip Rainey QC, instructed by Cripps Harries Hall LLP, solicitors, for the respondent

Members of the leasehold valuation tribunal:

Margaret Wilson
P M Casey MRICS

Date of the decision: 7 November 2012

Introduction

1. This is a restored application under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the terms of transfer of the remainder of a 999 year lease ("the 2003 Roof Lease") of part of the roof of Durrels House, Warwick Gardens, London W14. The applicant in the claim which is the subject of the present decision is Grovehurst Properties Limited ("Grovehurst"), the leaseholder under the 2003 Roof Lease which was granted to it by Hemphurst Limited ("Hemphurst"), the freeholder, of which it is a wholly owned subsidiary. The respondent to the application is Durrels House Limited ("DHL"), the nominee purchaser. It is intended by this present decision to dispose of all outstanding issues arising out of the application with the exception of the landlords' recoverable costs.

Background

2. Durrels House and the title structure of the various parts of the property are described in our previous decision dated 14 February 2011 and most of the background there set out need not be repeated here. Of the property it is sufficient for present purposes to say that Durrels House is a block of flats in Kensington which is arranged on basement, ground, and in part eight and in part seven upper floors and was built in the early 1970s.

3. The 2003 Roof Lease is dated 10 October 2003. It grants to Grovehurst for a term of 999 years from 29 September 2003 part of the flat roof of the block and the airspace above the part demised and the right to build a flat or flats on the demised area. The development rights are set out in the fifth schedule.

4. In furtherance of the development rights Grovehurst obtained from the Royal Borough of Kensington and Chelsea ("the Council") the following planning permissions and amendments to those permissions:

i. In 2003 it was granted permission to build a three-bedroomed flat with a gross internal area ("GIA") of 1259 sq ft. That permission has now lapsed.

ii. In 2005 it was granted, on appeal, permission to build a four-bedroomed flat with a GIA of 2368 sq ft. That permission has also lapsed.

iii. In 2007 it was granted permission to build a four-bedroomed flat with a GIA of 2465 sq ft.

iv. By an amendment dated 2 December 2008 to the 2007 permission it was granted permission to install in the position shown on the drawings attached to the permission a satellite dish and an outdoor air conditioning condenser unit with associated screening and noise reduction facilities.

v. Having in 2008 commenced works to replace one of the passenger lifts with a new lift capable of reaching the proposed new flat and to extend the height of the risers and the roof over the communal stairwell to accommodate the new flat, in January 2009 it was granted a certificate of lawful existing use or development to confirm that the development permitted by the 2007 planning consent had been implemented. The works to replace the lift are said to have cost £261,406 plus VAT and the enabling works £265,803 plus VAT, with professional fees of £61,169.87 plus VAT.

vi. By an amendment dated 6 August 2009 to the permission granted in 2007 it was granted permission to build a flat with a GIA of 2637 sq ft, including two terraced areas with a combined area of 387 sq ft.

vi. By a further amendment dated 20 July 2010 to the 2007 it was granted permission to build a flat with a GIA of 2831 sq ft, incorporating the area presently occupied by the west water tank.

The claim and previous proceedings

5. On 2 August 2006 DHL gave Hemphurst a notice under section 13 of the Act of its claim to acquire the freehold of the block and that part of the leasehold interest under the 2003 Roof Lease "which does not form part of the area to be comprised in a new flat for which planning consent was granted on 8 June 2005", the area claimed shown on a plan attached to the notice. The notice proposed a price of £1 for that part of the leasehold interest which it proposed to acquire.

6. On 28 November 2006 the landlord served a counter-notice in which it disputed most of the prices proposed for the acquisition of various interests, admitted DHL's right to acquire the block and proposed a price of £500,000 for the part of the leasehold interest in the property demised by the 2003 Roof Lease which DHL proposed to acquire.

7. On 1 February 2007 Hemphurst and Grovehurst applied to the tribunal under section 24 of the Act for a determination of the terms of acquisition and the application came before a leasehold valuation tribunal on 1 October 2008, the purpose of the hearing being to determine the extent of the property to be acquired, the price, and the terms of transfer. In relation to the extent of the property to be acquired, the issues before the tribunal included whether DHL was entitled to acquire part, but not the whole, of the property demised by the 2003 Roof Lease. By its decision dated 10 December 2008 the tribunal determined that DHL was not entitled to acquire part of Grovehurst's leasehold interest in the property demised by the 2003 Roof Lease, although it was entitled to acquire the whole of it. The tribunal did not determine the price to be paid for the freehold of the building because the constituent parts of the valuation were said to have been agreed. Nor did it determine the terms of transfer because it considered that it was not in a position to do so, but it gave liberty to apply for the terms to be determined.

8. On 21 July 2009 the Lands Tribunal gave permission (so far as is relevant to the present dispute) to DHL to appeal against the tribunal's decision that

DHL was not entitled to acquire part only of the leasehold interest under the 2003 Roof Lease and to Hemphurst to appeal against the tribunal's decision that DHL was entitled to acquire the whole of that interest.

9. On 2 November 2009 an application to determine the terms of transfer of the freehold interest in all parts of the property to be acquired, but not the terms of the transfer of the leasehold interest in the property demised by the 2003 Roof Lease in respect of which appeals to the Upper Tribunal were pending, came before the tribunal as presently constituted. That hearing occupied three days and our decision was issued on 14 February 2011.

10. In a decision dated 5 January 2011 HHJ David Mole QC, sitting in the Upper Tribunal ([2011] UKUT 6, LRA/27/2009) held that DHL was entitled to acquire part only of Grovehurst's leasehold interest in the property demised by the 2003 Roof Lease and that DHL was not entitled to acquire the whole of that interest because it had not claimed it. He said at paragraph 31 that it was "difficult to see what purpose compelling the nominee purchaser to take more of the leasehold interest than he wants or needs would serve" and, at paragraph 33, that it did not seem to him "that any insuperable difficulties would be caused by an interpretation that acknowledged 'elective severance'", which, he assumed, "Parliament was content would not impose intolerable burdens on the machinery". He said at paragraph 34 that "it does seem to me that to read s.2 as enabling the nominee purchaser to acquire as much of the leasehold interest as it needed and wanted but not insisting that all of it would be acquired, is much more consistent with the purpose of conferring on the tenants those advantages Parliament must have intended them to enjoy. Instead of a rigidity that seems to me pointless, such an interpretation produces a sensible flexibility, no more likely to create difficulties in practice than the interpretation of the Act that [Hemphurst] advances".

11. Hemphurst applied for permission to appeal to the Court of Appeal against HHJ Mole's decision that DHL could acquire part only of the leasehold interest in the 2003 Roof Lease but did not pursue the appeal.

The present hearing

12. The evidence occupied five days, starting on 3 September 2012. On 5 October the tribunal, accompanied by representatives of the parties including the participating tenant of Flat 80, inspected the roof and the interior of Flat 80 which was agreed to be an important comparable. Unaccompanied, we externally inspected what appeared to us to be the most relevant of the other comparables. Final submissions were made on 8 October 2012.

13. At the hearing, Grovehurst was, as it had been in the previous hearings, represented by Edwin Johnson QC, instructed by Pemberton Greenish, solicitors, who called Alexander Graham BA (Hons) BPL MRTPI of Savills (L&P) Limited in relation to planning issues, Jeremy Price BSc (Hons) MA MRICS in relation to building surveying issues relevant to the terms of transfer, Ben Shove BSc MRICS (QS) of Trinity Construction Limited in relation to building costs of the proposed flat, and Jeremy Dharmasena BSc (Hons) MRICS and Mark Redfern, an estate agent, both of Knight Frank, in relation to valuation issues. DHL was, as before, represented by Philip Rainey QC, instructed by Cripps Harries Hall LLP, solicitors, who called Tracey Rust DipTP MRTPI of Bell Cornwell LLP in relation to planning issues, Martyn Gibbons FRICS MaPS of Hughes Jay & Panter, chartered surveyors, in relation to building surveying issues relevant to the terms of transfer, and Prosper Marr-Johnson MRICS, of Marr-Johnson and Stevens, chartered surveyors, in relation to valuation issues.

The statutory framework

14. Section 2 of the Act provides, so far as is relevant:

> *(1) Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ... then, subject to and in accordance with this Chapter - ...*

(b) [the participating qualifying tenants] shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3); ...

(3) Paragraph (b) of subsection 1 above applies to the interest of the tenant under any lease (not falling within subsection (2) above) under which the demised premises consist of or include -

(a) any common parts of the relevant premises ...

(4) Where the demised premises under any lease falling within subsection ... (3) include any premises other than -

(a) a flat contained in the relevant premises which is held by a qualifying tenant,
(b) any common parts of those premises, or
(c) any such property as is mentioned in subsection (3)(b),

the obligation or (as the case may be) right under subsection (1) above to acquire the interest of the tenant under the lease shall not extend to his interest under the lease in any such other premises.

15. The relevant parts of section 24 provide:

(1) Where the reversioner ... has given the nominee purchaser ... a counter-notice ... but any of the terms of acquisition remain in dispute ... a leasehold valuation tribunal may ... determine the matters in dispute. ...

(8) In this Chapter "the terms of acquisition" ... means the terms of the proposed acquisition by the nominee purchaser, whether relating to -

(a) the interests to be acquired,

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

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

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

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

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

16. Schedule 6 to the Act is concerned with the purchase price to be paid by the nominee purchaser. Paragraph 3 of the Schedule, as modified by the Commonhold and Leasehold Reform Act 2002, provides that the value of the freeholder's interest is the amount which *at the relevant date*, which is the date of the notice of claim, the interest might be expected to realise on certain assumptions. Paragraph 10(2) of the Schedule provides that where the nominee purchaser is to acquire any leasehold interest by virtue of section 2(1), the price payable is the aggregate of:

(a) the value of the interest as determined in accordance with paragraph 11, and

(b) any amount of compensation payable to the owner of the interest in accordance with paragraph 13.

17. Paragraph 11(2) of Schedule 6 provides, so far as is relevant, that paragraph 3 shall apply to the valuation of such leasehold interests as fall within paragraph 10(2).

18. Paragraph 13 of Schedule 6 provides:

(1) Where the owner of any such freehold or leasehold interest as is mentioned in paragraph 10(1) or (2) ("relevant interest") will suffer any loss or damage to which this paragraph applies, there shall be payable

to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to -

(a) any diminution in value of any interest in other property belonging to the owner of any relevant interest, being diminution resulting from the acquisition of the property in which the relevant interest subsists; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the ownership of any interest in other property.

(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the property in which the relevant interest subsists to the extent that it is referable to his ownership of any interest in other property.

(4) In sub-paragraph (3) "development value", in relation to any property in which the relevant interest subsists, means any increase in the value of the relevant interest which is attributable to the possibility of demolishing, reconstructing or carrying out substantial works of construction on, the whole or a substantial part of the property.

19. Section 34 of and Schedule 7 to the Act are concerned with the provisions to be included in a conveyance to a nominee purchaser. Section 34 includes:

(2) Any ... conveyance [executed for the purposes of this Chapter] shall, where the nominee purchaser is to acquire any leasehold interest in the specified premises ... or (as the case may be) in other property

to which the conveyance relates, provide for the disposal to the nominee purchaser of any such interest.

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

...

(b) as respects the conveyance of any leasehold interest, conform with the provisions of paragraph 2 of [Schedule 7] ...

20. Schedule 7 sets out provisions relating to covenants for title, rights of support, rights of way and covenants which are to be included in a conveyance to the nominee purchaser.

The issues

General

21. The matters for determination were the terms of the transfer of the part of the leasehold interest to be acquired by DHL, the terms of the contract for that transfer, and the price to be paid for the interest to be acquired. We were not asked to determine which part of the leasehold interest should acquired. Mr Johnson submitted that we had no jurisdiction to do so and that we had no alternative in the light of the decision of HHJ Mole but to accept that DHL was entitled to acquire the leasehold interest in whatever part of the property demised by the 2003 Roof Lease that it wished to acquire. Whether that submission is correct or not, Mr Rainey did not invite us to determine what part of the demise was to be acquired and was content to accept Mr Johnson's submission that the part of the interest to be acquired was at DHL's election. In those circumstances, there being no dispute, we have not addressed that question.

22. Essentially, DHL wishes to acquire, and therefore will acquire, those parts of the roof demised by the 2003 Roof Lease which will not be occupied by a new penthouse flat with a GIA of 2637 sq ft, including two terraces with a combined area of 387 sq ft, for which planning permission was granted in 2009, together with the airspace above. Grovehurst will retain the part of the roof to be occupied by the new flat up to its external walls, together with its two terraces and the airspace above them up to the height of the new flat. The area demised by the 2003 Roof Lease which DHL will acquire is agreed to be 850 sq ft. Grovehurst does not now seek to implement the 2010 permission for a flat with a GIA of 2831 sq ft, incorporating the west water tank. DHL concedes that the provisions of the 2003 Roof Lease enable Grovehurst to place an air-conditioning unit in the place permitted by the 2008 planning consent. The parts of the demised roof which DHL will acquire are shown on an agreed plan which will be attached to the transfer.

23. It appeared to us at times difficult to understand how this case, or at any rate that part of it which related to the terms of the transfer and contract, came to be so lengthily and expensively fought when Grovehurst professed to wish to carry out the development permitted by the 2009 planning consent and DHL professed that it wished to do nothing to stop Grovehurst from doing so. It seemed to us that it would be relatively easy to arrive at a scheme of rights and obligations to be included in the transfer which would protect the legitimate interests and concerns of both of Grovehurst and DHL, and Mr Price and Mr Gibbons, the building surveyors instructed by the parties in relation to that very point, agreed that it would take them little time to arrive at mutually acceptable terms of a kind which they would normally expect to see in an agreement to build a penthouse on top of an existing block of occupied flats.

The terms of transfer

24. The dispute related essentially to the tribunal's powers to include terms in the transfer which go beyond those prescribed by section 34 of and Schedule

7 to the Act. Mr Johnson's submission was that, in the case of the transfer of a leasehold interest, our powers were limited to those contained in the few provisions contained in section 34 and Schedule 7 which were relevant to the transfer of such an interest and that we had no discretion to include other terms, however reasonable, or, indeed, necessary, they might be. Mr Rainey submitted that our powers were considerably wider, and that we had a discretion to include such terms as we found to be reasonable and necessary.

25. The final version of the form of transfer which Grovehurst proposed at the hearing ("the Grovehurst transfer") is at tab 33 of the hearing bundle. In response to an indication from us along the lines set out in paragraph 23 above, Mr Johnson put forward on the second day of the hearing another draft transfer incorporating terms designed to answer some of the points made on behalf of DHL in order to show the terms to which Grovehurst would be willing to agree if the relevant jurisdiction existed. The final version (as at the end of the hearing) of the form of transfer proposed by DHL ("the DHL transfer") was submitted to us under cover of a letter dated 12 September 2102.

26. In response to our request the parties' solicitors submitted after the hearing Scott schedules in electronic form showing their final proposed versions of each clause of the transfer and of the contract. The body of this decision is confined to issues of principle. The schedules, which are appended to the decision, show in the final column the terms we have determined.

27. Mr Johnson said that it should be borne in mind that the hearing was not concerned with the terms upon which DHL was to acquire the freehold of any part of the roof, the terms of and price for which had already been determined or agreed. All that was left, he said, was for the tribunal to determine, insofar as it had power to do so, the terms upon which DHL was to become tenant of the assigned part of the property which was the subject of the 2003 Roof Lease, and the tribunal could not concern itself with the landlord and tenant relationship which would exist between DHL and Grovehurst which was governed by the 2003 Roof Lease. It would be wrong, he submitted, and

beyond our powers to change those terms and to produce in the transfer a home-made building contract such as that which, he submitted, DHL sought. He said that it was the fifth schedule to the 2003 Roof Lease which set out the development rights and obligations and it would be not only wrong in principle but also confusing and apt to lead to disputes to have another scheme of obligations running alongside it. He said that DHL could if it wished have acquired the whole of the 2003 Roof Lease and it would have thereby had the ability to control the development of the roof, but, having elected not to do so, it must live with the consequences.

28. He submitted that the tribunal did not have the power to impose terms in the transfer other than those expressly required by section 34 of and Schedule 7 to the Act, and that section 24(8) of the Act did not confer a general discretion on the tribunal to determine the terms of transfer. He submitted that the tribunal's powers under section 24(8) were limited by other provisions of the Act, which did not give a general power to include whatever terms the tribunal considered reasonable. He submitted that the observations made by the President of the Lands Tribunal in *Re McGuckian's Appeal* (see paragraph 35 below) were incorrect and that they might not have been made if the landlord in that case had appeared at the appeal. He did not accept Mr Rainey's submission that section 24(8)(d), which includes as a term of acquisition *the apportionment of conditions or other matters in connection with the severance of any reversionary interest,* provided a power which was relevant to the present case because the 2003 Roof Lease was plainly not a reversionary interest and the present disputes did not relate to apportionment.

29. He submitted that even if the tribunal had jurisdiction to introduce terms in the transfer, it was not a reasonable exercise of its jurisdiction to re-write the development rights in the 2003 Roof Lease just because it might consider that particular rights might have been more narrowly or reasonably defined.

30. He submitted that a particular problem with the DHL transfer was that it removed the provision for merging the assigned part of the leasehold interest with the freehold interest on completion. He said that although the tribunal did

not have jurisdiction to require the transfer to contain a merger provision, it was essential for such a provision to appear in it in order for the rights granted to the tenant under 2003 Roof Lease to become exercisable against the assigned part, and, he submitted, without a merger provision DHL would have in respect of the assigned part all the rights, including development rights, contained in the 2003 Roof Lease, a situation which would in his submission raise doubts about whether Grovehurst could exercise the rights contained in that lease.

31. In appendix 2 to his written closing submissions Mr Johnson set out his submissions as to what the transfer should contain if, contrary to his main submission, we decided that we did have jurisdiction to introduce terms into the transfer other than those expressly prescribed by section 34 and Schedule 7. To summarise the main points which he made, particularly in relation to panel 12 of the transfer, he submitted:

i. DHL's proposed clause 12.3 would prevent the development from taking place.

ii. In relation to DHL's proposed clauses 12.3.3 and 12.3.4, if the requisite jurisdiction existed Grovehurst was willing to accept a provision for notice to be given before DHL or its agents could go on the assigned part, although he did not accept that the notice provisions proposed by DHL were satisfactory. He agreed that a suitable notice provision would eliminate the privacy problem perceived by Grovehurst.

iii. In relation to clause 12.9, it was not reasonable to expect Grovehurst to enter into any sort of building contract with DHL. Nor was it reasonable for DHL to seek to improve its position under the 2003 Roof Lease by, for example, seeking to specify how the building works were to be carried out, and any drawbacks in the lease should have been addressed when the terms of the transfer of the freehold were addressed. It was unreasonable to expect Grovehurst to obtain warranties from third parties, such as the building contractor appointed to build the new flat. The time limit provisions proposed

by DHL in clause 12.9.1.5 were unworkable, and any clause limiting the time which could be taken on the building works should contain, as a minimum, other provisions, which he listed.

iv. In relation to clause 12.11, Grovehurst was willing to accept, subject to jurisdiction, a right of emergency entry into the new flat such as existed in the cases of the other flats in the block.

32. Mr Johnson called Mr Price to give evidence as to the fairness and consequences, from a building surveying perspective, of the proposals in the original form of the DHL transfer. Mr Price described the Bauder roofing system which Grovehurst proposes to install on the area of roof demised by the 2003 Roof Lease which is to be acquired, such installation being necessary in order to ensure proper drainage falls for the purpose of the new flat.

33. Mr Rainey said that there was no dispute but that the rights granted by schedule 5 to the 2003 Roof Lease applied to the part of the leasehold interest to be assigned to DHL and that the rights granted to Grovehurst by the lease entitled it to install an air conditioning unit in the location permitted by the 2008 amendment to the 2007 planning consent. He said that none of the terms of transfer was intended to prevent the development from taking place and that any of the terms of the DHL transfer which were held to have that effect should be excluded from it.

34. He submitted that in determining the terms of acquisition the tribunal has a wider jurisdiction than that conferred by section 34 and Schedule 7 and that it has power to include such further provisions as are reasonable, although he accepted that the transfer could not include wholly new obligations or create wholly new rights. He submitted that section 24(8)(d) could be applied to the interest under the 2003 Roof Lease because *reversionary interests* were not defined in the Act and it was necessary to have the power to provide for the consequences of the acquisition of parts of leasehold interests. The demise of the roof could, he said, easily have been by means of an intermediate lease

and the tribunal would then clearly have had power under section 24(8)(d) to deal with the consequences of the severance of the property it demised.

35. He relied on what the President of the Lands Tribunal said in *Re McGuckian's Appeal* LRA/85/2006 at paragraph 30 when considering the question of what terms can be included in a conveyance on a collective enfranchisement. The President, who had been invited by the leasehold valuation tribunal when it gave permission to appeal to give guidance on terms which could be included in transfers made on collective enfranchisements, observed that *terms of acquisition* were defined by section 24(8) to include any of the five specific matters there set out *or otherwise,* which implied that "*the LVT may determine that any terms of acquisition that are shown to be appropriate should be included*". The President said that the tribunal could also determine terms that would require to be included in the contract but not the transfer and that, although the conveyance must "conform with" section 34 and Schedule 7, "*a conveyance would in my view conform with the provisions of Schedule 7 provided that it observed the prohibitions and included those matters that were required to be included. If it did this and contained in addition other provisions that were not inconsistent with the prohibitions and requirements, it would still conform with Schedule 7*".

36. Mr Rainey also derived support from the observations of the Lands Tribunal Member in *Shortdean Place (Eastbourne) Residents' Association v Lynari Properties Limited* [2003] EGLR 147 at paragraph 64 when, in relation to permanent rights to be granted under section 1(4)(a)(i) of the Act, he said that "any dispute as to the exact scope and nature of the rights to be granted that cannot be settled by agreement can be determined by a county court under section 24(3) and (4) of, and Schedule 5 to, the 1993 Act."

37. He submitted that if the tribunal's opinion was that it did not have jurisdiction to include in the transfer terms which it considered ought to be included it could include them in the contract.

38. He said that DHL did not accept that the removal of a clause which DHL had earlier proposed merging the part of the 2003 Roof Lease with the freehold would have any of the consequences which Mr Johnson suggested, and that the merger clause had been removed only to meet objections to it which it had understood that Grovehurst had. The tribunal, he said, would have to decide whether or no the merger clause was necessary, and, if it decided that it was necessary, it should be included.

39. Mr Rainey called Mr Gibbons to give evidence of what, from a building surveying perspective, he would expect to see in a properly drafted development lease. Mr Gibbons also gave evidence that he had measured the height of the parapet wall around the edge of the roof and found it to vary from 0.43 metres to 0.48 metres. He said that the Bauder roofing system which Grovehurst proposes to install on top of the existing roof covering would be 0.175 metres high and would thus reduce the height of the parapet wall by at least that amount. He said that the Bauder system was a satisfactory one but that, if a Bigfoot system such as Grovehurst proposed for the purpose of landscaping was installed, very careful consideration of load factors would be required.

Decision on terms of transfer

40. We are satisfied that we have the power under section 24 of the Act to determine any of the terms of acquisition which are in dispute, and that the power is not confined to determining the terms identified in section 34 and Schedule 7. Section 24(8) defines *terms of acquisition* widely, and in our view it would be not only very surprising, in view of the width of that definition, but also very unfortunate if we did not have the power to insert in a transfer of part of a leasehold interest any terms which are necessary, and, in particular, any terms which are made necessary by the severance of the interest. We respectfully agree with the observations of the President in *Re McGuckian's Appeal* that the tribunal's power under section 24 of the Act is such that it can determine that "*the terms that are appropriate can be included*".

41. We accept that the power should be used cautiously. We are satisfied that it would be a wrong exercise of our discretion to insert terms which are not really necessary or which contain wholly new rights and obligations. We accept Mr Johnson's submission that we ought to avoid introducing terms which are in conflict with the 2003 Roof Lease, and we also accept that any terms of the lease which might affect the quality of the freehold interest ought to have been addressed when the terms of transfer of the freehold were determined and should not be re-visited. We see no reason, however, why any consequences of the severance of the leasehold interest should not be addressed in the transfer if need be, and every reason why they should. While we accept that the interest under the 2003 Roof Lease is not a reversionary interest it is closely analogous to it. It not infrequently happens that leases of common parts such as a roof are granted as intermediate leases between the freehold interest and the residential leases and it would be not only unfortunate but, we consider, absurd if the consequences of the severance of such intermediate interests in common parts of a building could be addressed in the transfer by virtue of section 24(8)(d) but the consequences of severance of the interest in the present case could not. Mr Johnson's own submission that a merger clause is essential but cannot be inserted without consent illustrates, in our view, the unsatisfactory consequences of the approach he advocates.

42. We approach the question of the terms of transfer by asking whether any, and, if so, what terms, in addition to those for which provision is made in section 34 and Schedule 7, are necessary, either because of the severance of the leasehold interest or for any other reasons. After the severance DHL will own not only the freehold but also the remainder of the 999 year term in the part of the roof immediately adjacent to the new flat and will therefore have possessory rights over the area it acquires. That situation will have valuation consequences which we will consider, but it will also have other consequences, some of which could not readily have been addressed when the terms of the transfer of the freehold interest were considered because it was not at that stage known whether a severance was permissible.

43. Because of the severance, we are satisfied that it is not only reasonable but also necessary to make provision in the transfer to ensure that Grovehurst does not take an excessive amount of time to complete the development once the builders are on site and that the works are carried out to a reasonable standard so that DHL, which will be responsible for the maintenance of the roof, including that part of it which will lie beneath the new flat, has a right of action if they are not. We also consider that Grovehurst should arrange to insure the works. And we consider that the severance makes it necessary, in order to ensure reasonable privacy to the occupier of the new flat, to include in the transfer provision for reasonable notice to be given to Grovehurst before DHL or anyone which it instructs to do so can go on the area of the roof to be acquired by DHL and also to prevent DHL from placing near the proposed new flat any items which could adversely affect its enjoyment. It is also our view that the omission from the 2003 Roof Lease of a right in the landlord to enter the new flat in an emergency is a serious one which requires to be corrected to harmonise the provisions relating to the new flat with those relating to the other flats in the building. We regard those new provisions as essential and the minimum necessary to address the severance of the leasehold interest and a defect in the 2003 Roof Lease. We have had regard to the draft terms on such issues put before us by Mr Johnson without prejudice to his submissions as to jurisdiction, as well as those put before us by Mr Rainey. Our aim has been to ensure that the terms included are as simple and straightforward as possible.

44. We have not included in the transfer a right to Grovehurst to landscape any part of DHL's interest under the 2003 Roof Lease because we accept DHL's arguments that landscaping may compromise the roof surface and may encourage trespass on parts of the roof which are to be acquired.

45. In relation to the issue whether the transfer should provide for the merger of the freehold and leasehold interests of DHL, we consider that panel 12.4 of the transfer appended to this decision adequately addresses the point. If, on further consideration, the parties agree that the transfer should contain a merger provision, it is open to them agree that it should be included.

The terms of the contract

46. These terms are addressed in appendix 2 to this decision. We hope that the appendix is self-explanatory but would add that, in relation to the service contracts, we have preferred Grovehurst's proposal because the acquisition is in effect compulsory and if the parties are unable to agree which service contracts can be transferred to the buyer, Grovehurst should be entitled to terminate them and any costs associated with doing so should be recoverable by them through the service charge provisions of the trust deed incorporated in the occupational leases. That said, if the parties are able to agree, even at this late stage, they should, if they can, include an agreed list of contracts to be transferred to DHL.

47. The numbering of the terms of the transfer and of the contract will need to be re-visited and we wish to see a final version of both documents before they are signed.

The price

48. It was common ground between the valuers that the part of the 2003 Roof Lease to be acquired by DHL has no intrinsic value and that the price to be paid falls to be assessed as compensation within the meaning of paragraph 13 of Schedule 6. It is thus, as applied to the present case, such amount as is reasonable to compensate Grovehurst for any diminution in the value of its interest in the area of the roof which it is to retain which results from the acquisition by DHL of the other parts of the roof which are demised by the 2003 Roof Lease.

Valuation date

49. The first and key issue to be addressed is the valuation date for the purpose of assessing such compensation. It was Mr Johnson's case that the

valuation date will be the date of acquisition, which, he said, for practical purposes should be taken as the date of the hearing. Mr Rainey's case was that it was the date of the notice of claim, namely 2 August 2006. There appears to be no relevant judicial authority on the point, which is not considered by the learned editors of *Hague's Leasehold Enfranchisement.*

50. Mr Johnson submitted that in assessing the compensation the task was to assess the actual loss and damage suffered by the relevant owner as a result of the acquisition, and, for that to be done, the loss could not be tied to an artificial date such as the claim date. He said that a provision comparable to paragraph 3(1) of Schedule 6 (applied by paragraph 11(2) to the acquisition of a leasehold interest) which required the value of the leasehold interest to be acquired to be taken at *the relevant date* was conspicuous by its absence from paragraph 13, and that DHL would acquire an unfair benefit if the compensation had to be assessed at a date some six years ago.

51. He submitted that it would have been surprising to find in paragraph 13 a reference to an historic valuation date because compensation for loss is normally assessed by reference to the actual loss suffered and is not to be artificially reduced unless there is some specific direction to do so. He cited Lord Blackburn in *Livingstone v Raywards Coal Company* (1880) 5 App Cas 25, in which the main issue was the date at which compensation was to be assessed, at page 39:

> *I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.*

52. He submitted that the historic valuation date prescribed for the purpose of paragraphs 3 and 11 of Schedule 6 had worked considerable injustice in the

present case and it would not be *reasonable,* and would compound the injustice, to write such a valuation date into paragraph 13, the compensation payable under paragraph 13 being separate from and additional to the value of what was being transferred. He submitted that there was no good reason why different components of the price should not be assessed at different dates, and he did not accept Mr Rainey's argument that parts of the loss for which compensation was sought in the present case could be regarded as attaching to the property to be acquired rather than to the retained property.

53. He submitted that *The Bwllfa and Merthyr Dare Steam Collieries Limited v The Pontypridd Waterworks Company* [1903] AC 426, a compensation case on which Mr Rainey relied, in fact supported Grovehurst's argument, because the House of Lords had held in that case that the compensation was to be assessed, not at the historic date of the counter-notice, but on the basis of what the colliery company had actually lost. He did not accept that *Watton v The Trustees of the Ilchester Estates* (LRA/21/2001), on which Mr Rainey also relied, was helpful because the question of the valuation date for compensation under Schedule 6 was not argued and it was simply assumed by both sides that the valuation date for compensation was the same as for the valuation of the interest to be acquired.

54. Mr Rainey submitted that the valuation date was *the relevant date.* Compensation was, he submitted, by virtue of paragraph 10(2) of Schedule 6 a component of *the price,* and all elements of *the price* should be assessed at the relevant date. He said that in *Bwllfa* the House of Lords had said that the compensation should be assessed at the date of the actual loss only because the compensation which fell to be assessed was not part of the price. Lord Robertson said, at page 432, *"what is due to the appellants is not the price on a transaction of sale, but compensation for a continuing embargo on working"*, and, Mr Rainey submitted, the result in that case would have been different if the statute had been setting the price for the land acquired, as, he submitted, is the case with compensation under Schedule 6. He submitted that Parliament should be taken to have intended to achieve a valuation which is internally consistent unless the contrary intention is indicated, and it would be

wholly inconsistent to have different valuation dates for different components of the price, an approach for which there was no principled basis. He submitted that using a current valuation date for compensation would provide an incentive for landlords to delay enfranchisements, perpetuating the mischief which led to the "floating" valuation date in collective enfranchisements which section 126(1) of the Commonhold and Leasehold Reform Act 2002 was passed to address.

55. He submitted that it was implicit in the decision of the Lands Tribunal in *Watton* (above) that the apportionment of lost development value between the property to be acquired, which fell within paragraph 3, and the rest of the building, which fell within paragraph 5, was to be taken at the same date, and that there was no suggestion in the discussion in *Nailrile Limited v Earl Cadogan* [2009] 2 EGLR 151 of compensation under paragraph 5 that compensation fell to be assessed at a date other than the relevant date.

56. He said that if DHL had chosen to acquire the retained part of the lease the valuation date would have been assessed under paragraph 11 at the relevant date and the position could not be different when part of the same development value fell to be assessed under paragraph 13. He submitted that if Grovehurst's case was accepted, anomalies would abound. For example, rooftop development potential on a single building would be assessed at the valuation date but the potential to put a penthouse across that building and a neighbouring building would be assessed at two different dates. Indeed, in the present case, he submitted, part of the development value could be said to reside in the interest which will be acquired by DHL, because of the hope that a purchaser of the area to be acquired might be able to sell it to the owner of the retained area, and it should make no difference to the overall price how the value was apportioned between the interest to be acquired and compensation for diminution in the value of the interest retained.

Decision on valuation date

57. The arguments on this question are finely balanced, but we have come to the conclusion that the compensation payable by virtue of paragraph 13 should be assessed at the date of the initial notice. We bear in mind that compensation is, in other contexts, generally assessed at the date of acquisition. We also bear in mind that there is no reference to *the relevant date* in paragraph 13. But we agree with Mr Rainey's submission that in many cases it would be so anomalous to adopt different valuation dates for different parts of the price that Parliament is unlikely to have intended such an approach. As he submitted, if DHL had chosen, as it could have done, to acquire the whole of the interest under the lease the valuation date at which any development potential would be assessed would have been the date of the notice of claim. It would be surprising if the valuation date were to depend on the extent of the leasehold interest which the claimant chose to acquire. We also agree with Mr Rainey's argument that it would be very surprising if rooftop development potential on a single building was to be assessed at the date of the claim but the potential to put the development across a neighbouring building was to be assessed at a different date.

58. Furthermore, we observe that in paragraph 13(4), as in paragraph 5(4), of Schedule 6 "development value", in relation to the property in which the relevant interest, which is the interest to be acquired by the nominee purchaser, subsists, means *any increase in the value of the relevant interest which is attributable to the possibility of demolishing, reconstructing or carrying out substantial works of construction on, the whole or a substantial part of the property.* It seems to us that, to arrive at the development value, *the value of the relevant interest* would have to be assessed at the date of the claim in accordance with paragraph 11, and that, for consistency, *any increase in the value* of that interest which is attributable to the events listed in paragraph 13(4) ought to be assessed at the same date.

The compensation: introduction

59. In case we are later found to be wrong in our conclusion as to the valuation date, at the request of the parties we have determined the amount of compensation both at the date of claim and at the date of the transfer which, we accept, should be taken as the date of the hearing.

60. Both parties' valuers assessed the compensation by considering first the gross development value ("GDV") of the proposed penthouse flat, and then the diminution in that value caused by DHL's acquisition of part of the area of roof demised by the 2003 Roof Lease.

61. At the start of the hearing it was Grovehurst's contention that the terms which DHL wished to see included in the transfer were such that they would prevent the development from taking place at all and, that, if they were adopted, Grovehurst would be entitled to compensation equivalent to the entire GDV of the flat. As the hearing proceeded it soon became clear that such an extreme result was not a realistic outcome and Grovehurst agreed that its claim for compensation was confined to the effects on the GDV of the proposed flat of the possible effects of DHL's ownership and control of the area of roof adjacent to it. Such effects, it was agreed, could be categorised as loss of the right to landscape the areas of the roof surrounding the flat, the risk that DHL might install or place unsightly objects on the parts of the demised roof which it acquired, and possible loss of privacy to the occupiers of the new flat.

Gross development value at the date of claim

62. Mr Dharmasena approached the GDV of the new flat "top down", namely by seeking first to arrive at the value of the new flat on the assumption that Grovehurst would have the ability to control all the outside space demised by the 2003 Roof Lease. To arrive at the GDV on that basis in August 2006 he relied on a number of transactions in Durrels House and in the nearby St Mary

Abbot's Court, Warren House and Kensington West which he listed in his Appendix 13. He adjusted the transactions for time via the Savills Prime Central London Flats Index and for tenure via the Savills Enfranchiseable Graph. For condition he made an upwards adjustment of 10% for "new build" where the property was unmodernised, 5% where it was modernised and nothing if it was "excellent". He also adjusted for location and, in adjusting comparables in Durrels House, upwards by 2% per floor for floor level.

63. In making his adjustments for outside space he assumed that the landscaping of the area to be acquired would give an overall impression of "a sizeable terrace extending over the whole roof". He accordingly made a downwards adjustment of 2.5% for comparables with a larger terrace but he adjusted upwards by 10% where the comparable had a smaller terrace because of the reduced "feeling of grandeur". He added 15% where the comparable had only a balcony and 20% where it had no outside space.

64. He assumed that the new flat would be offered with two parking spaces for which he added £100,000 to the value of comparables without parking, or £75,000 if there was only the possibility of a parking space.

65. Like Mr Marr-Johnson he regarded the sale of Flat 80, Durrels House, as the most helpful comparable. Its virtual freehold value was agreed to be £1,845,000 by Jennifer Ellis FRICS, who was then advising Hemphurst, and Mr Marr-Johnson for the purpose of the tribunal hearing in 2008. The flat was sold in November 2007 for £1,900,000 on a lease of 63 years. It is one of four flats on the eighth floor but has a large terrace on the roof of the part of the building with seven upper stories; the proposed penthouse flat would be built partly above this flat and the others on the eighth floor. Flat 80 has a GIA of 2026 sq ft and the terrace has an area of 3310 sq ft. Mr Dharmasena adjusted the sale price for time and for tenure and added 2% for floor level. He then deducted 2.5% for the larger roof terrace and added 10% for what he considered to be the poorer layout of Flat 80 and 10% for what he said was its unmodernised condition at the date of sale and, finally, he added 10% for a restriction in the lease of Flat 80 which provides that the tenant cannot place

"any tub or enclosure for flowers plants or trees" on the terrace without the consent of the landlord. That restriction, he said, was to be compared with the 2003 Roof Lease which did not contain such a restriction. He made no adjustment for planning risk to his addition for the right to landscape the area surrounding the proposed new flat.

66. He said that the average rate per sq ft of the adjusted transactions in his Appendix 13 was £872, whereas his adjusted figure for Flat 80 Durrels House alone was £1116 per sq ft. He arrived at a weighted average, giving more weight to Flat 80, of £1000 per sq ft, which, based on a GIA of 2637 sq ft, the GIA permitted by the 2009 planning consent, and before any diminution in value caused by the acquisition of part of the 2003 Roof Lease by DHL, equated to a GDV of the new flat in August 2006 of £2,637,500,

67. Cross-examined, he said that he had not used the values of flats in Durrels House which were agreed by Ms Ellis and Mr Marr-Johnson in 2008 because he preferred to consider and adjust open market sales for himself. He did not accept that his upwards adjustments to the sale price of Flat 80 were excessive and he considered that Mr Marr-Johnson's downwards adjustment of 15% for the very large roof terrace at Flat 80 was wrong because it made no allowance for the advantage of the soft landscaping outside the perimeter of the area occupied by the new flat which he considered to be very valuable. Pressed by Mr Rainey, he agreed that he had made too large an upwards adjustment to the sale price of Flat 80 to reflect the restriction on the placing of planters on the terrace and that he had had insufficient regard to the size of the terrace of Flat 80, and that the adjustment for the terrace could be 2.5% rather than 10%. He agreed that Mr Marr-Johnson's adjustments to the comparables he had used for his 2006 valuation were "fair and reasonable". He also agreed that it was unnecessary, now that it was no longer contended that the new flat could not be built at all if the terms of transfer were as proposed by DHL, to consider the residual value of the site. Asked why, on the basis of the 2006 valuation date, he had not made an allowance for the risk that planning consent might not be granted for a larger flat, he said that he had used the benefit of hindsight.

68. Mr Marr-Johnson said that he had used a "bottom up" approach to the valuation. He had first considered the GDV without any additional value which might be derived from landscaping the area of the roof to be acquired. He had then considered the GDV with landscaping in accordance with Grovehurst's proposals from which he had deducted the agreed installation costs and the risk that landscaping would not obtain the planning consent which he assumed it would require. He said that he did not consider a residual valuation to be necessary for the purpose of the exercise, which was to assess the additional value which would be derived from landscaping the roof area outside the flat which is to be acquired by DHL.

69. He said that when he and Ms Ellis had agreed values for the purpose of the hearing in 2008 they had agreed an uplift of 1% per floor above the sixth floor, and he had applied the same adjustment for the purpose of the present hearing. He said that he considered the proposed layout of the new flat to be not ideal, because it was long and thin, and with a poor entrance. He excluded the value of car parking from his valuation because the 2003 Roof Lease did not provide for parking, which would be a separate matter. Like Mr Dharmasena, he relied for comparable evidence mainly on Flat 80 Durrels House, which he took at the value of £1,845,000 agreed in 2008. He then added £200,000 for modernisation, added 1% for floor level and deducted 15% for the exceptionally large roof terrace of Flat 80. He also took into account the sales of two flats in Warren House (though not the sales on which Mr Dharmasena relied) and averaged the three rates per sq ft which he derived from those sales to arrive at a rate per sq ft of £872.

70. This rate he had applied to a GIA of 2314 sq ft which Ms Ellis had said in her evidence to the tribunal was the GIA allowed by the 2005 planning consent, although the GIA under that consent is now agreed to be 2368 sq ft. Mr Marr-Johnson reflected the risk that planning consent for a larger flat would not be obtained by taking two thirds of the value of the additional GIA allowed by the 2009 consent. This exercise produced a GDV in August 2006 of £2,200,000, excluding parking and excluding the advantages, such as

landscaping, of control of the surrounding area which, Mr Marr-Johnson agreed, would have some value.

Decision on gross development value at 2 August 2006

71. In order to compare like with like we have first decided the value without parking and without the advantages of control of the area demised by the 2003 Roof Lease which is to be acquired by DHL. Given that Mr Dharmasena's proposed GDV was based on a flat with landscaping and with parking, but that Mr Marr-Johnson's was based on a flat without landscaping and without parking, their respective GDVs as at August 2006 are very similar. In our view Mr Marr-Johnson was correct to say that an allowance for planning risk ought to be made in case it did not prove possible to build a flat with a GIA of 2637 sq ft, and we regard his proposed deduction of one third from the additional space for that risk as reasonable. The error, if such it was, in calculating the GIA of the flat permitted by the 2005 consent makes some difference to the result and we have taken the floor space from the agreed statement of facts. In our view, too, parking, which is to be provided separately, ought to be disregarded because the purpose of the exercise is to assess compensation for the development on the roof.

72. We do not consider that the layout of the new flat is likely to be significantly better than that of Flat 80 but we accept that a new flat, built to a high specification, may command a premium. We do not regard ourselves as bound by the agreement reached between Ms Ellis and Mr Marr-Johnson in 2008 as to the value of Flat 80 and in our view we can look at the matter afresh on the basis of the evidence available to us. Having said that, it seems to us that Mr Marr-Johnson's comparables were appropriate and, as Mr Dharmasena very fairly accepted, that his adjustments to them were fair and reasonable. Some of Mr Dharmasena's adjustments were not realistic, as he to some extent accepted. We regard his upwards adjustment of 2% per floor as excessive, and his adjustment for landscaping, which we consider in more detail below, as also excessive. However, having inspected the terrace of

Flat 80, which is large but has some unsightly plant which would require a good deal of high screening to conceal, we also consider that Mr Marr-Johnson's adjustment of 15% for the terrace is too high and should be closer to 10%. This would give a price per sq ft of about £900, which is the figure we adopt as our starting point. On that basis the GDV of the proposed flat with a GIA of 2368 sq ft for which in August 2006 planning consent had been previously obtained, without parking and without the advantages derived from control of the surrounding area, was £2,131,200.

73. We accept Mr Marr-Johnson's opinion that there was no certainty in August 2006 that planning consent would be granted for a flat of 2637 sq ft and that it is appropriate to discount, as he has done, for planning risk. We have followed his approach and have made a deduction of one third of the value of the additional floor space arising from the 2009 consent to reflect this risk and have thus taken the additional 269 sq ft at a rate of £600 per sq ft, which gives an additional £161,400, and a total of £2,292,600, say, £2,300,000 as the GDV we have adopted.

Gross development value at the date of the transfer

74. To arrive at the GDV at the date of the transfer, Mr Dharmasena produced a list of comparables as his appendix 15, including two properties on the market but not sold, and the 2007 sale of Flat 80. He adjusted the comparables for time, tenure, condition and other variables as set out in the appendix to arrive at an average rate of £1650 per sq ft, producing a value based on the 2009 consent of £4,350,000, again with parking and assuming the advantages of control of the surrounding area.

75. Mr Shove gave evidence for Grovehurst in connection the probable building costs for the purpose of Mr Dharmasena's residual valuation. We accept his figures as the best that could be provided in the absence of a detailed specification, but without such a specification it is not possible to arrive at a reasonably precise figure and we agree with Mr Rainey's

submission that residual valuations are often unreliable. In any event Mr Dharmasena agreed that a residual valuation was not necessary in this case and we agree.

76. Mr Marr-Johnson's proposed current value, without parking and without control of the surrounding area, was £3,150,000. He referred in his appendix 6 to six transactions and one asking price, and derived his average from the six transactions. He based his value on a rate of £1248 per sq ft for a flat of 2314 sq ft, the GIA he had assumed for a flat built to the 2005 planning consent. He had deducted a third from the balance to reflect planning risk, but Mr Rainey accepted that if the valuation date was the date of the hearing there was no planning risk and that Mr Marr-Johnson's calculation was in that respect not correct. On that basis Mr Marr-Johnson's value should have been about £3,291,000.

Decision on gross development value at the date of the transfer

77. In our view the GDV of the flat at the date of the transfer, which at counsel's invitation we take to be the date of the hearing, without parking and assuming that it does not have the advantages to be derived from control of the area to be acquired, is £4,100,000. Again, as with the 2006 valuation there is, save for flat 80, no agreement between the valuers as to what are the most helpful comparable sales transactions, and each has produced his own list. Counsel for both parties invited us to select our own "basket of comparables", and we have done so. We have looked at penthouses of comparable size where the valuers have made the least adjustments for factors such as location and floor level. These include Mr Marr-Johnson's 27 Stuart House, where his unchallenged adjustments to the sale price result in a figure of £1225 per sq ft, and 1401 Point West which shows £1386 per sq ft. Although 1401 Point West is on the small side, it is a penthouse, unlike 1014 Point West which also has the disadvantage of being on three floors and we have disregarded 1014 as unhelpful. We have also had regard to Mr Dharmasena's comparable sales of penthouses at Roland House and at 288

Westbourne Grove and of the 4/5th floor flat at Lancaster Gate. We have ignored Mr Dharmasena's floor level adjustments to all three of those comparables as they are penthouses, and we have stripped out his car parking adjustments to give respectively £1802, £1646 and £1721 per sq ft. While Mr Dharmasena's comparables show significantly higher figures than 27 Stuart House and 1401 Point West, we still regard it as appropriate to average the five transactions as the analysis of each was dependent on the valuers' subjective views of the adjustment for location. The average is £1556 per sq ft, which, applied to the GIA of 2637 sq ft, gives £4,103,172, say £4,100,000, ignoring car parking and landscaping.

Compensation for the loss of the right to landscape

78. The possible loss in the value of the retained property resulting from the inability after the transfer to landscape the acquired part occupied a considerable part of the hearing. Mr Rainey said that, for what DHL was advised were sound reasons connected with the future maintenance of the roof for which it would be responsible after the acquisition of the freehold, it would not agree to any landscaping on the acquired part of the roof or to any decorative finish, such as gravel or pebbles, being placed over the new Bauder roof which Grovehurst proposes to install on the acquired area.

79. Mr Rainey submitted that, with or without the enfranchisement, Grovehurst would lose nothing in this respect in consequence of the transfer because the 2003 Roof Lease did not permit landscaping and Grovehurst would continue, as tenant, to be subject to the terms of the lease after the transfer. He based the submission on paragraph 12 of the regulations in the fourth schedule to the lease which provides that the tenant is:

> *Not to leave or deposit or allow to be left or deposited on the balcony (if any but as* [sic] *any balcony shall be distinct from any terrace area) belonging to the premises any window boxes flowerpots or other article or thing of any kind which in the opinion of the landlord is unsightly or*

dangerous to the other tenants of the building and not to place or fix outside the windows of the premises any sunblinds window boxes flowerpots or other articles ...

80. In our view this regulation does not apply to the roof, which is not a balcony. In any event we do not understand Grovehurst's case to rest on rights granted or, indeed, not granted, under the lease. Its case is based on the loss, resulting from the acquisition, of the ability to control the acquired area and thus to permit or prevent landscaping or any other activity upon it. We accept that the lease itself does not grant the right to landscape the part which DHL is to acquire, but that the acquisition will prevent Grovehurst from landscaping, not because of the 2003 Roof Lease, but by virtue of its ability to control the acquired area.

81. Mr Rainey, while he agreed that at the date of the claim the potential existed to obtain planning permission to build a larger flat by variation amendment or modification of that consent, submitted that if the valuation date was the date of the transfer, the right to obtain any further planning consents, including the consent necessary to implement a scheme of landscaping, had, if it existed at any time, been lost in 2008 when Grovehurst carried out the enabling works on the basis of which it received a certificate of lawful existing use and development. This, he said, had the effect of preventing a further application for the planning consent which, he submitted, was required for landscaping, because the fifth schedule to the 2003 Roof Lease provides that the building works which the tenant is authorised to carry out mean works to construct a flat or flats in accordance with the consent, and "consent" is defined in the schedule as:

the planning permission for the carrying out of the building works granted by the Royal Borough of Kensington and Chelsea on 21st February 2003... or any other subsequent or different planning consent or consents that the tenant may obtain before commencing the building works ... together with any variation amendment modification from time to time of the same.

82. Mr Johnson said that it was accepted that the 2003 Roof Lease did not confer the right to landscape, and submitted Grovehurst's ability to landscape depended on control of the area to be acquired and that it was loss of control which would cause the loss. We accept this. In our view Grovehurst could, if it had retained control of the acquired area, have decided to permit landscaping on the area of roof surrounding the flat.

83. It was agreed that the scheme shown in the drawings attached to Mr Graham's first witness statement ("the first landscaping scheme") would cost £45,000 to implement and that it was open to the tribunal to form its own view as to the costs of the more limited scheme ("the second landscaping scheme") shown in the drawings attached to his supplemental statement.

84. It was Grovehurst's case at the hearing that, had it not been for DHL's acquisition of the parts of the roof required to accommodate such a scheme, it would have implemented the second landscaping scheme.

85. Much of the debate on the loss of the right to landscape was concerned with planning issues. It was Grovehurst's case that planning consent was not required for the sort of landscaping which Grovehurst plans to carry out but that, if it was, it was likely to be granted. It was DHL's case that planning consent was required and was likely to be refused.

86. Condition 9 of the 2005 planning consent provided that there should be no access to the remainder of the roof from the new flat or roof terrace other than for the purpose of maintenance or emergency escape. Condition 6 of the 2007 planning consent provided that, other than the two terraces, the roof of the building should not be used at any time as a terrace without further planning permission. On 5 May 2010 Grovehurst's planning advisers applied for a certificate of lawful proposed use or development to confirm that the placing of planter boxes on the roof of the building was not a development which required planning consent. The application was accompanied by plans and drawings showing the then proposed first landscaping scheme on the parts of the roof to be acquired by DHL. The Council's planning officers

responded that they considered that the proposal was development which required planning consent, whereupon the application was withdrawn. No application for planning consent for landscaping has been submitted but by a letter dated 26 June 2012 Grovehurst's planning advisers submitted a request for pre-application advice as to whether the first landscaping scheme was development which required planning consent and, if so, whether the scheme was acceptable. In its response dated 2 August 2012, given after a visit from a planning officer, the officer said that it was considered that the scheme amounted to development and would require planning permission but that if the area of decking was *significantly reduced so that it is a narrow strip to allow access to the planted areas only* and *providing that the roof is accessed twice a year only for maintenance purposes and there are no railings/balustrading installed that would facilitate the use of the remainder of the roof as a terrace* an application for consent would be likely to be considered favourably.

87. Mr Graham gave evidence for the landlord. He is a planning consultant with the necessary expertise to give expert evidence on planning issues although he is not independent because he has since 2005 provided planning advice to the landlords in relation to the proposed roof development and has represented it at hearings relating to planning issues.

88. He said that the reason that Grovehurst had not applied for planning consent for a landscaping scheme was his advice that planning consent was not required, but that if planning consent was sought and if the scheme was "suitably restrained in nature", without large decked areas, requiring low maintenance and maintained as a non-useable terrace area, planning consent would be granted, as the pre-application advice from the Council strongly suggested.

89. In cross-examination he said that when in 2010 the application for a certificate of lawful proposed use in respect of the proposed scheme was refused on the basis that planning consent was required, no application for consent was made because he was not instructed to make one, and he could

not remember whether he advised Grovehurst to withdraw its application or to appeal. He said that he considered that the purpose of condition 6 in the 2007 planning consent was to protect the privacy and amenity of neighbouring occupiers, and he considered that the reason the Council did not approve the first landscaping scheme was that the large area of decking might encourage its use for sitting out. He agreed that it would be prudent to apply for consent for landscaping. Recalled on the fifth day of the hearing to comment on a question from the tribunal whether safety might be a consideration which a planning committee might take into account in deciding whether to grant permission for a landscaping scheme, he said that it was not, and he disagreed with the suggestion made by Ms Rust, DHL's planning expert, that Policy 7.2 in the London Plan dated July 2011 was relevant because in his view it related only to access for the disabled.

90. Ms Rust gave evidence for DHL on the planning issue. She said that in her opinion the use of the remainder of the roof outside the area permitted under the implemented planning consent for any purpose other than maintenance or in the case of an emergency would require planning permission by virtue of condition 6 attached to the permission, and also because Grovehurst's proposals indicated a degree of permanence. She said that if an application for planning permission was made she would expect it to be refused because of the adverse impact the use of the flat roof would have on existing residential amenity due to overlooking and loss of privacy to neighbouring occupiers. Recalled to deal with the question from the tribunal as to whether safety might be a relevant planning consideration she said that it would be relevant at the date of the hearing because of Policy 7.2 in the London Plan dated July 2011, the relevant parts of which require all new development to be *accessible and inclusive to all* so that it can be used *safely, easily and with dignity by all, regardless of disability, age and gender.*

91. Cross-examined, Ms Rust said that the word "terrace" was loosely used by the Council to mean simply a flat level surface. She said that it would be regarded as relevant in planning terms that over time a landscaping scheme might change, might be used more, and might be such as to invite people to

go on to it and use it as more than a visual amenity. She said that there was a possible over-looking issue in respect of flats in the neighbouring block, St Mary Abbots Court, and possibly also in respect of houses in Warwick Gardens, and that if the use of the roof was intensified there was also a possible problem of noise. She said she was not a great advocate of pre-planning enquiries because planning officers did not have much time to deal with them, and other officers, or an inspector on appeal, might well take a view contrary to that expressed in the advice. She agreed that opinions on any landscaping scheme might differ but that if she was asked for her advice she would advise that planning consent for anything but the most minimal scheme would not be granted. She thought it might be that the rows of low artificial box hedging to the western side of the proposed new flat proposed in the second landscaping scheme might be approved.

92. Mr Dharmasena gave evidence as to the effect on value of the absence of a landscaping scheme. In chief he said that he had spoken to a number of agents and had taken account of the comments of Mr Redfern, and had concluded that the lack of the ability to landscape justified a deduction of 10% from the GDV.

93. In cross-examination, however, he said that if the roof was covered with gravel and bearing in mind that the tank room and air-conditioning unit would be screened from view, the deduction for lack of landscaping might not be as much as 10%, and he agreed that the width of the area to be acquired in front of the main terrace was so narrow that, even without gravel or a similar dressing, the lack of landscaping in front of the main terrace would not be a serious detriment. He also agreed that the view from the smaller terrace outside the main bedroom was less valuable than the view from the main terrace. He said that he had made no adjustment for planning risk because he had assumed that planning consent would be granted, and he said that on further consideration he agreed that the deduction should be "slightly less than 10% - 5 to 10%". He said that he had included parking in the GDV he had used to calculate the percentage discount because it was part of the package which would be offered to the market. He agreed that the approach

he had taken in his witness statement, which suggested total compensation of £749,500 when his residual valuation of the roof was £859,000 was "questionable".

94. Mr Redfern said that the view from the demised terrace would be "greatly diminished" by the unsightly expanse of flat roof outside the demised area, and that if there was to be neither landscaping nor, at least, a more aesthetically pleasing roof surface, that would have a negative effect on the price. On balance, he said, he supported the discount proposed by Mr Dharmasena.

95. Cross-examined, he said that he had not been on the main roof where the penthouse is to be built. He said that if from the flat there was a bad outlook over an old asphalt roof a buyer would expect a discount of between 5 and 10%. Asked whether he supported the additional discounts which Mr Dharmasena had proposed in his written statement of 10% for lack of privacy and 5% for the possibility that DHL might use the landscaped area for its own purposes, he said that he was not qualified to answer the question.

96. Mr Marr-Johnson said that he had enquired of local estate agents as to the general value of a roof terrace and/or landscaping. He gave evidence of what they had said, but as they were not available to be cross-examined and because there was no evidence that they were familiar with the roof or the detailed nature of the proposed development we have not taken their views into account.

97. Giving his own opinion of the value of landscaping, Mr Marr-Johnson said that some of the areas outside the perimeter of the new flat were inaccessible and dangerous given the very low perimeter upstand around the outer edge of the roof, and that it was quite normal for flats built on roofs to look out over a small section of asphalt. That, he said, was one of compromises to be made for living at such a great height but it was not detrimental to value unless it obscured the view. He said that the largest area of the proposed landscaping, which was in front of the main bedroom, was largely hidden from view from

the main reception areas and that, while landscaping would improve the view from the main bedroom, its effect on GDV would be limited. He considered that pot plants on the demised terraces would diminish any need for landscaping, and that a purchaser would bear in mind as a disadvantage that any landscaping would require regular maintenance. Taking all these factors into account he considered that landscaping in accordance with the first landscaping scheme would add no more than 2% to the GDV of the new flat. That equated to an additional value of just under £45,000 on the basis of this proposed value as at 2 August 2006, before allowance was made for the agreed £45,000 which it would cost. Alternatively, he said, if the second landscaping scheme, which he regarded as better and with a greater effect on value, could be implemented it would add 3% to the GDV, equivalent to some £65,000, less the cost of installing it. In either case, he said, a substantial deduction would fall to be made for planning risk.

98. In relation to the discount for planning risk, Mr Rainey drew our attention to the decision of the Lands Tribunal in *Arrowdell Limited v Coniston Court (North) Hove Limited* (LRA/72/2005) where a 50% deduction for planning risk was applied in circumstances in which a roof development on a block of flats was supported by the planning officer with the words "refusal could not be upheld on appeal". He submitted that in the present case the planning risk was considerably greater than it was in *Arrowdell*.

Loss of privacy and security

99. By clauses 3.14 and 3.15 of the 2003 Roof Lease the tenant covenants to permit the landlord and its agents, on 10 working days' notice and then on prior appointment, to enter the demised premises for certain defined purposes. It was agreed that on the acquisition these provisions will cease to bind DHL. DHL has offered to include a provision in the transfer the following provision:

12.3.3.1 throughout the period in which the new flat is occupied as a residential home but except in the case of emergency (or where there are grounds to reasonably believe that it is a case of emergency):

12.3.3.1 The transferee, its agents or workmen shall give at least 24 hours prior notice to the transferor prior to the transferor, its agents or workmen entering upon any part of the property which would adversely affect the privacy of the occupier of the new flat; and

12.3.3.2 the transferee, its agents and workmen shall cause as little disturbance to the privacy of the occupier of the new flat as reasonably possible while carrying out and discharging their duties in relation to the property

100. Without prejudice to his contention that no such clause could be included in the transfer, on the final day of the hearing Mr Johnson proposed the following alternative:

Except in the case of emergency

the transferee, its agents or workmen, shall give at least 24 hours' prior written notice to the transferor prior to the transferee, its agents or workmen entering upon any part of the property which would adversely affect the privacy of the occupier of the new flat and
the transferee, its agents or workmen shall cause as little disturbance to the privacy of the occupier of the new flat as reasonably possible while carrying out and discharging their duties in relation to the property.

Mr Johnson said that it was accepted that a clause in such terms would defeat a claim for compensation for loss of privacy.

101. Mr Dharmasena had in his written statement proposed a deduction from the GDV of 10% for lack of privacy because, in his opinion, purchasers of a valuable penthouse flat would expect total security and privacy.

102. Mr Marr-Johnson had not in his written evidence considered privacy and security as a separate deduction, but, asked by Mr Johnson to do so, he said that he did not regard lack of privacy as a serious problem because it was unlikely that workmen or others would go on the roof without good reason. He said that he had considered that his proposed deduction from GDV of 3% for lack of landscaping was adequate to cover loss of privacy but that he would agree to an additional 1% for loss of privacy and security.

103. Mr Rainey submitted that, because any compensation to be paid must be *reasonable,* account should be taken of DHL's offer to include a suitable clause in the transfer for entry on the acquired areas only on notice, and Grovehurst ought to mitigate any perceived loss by accepting a suitable clause designed to prevent it.

The risk that DHL might place unsightly objects on the acquired part of the roof

104. Mr Dharmasena initially proposed a further discount of 5% for this risk, although he agreed in cross-examination that all his deductions were questionable. Mr Marr-Johnson had also considered the impact on value should the freeholder in the future erect aerials or satellite dishes on the acquired areas of the roof. He said that his researches showed that that any aerial or satellite dish was likely to point in a southerly or south-easterly direction, which was away from the proposed terraces of the penthouse flat. He said that he understood if an aerial were to be placed right in front of one of the terraces that the flat owner would have a right of action, and in the circumstances he did not consider that the risk that DHL might place such objects on the roof would have any effect on value, although he was prepared to concede a further 1% deduction from the GDV to reflect the perceived risk.

105. Mr Rainey submitted that if the person who controlled the acquired area were maliciously to place an object on the roof in order to annoy the occupier, that would amount to an actionable nuisance, as in *Hollywood Silver Fox Farm Limited v Emmett* [1936] KB 468. He submitted that the cumulative 5% deduction from the GDV which Mr Marr-Johnson had conceded was more than adequate to cover all the consequences flowing from Grovehurst's lack of control of the acquired area, but that from that deduction would fall to be deducted the cost of landscaping, which was either £45,000 for the first landscaping scheme or a lesser sum, to be determined by the tribunal on the available evidence, for the cost of the second landscaping scheme, and a further deduction for planning risk.

Decision on the amount of compensation

106. We are satisfied that the reasonable compensation falling within paragraph 13(2) of Schedule 6 is £22,000 if the valuation date is 2 August 2006. If the valuation date is the date of the hearing, the compensation is £49,000. We have reached these figures for the following reasons.

107. Both valuers calculated the loss as a percentage of GDV and we have adopted the same approach.

108. In relation to the loss of the right to carry out a landscaping scheme on the area to be acquired, our inspection was instructive. It vividly brought home to us, in a way that photographs and plans could not so effectively do, how little scope for landscaping is provided by the very narrow distance between the proposed glass screen at the front edge of the main terrace and the edge of the roof. There is a larger area of roof in front of the small terrace leading from the main bedroom, but we agree with Mr Marr-Johnson's opinion that the view from the bedroom windows and terrace is significantly less important and valuable than is the view from the reception rooms and main terrace. From all parts of the flat, however, the unique selling point will undoubtedly be the spectacular distant views of London, and it might

reasonably be said that soft landscaping will not improve that view and may even detract from it. Moreover, any landscaping scheme will require maintenance, which may well prove expensive because of health and safety issues related to the sheer drop beyond the very low parapet wall which will be even lower than it now is after the new roof covering membrane has been applied. It is accepted that the unsightly wall of the west tank room where the air-conditioning unit will be sited will be screened from view, and we accept that the surface of the area of roof surrounding the flat will not be unsightly, even without a decorative finish to which, on advice from its building surveyor, DHL will not agree.

109. In these circumstances we regard Mr Marr-Johnson's proposed deduction of 3% from GDV for lack of landscaping (before any adjustments for the cost and planning risk associated with the scheme), as fair, and even generous. We are in no doubt that Mr Dharmasena has very considerably exaggerated the effect on value of loss of the right to landscape. He himself acknowledged in his oral evidence that some of his proposed deductions from GDV were "questionable". Mr Rainey described them as "manifestly unreliable" and submitted that the aggregate of the deductions which Mr Dharmasena proposed, which was not far short of his residual value of the whole site, was simply not tenable. We agree. Mr Rainey in his final submissions made the valid point that there was a plain inconsistency between Mr Dharmasena's evidence as to the adjustment for lack of landscaping and the adjustments he made to his comparables to arrive at his proposed rate per sq ft for the GDV of the flat. He had made a downwards adjustment of 2.5% to reflect Flat 80's larger terrace (3310 sq ft compared with 387 sq ft for the two terraces combined in the proposed penthouse) as opposed to his proposed downwards adjustment of 10% (revised in his oral evidence to 5%) which he made for lack of landscaping. And while we have to commend his flexibility in halving his proposed adjustment for landscaping in cross-examination, we question his judgement in suggesting such an unrealistic adjustment in the first place.

110. We have borne in mind Mr Redfern's evidence. He suggested a deduction of GDV of between 5 and 10%, but it was clear that he had not entertained the notion that such a deduction would not cover all the disadvantages of lack of control. Moreover he had not inspected the roof and he was for that reason, we are satisfied, at a considerable disadvantage when he came to give his opinion. In the report he had given before the hearing he had also taken into account in his proposed deduction the impact of the unsightly wall to the tank room and the air-conditioning plant, whereas DHL conceded at the hearing that the tank room and air-conditioning unit would be screened from view.

111. On that basis, in our opinion the starting point for the element of the compensation which relates to the lack of the ability to landscape is 3% of the GDV, or £69,000, on the assumption that the valuation date is 2 August 2006, or £123,000, if the valuation date is the date of the hearing. However we are satisfied, in particular from the indications from the Council as well as from the evidence of Ms Rust, that planning consent would be required for either the first or second landscaping schemes. It is impossible to be confident that such an application would succeed. The pre-planning advice suggests that the second landscaping scheme may be approved, but we regard that as by no means certain. It is likely, as was accepted in evidence, that there would be objections to the application which would therefore be considered by a committee rather than an officer. In our view the evidence suggests that a very limited scheme would probably receive approval but there is a significant risk that it would not. For the purpose of assessing reasonable compensation for what is agreed to be a potential loss in value we have to reach a conclusion and we have come to the conclusion that the discount from value which should be applied for planning risk is 50%.

112. It is agreed that a deduction must also be made for the cost of landscaping and that the cost of installing the first landscaping scheme would be £45,000. We are satisfied on the basis of the indications from the planning department of the Council that the first landscaping scheme would not be approved and we were invited to form our own conclusions about the costs of

a reduced scheme. In our opinion, based on the agreed cost of the first landscaping scheme and the drawings which we have seen showing the second landscaping scheme, the costs of a reduced scheme which might receive planning consent would be £25,000 and that sum ought to be deducted, at either valuation date, from the additional GDV which such a scheme if implemented would generate, but that, given the planning risks, a developer would only pay 50% of the net-of-cost added value, giving £22,000 at a valuation date of 2 August 2006 and £49,000 at the date of the hearing.

113. We accept Mr Marr-Johnson's evidence and Mr Rainey's submission that the risk that DHL will place unsightly objects such as aerials and satellite dishes is slight and would not have a significant effect on value, if, indeed, it would have any effect at all. We accept that it would be an actionable nuisance if with the deliberate intention of annoying the occupants objects were placed which were visible from the flat. Again, we consider that Mr Dharmasena has considerably exaggerated the possible effect on value of what we regard as a very slight risk. In any event our inclusion in Panel 12.3 of the transfer of a provision designed to prevent the placing of any such items as would interfere with the reasonable use of the retained property will eliminate any compensation under this head.

114. In relation to the possible loss of privacy and security, DHL has offered to ensure by a term in the transfer that the privacy of the occupants of the flat will be protected, and Mr Johnson agreed that a suitable clause, very similar to that proposed by DHL, would eliminate any loss under this head. Mr Rainey indicated that DHL would agree to any reasonable suggestion and we assume that that concession extends to the version produced by Mr Johnson. Given that compensation under paragraph 13 of Schedule 6 must be *reasonable,* we consider that a reasonable offer to mitigate the loss by a suitably phrased term in the transfer ought to be accepted by Grovehurst and that, if it is not accepted, the loss which it would have addressed ought not to be the subject of compensation. For that reason we consider that compensation for this head of loss would not be reasonable. Even without the relevant clause in the transfer we would have regarded Mr Marr-Johnson's

proposed deduction of 1% of GDV as ample compensation for loss of privacy and security.

114. We therefore conclude that Grovehurst is entitled to compensation under paragraph 13 of Schedule 6 to the Act, that the compensation should be assessed at the date of the notice of claim and that the sum which should to be awarded as compensation is £22,000.

CHAIRMAN.....

DATE: 7 November 2012

IN THE LEASEHOLD VALUATION TRIBUNAL

Ref: LON/00AW/OCE/2007/0058

HEMPHURST LIMITED (1) and GROVEHURST PROPERTIES LIMITED (2) (Applicant) v DURRELS HOUSE LIMITED (Respondent)

SCOTT SCHEDULE VERSION OF TRANSFER OF PART

APPENDIX ONE TO THE TRIBUNAL'S DECISION

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
1	Agreed	Title number(s) out of which the property is transferred: BGL46855	
2	Agreed	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: NGL165124	
3	GPL is not able to dispute this.	Property: Parts of the ninth floor area at Durrels House (as that expression is defined below) such parts being all of the premises let by the Lease other than the Retained Property (as those expressions are defined below). The Property is identified: [x] on the attached plan being: (a) the area shown edged red (including the airspace above that area); and	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		(b) the airspace above the area shown edged blue (including the parts shaded pale blue within that area) save for such part of such airspace as: (1) will be taken up or physically displaced by the New Flat (also defined below) by the time it is constructed; and (2) is above the areas shown shaded pale blue but not extending beyond the height of the New Flat by the time it is constructed. ☐ on the title plan(s) of the above titles and shown:	
4	Agreed	Date: [date]	
5	Agreed	Transferor: Grovehurst Properties Limited For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: 02152672 For overseas companies (a) Territory of incorporation:	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		(b) Registered number in the United Kingdom including any prefix:	
6	Agreed	Transferee for entry in the register: Durrels House Limited <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 05621172 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:	
7	Agreed	Transferee's intended address(es) for service for entry in the register: Flat 80 Durrels House, 28-46 Warwick Gardens, London W14 8QB	
8	Agreed	The transferor transfers the property to the transferee	
9	For determination by the tribunal	Consideration	
		[x] The transferor has received from the transferee for the property the following sum (in words and figures): [(TBC)]	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		☐ The transfer is not for money or anything that has a monetary value ☐ Insert other receipt as appropriate:	
10	Agreed	The transferor transfers with ☐ full title guarantee ☒ limited title guarantee	
11	Not applicable	Declaration of trust. The transferee is more than one person and ☐ they are to hold the property on trust for themselves as joint tenants ☐ they are to hold the property on trust for themselves as tenants in common in equal shares ☐ they are to hold the property on trust:	Not applicable
12	Agreed	Additional provisions RECITALS The Transferee as a result of the Freehold Transfer is the landlord under the Lease and enters into this transfer in its capacity as landlord under the Lease and as assignee of the Property.	
		12.1 DEFINITIONS	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	12.1.1 Agreed	12.1.1 "Act" means the Leasehold Reform, Housing and Urban Development Act 1993 (as amended).	
	Not necessary in GPL's form of transfer	12.1.2 "Building" has the same meaning as that ascribed to it in the Lease.	We accept the DHL/CHH draft
	Not necessary in GPL's form of transfer	12.1.3 "Building Works" has the same meaning as that ascribed to it in the Lease.	We accept the DHL/CHH draft
	Not necessary on GPL's form of transfer	12.1.4 "Building Completion Notice" has the same meaning as that ascribed to it in the Lease.	We accept the DHL/CHH draft
	12.1.2 Agreed	12.1.5 "Durrels House" means Durrels House, 28 to 46 (even) Warwick Gardens London W14 8QB.	
	12.1.3 Agreed	12.1.6 "Freehold Transfer" means the transfer of even date (but entered into immediately prior to this transfer) made between Hemphurst Limited (1) and Durrels House Limited (2) relating to certain of the land registered at the Land Registry under title number NGL165124 as specified therein.	
	12.1.4 Agreed but Phillip has two 'l's'	12.1.7 "Lease" means the lease dated 10th October 2003 and made	Phillip not Philip

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		between Hemphurst Limited (1) Grovehurst Properties Limited (2) and Peter Philip Smulovitch and others as the Trustee (as defined in that lease) (3) in relation to part of the ninth floor roof area and airspace of Durrels House as registered at the Land Registry under title number BGL46855.	
	Not necessary on GPL's form of transfer	12.1.8 "Lifts" has the same meaning as that ascribed to it in the Lease.	Not required
	12.1.5 "New Flat" means the construction of the new flat on the Retained Property.	12.1.9 "New Flat" means the flat to be constructed or, as applicable, constructed on the Retained Property in accordance with the Lease.	We accept the Grovehurst draft
	Not necessary on GPL's form of transfer	12.1.10 "New Flat Works" means the Building Works on the Retained Property in accordance with the Fifth Schedule of the Lease and the terms of this transfer and which are carried out after the date of this transfer.	We accept the DHL/CHH draft
	Not necessary on GPL's form of transfer	12.1.11 "New Flat Works Commencement Date" means the date on which the Transferor gives notice under clause [06] of this transfer (or the date upon which such notice ought to have been given in the event that the Transferor gives such	"New Flat Works Commencement Date" means the date on which the Transferor gives notice under clause 12.8.1.6 of this transfer

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		notice later than when required under that clause).	
	Not necessary on GPL's form of transfer	12.1.12 "Other Transfers" means three transfers also made of even date (but entered into immediately prior to this transfer) all made between the Transferor (1) and the Transferee (2) in relation to title number BGL46743 (the porter's office and service corridor), title number BGL46701 (the forecourt strip) and title number NGL607712 (the visitor car parking areas) (as more particularly described in those transfers) by which the relevant properties were transferred to the Transferee.	Not necessary
	12.1.6 Agreed	12.1.13 "Plan" means the plan attached to this transfer.	
	12.1.7 Agreed	12.1.14 "Premises" means the premises demised by the Lease.	
	12.1.8 Agreed	12.1.15 "Property" means the property described in panel 3 of this transfer.	
	12.1.9 Agreed	12.1.16 "Retained Property" means those premises in title number BGL46855 not transferred by this transfer.	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Not necessary on GPL's form of transfer	12.1.17 "Service Equipment" has the same meaning as that ascribed to it in the Lease.	Not necessary
	Not necessary on GPL's form of transfer	12.1.18 "Trust Deed" means a deed dated 19 November 1971 and made between The Prudential Assurance Company Limited (1) and Morgan Grenfell Trustee Services Limited (2) (and as amended by later deeds).	Not necessary
		12.2 INTERPRETATION 12.2.1 References in this transfer:	
	12.2.1.1 to the Transferee include its successors in title the owners for the time being of the Property and Durrels House; and	12.2.1.1 to the Transferee include its successors in title the owners for the time being of the Property and for the avoidance of doubt includes the freeholder of Durrels House in the event that the Lease of the Property is merged or surrendered at or at any time subsequent to completion of this Transfer; and	We accept the Grovehurst draft
	12.2.1.2 Agreed	12.2.1.2 to the Transferor include its successors in title the owners for the time being of the Retained Property;	
	12.2.2 Agreed	12.2.2 References to any statute includes and refers to that	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		statute as amended or re-enacted and as implemented or amended by any subordinate legislation;	
	12.2.3 Agreed	12.2.3 References to each of the Property and the Retained Property include the whole or any part of them; and	
	12.2.4 Agreed	12.2.4 Where a party is more than one person their rights and obligations are joint and several.	
	12.3 RESTRICTIVE COVENANTS BY THE TRANSFEREE * *[NOTE – clauses marked with one asterisk can only be included if the LVT determines that it has jurisdiction]* In its capacity as landlord under the Lease the Transferee covenants with the Transferor that the Transferee shall not place or position (nor allow any party to place or position) onto the Property any plant equipment article or other thing that shall damage disturb annoy or interfere with or otherwise detract from the Transferor's use and enjoyment of the Retained Property AND such shall also include the positioning of any plant	12.3 DECLARATION AND RESERVATION OF RIGHT In their respective capacities as landlord and tenant under the Lease (and, in relation to the Transferee too, as assignee of the Property):	In its capacity as landlord under the Lease the Transferee covenants with the Transferor that the Transferee shall not place or position (nor allow any person to place or position) on the Property any plant equipment article or other thing that shall interfere with the reasonable use and enjoyment of the Retained Property

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	equipment article or other thing as aforesaid that shall be positioned nearby the Retained Property that shall be audible or visible to the Transferor at the Retained Property		
	Disputed	12.3.1 the Transferee and Transferor acknowledge and agree that from and after the date of this transfer the Property shall cease to be part of the Premises and shall form part of the Building and the Lease shall be construed and shall apply accordingly and, for the avoidance of doubt (but without limitation):	Not necessary
	Disputed	12.3.1.1 the provisions of the Fifth Schedule of the Lease which apply to the Building shall apply to the Property; and	Not necessary (in any event should be "Schedule to the Lease", not "Schedule of the Lease")
	Disputed	12.3.1.2 the provisions of the Lease which relate to the Building in connection with Service Equipment (which, without limitation, includes the provision and maintenance of an air conditioning facility with associated	Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		screening serving the New Flat) shall apply to the Property; but	
	Disputed	12.3.1.3 the provisions of the Lease do not permit the installation or maintenance on the Property of any landscaping or decorative roof membrane or covering; and	Not necessary
	Disputed	12.3.2 in the event that the freehold interest and/or any superior interest in the Building is not held by the Transferee, the Transferee will not permit the holder of such superior interest to exercise any rights of access over the Property without giving such notice to the Transferor as is set out in clause (12.10); and	Not necessary
	Disputed	12.3.3 (for the avoidance of doubt) the Transferee and Transferor acknowledge and agree that the Transferor commenced the Building Works in 2008.	Not necessary
	12.4 POSITIVE COVENANT BY THE TRANSFEREE ** *[NOTE – clauses marked with two asterisks indicate clauses that are required to be*		In its capacity as landlord under the Lease and as Transferee the Transferee hereby covenants with the Transferor

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	conceded by DHL in order to avoid re-opening valuation issues; see Applicant's Closing Written Submissions] In its capacity as Landlord under the Lease the Transferee hereby covenants with the Transferor that the Transferor its assigns and those authorised by them shall be entitled to enter build upon execute works and otherwise use the Property for all purposes in connection with the development of the new flat at the Retained Property		that the transferor and its assigns and those authorised by them shall be entitled to enter build upon execute works and otherwise use the Property for all purposes reasonably connected with the development of the New Flat at the Retained Property
	12.5 CONSEQUENTIAL PROVISIONS **	12.4 CONSEQUENTIAL PROVISIONS	
	In its capacity as landlord under the Lease and as Transferee the Transferee confirms the Lease applies with full force and effect to the Retained Property and shall be deemed to bind the Property as well as all other parts of the property transferred out of title number NGL165124 by virtue of the Freehold Transfer	12.4.1 The Transferee (in its capacity as landlord under the Lease) and the Transferor (as tenant under the Lease) confirm that:	We accept the Grovehurst draft
	Disputed	12.4.1.1 this transfer does not operate as a surrender of the Lease and a grant of a new lease; and	Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		12.4.1.2 the Lease remains in full force and effect in relation to the Retained Property except as varied by this transfer.	Not necessary
	Disputed	12.4.2 For the avoidance of any doubt the Transferee has no liability for any breach by the Transferor of the tenant's covenants in the Lease before the date of this transfer.	Not necessary
	Disputed	12.4.3 The Transferor covenants by way of indemnity with the Transferee that the Transferor:	Not necessary
	Disputed	12.4.3.1 has complied with the obligations on the part of the tenant contained in the Lease for which the Transferor is or may become liable or in respect of which the Transferor has given an indemnity so far as the obligations are still in existence and relate to the Property; and	Not necessary
	Disputed	12.4.3.2 will keep the Transferee indemnified against all proceedings, costs, claims, liabilities and loss	Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		(whether incurred as original contracting part or indemnifying party or otherwise) in respect of any non compliance.	
	12.6 MERGER ** As a result of the Freehold Transfer the Transferee has become both lessor and lessee of the Property and hereby declares its interests in respect of the Property are merged	12.5 TRANSFER AND MERGER This transfer does not constitute or effect a merger in respect of the remainder of the term of years granted by the Lease in the reversion immediately expectant on it in respect of the Property with the titles comprised in the Freehold Transfer and the Other Transfers.	Neither version is necessary
	12.7 APPLICATION TO THE LAND REGISTRY ** Agreed	12.6 APPLICATION TO THE LAND REGISTRY The Transferee covenants with the Transferor that the Transferee will immediately apply to the Land Registry to make the necessary entries and cancellations in the registers of title numbers BGL46855 and NGL165124 in order to give effect to this transfer and the Transferor confirms its consent to the application being made.	
	12.8 THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999		Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act		
	12.9 TRANSFEROR'S RIGHT TO USE THE LANDSCAPED AREA *[Note: During the hearing it was suggested that GPL would prefer to receive compensation than to be granted rights over the Property for landscaping. In fact GPL's position is entirely the opposite in that it generally believes the lack of landscaping will have a serious impact on its ability market the new flat and as a result GPL would infinitely prefer to have rights to landscape rather than to receive compensation. In the event that the LVT determines it has a more general jurisdiction than we have argued for, GPL would accept a clause on the following terms.]* As part of the construction works of the New Flat the Transferor will install at its own cost an insulated roof membrane and construct new drainage gullies on the Landscaped Area and following such construction the Transferor will have		The terms proposed by Grovehurst should not be included

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	exclusive use of the Landscaped Area for placing thereon decking platforms, containers for low level ornamental planting and (if desired by the Transferor) an irrigation system for such planting in order to provide visual amenity landscaping for the New Flat AND in respect of which the following provisions shall apply:- 12.9.1 The Transferor shall not be allowed to affix any container permanently to the roof of the Landscaped Area but shall ensure the safety and security of all items placed on the Landscaped Area by the Transferor (particularly from high winds) at all times 12.9.2 The Transferor shall keep the Landscaped Area tidy and in a good state of repair maintenance and condition and shall also obtain all statutory consents and approvals for its permitted use at the Landscape Area. 12.9.3 In the event that the Transferee shall need to inspect or carry out any works to any part of Durrels House located beneath any part or parts of the		

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Landscaped Area then the following provisions shall apply:- 12.9.3.1 The Transferee shall give the Transferor reasonable prior written notice (except in the case of emergency when no notice shall be required) of (1) the nature of the inspection and the work required by the Transferee and (2) the date by which such parts of the Landscaped Area must be cleared of all (or part of) the Transferor's fittings thereon in order that the Transferee's purposes shall not be impeded 12.9.3.2 The Transferee shall act properly and shall only give notice to the Transferor as aforesaid when access shall not be reasonably obtainable by the Transferee from any other part of Durrels House 12.9.3.3 The Transferor shall be responsible itself for the costs of moving the		

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Transferor's fittings from the Landscaped Area and for replacing them when the Transferee's access to the relevant area(s) shall be concluded 12.9.3.4 If the Transferor shall need to move a sufficient size or extent of its fittings from the Landscaped Area then the Transferee shall (acting reasonably) first provide the **T**ransferor (at no cost to the Transferor) with a temporary alternative adjoining roof location at Durrels House for the Transferor's fittings that require to be moved until such time as the fittings can be replaced or reinstated at the Landscaped Area 12.9.3.5 The **T**ransferee covenants with the Transferor that if the Transferee shall need to have access to the Landscaped Area as aforesaid then it will do so causing as little damage and disturbance to the		

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Transferor as reasonable practicable in the circumstances AND the Transferee shall use all reasonable endeavours to procure that the Transferor's fittings can be replaced at the Landscaped Area as soon as reasonably possible on each occasion 12.9.3.6 If the Transferor fails to move the Transferor's fittings after the provisions of this clause have otherwise been complied with then the Transferee shall be entitled (acting reasonably and carefully) to move the Transferor's fittings and the Transferor shall pay the Transferee's proper costs (if any) incurred in so doing 12.9.4 The Transferor shall give the Transferee two working days prior written notice before any maintenance contractor attends at the Landscaped Area save in the case of emergency when no notice shall be required.		

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	12.9.5 The Transferor shall indemnify the Transferee against all reasonable sums properly expended by the Transferee in making good any damage to Durrels House caused by or attributable to the use of the Landscaped Area by the Transferor or caused by or attributable to any acts done by the Transferor or by any person authorised by the Transferor to have access to the Landscaped Area for the use permitted herein.		
	12.10 OTHER Agreed	12.7 OTHER This transfer is executed for the purpose of Chapter 1 of Part I of the Act.	
	Disputed	12.8 DEVELOPMENT OF NEW FLAT In connection with the Building Works:	We accept the DHL/CCH draft
	Disputed	12.8.1 the Transferor covenants with the Transferee:	We accept the DHL/CHH draft
	Disputed	12.8.1.1 to carry out and complete the New Flat Works in a good and	We accept the DHL/CHH draft

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING		LVT's comments
			workmanlike manner;	
	Disputed	12.8.1.2	to keep the works insured in their full reinstatement value;	We accept the DHL/CHH draft
	Disputed	12.8.1.3	by way of indemnity with the Transferee to pay to the Transferee upon demand from time to time by the Transferee (a) the amount of any increased or additional premium payable or paid by the Transferee in respect of maintaining insurance in connection with Durrels House in compliance with the Transferee's obligations under the Lease, the Trust Deed and/or applicable law to the extent that such increased or additional premium is referable to the Building Works, and (b) an amount equal to any insurance money that the insurers of any such insurance refuse to pay by reason of any act or omission of the Transferor or any undertenant, their workers, contractors or agents or any person at the Durrels House with the actual or implied authority of any of them;	to pay to the Transferee upon demand: (a) the amount of any increased or additional premium payable in respect of maintaining insurance in connection with Durrels House to the extent that such increased or additional premium is referable to the Building Works; and (b) any sum which the insurer of Durrels House may refuse to pay by reason of any act or omission on the part of the Transferor and those authorised by it in connection with the Building Works
	Disputed	12.8.1.4	to procure in favour of the	to ensure that such warranties as are

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING		LVT's comments
			Transferee collateral warranties from the building contractor, all members of the professional team with material design responsibility and any sub-contractors with material design responsibility (and in respect of so much of the works as relates to the creation only of the structure of the New Flat and any services for use in common by the other owners and occupiers of Durrels House) in JCT standard form;	given to the Transferor by the contract for the construction of the New Flat are assigned to the Transferee on completion of the New Flat
	Disputed	12.8.1.5	to complete the New Flat Works and serve a Building Completion Notice within fifteen (15) months of the New Flat Works Commencement Date (provided that the Transferee shall allow the Transferor up to a further nine (9) months to complete the New Flat Works if requested to do so (such consent not to be unreasonably withheld or delayed);	to complete the New Flat and serve a Building Completion Notice within the period specified within the contract for its construction provided that the Transferee shall if asked to do so by the Transferor allow the Transferor such further time for which provision is made in the contract for the construction of the New Flat
	Disputed	12.8.1.6	to notify the Transferee in writing at least ten (10) working days before carrying out any further work (other than minor works after the date of this transfer which in aggregate do	to notify the Transferee in writing at least ten working days before such date as is specified in the contract for the construction of the New Flat as the date for the commencement of the works

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING		LVT's comments
			not take more than ten (10) working days) which is within the meaning of Building Works such notice to be accompanied by such plans and specifications as have been issued to such contractor(s) as are to carry out the Building Works;	
	Disputed	12.8.1.7	not to carry out the New Flat Works in such manner or at such times as to cause unnecessary inconvenience to the Transferee and other owners and/or occupiers of any parts of Durrels House;	Not necessary
	Disputed	12.8.1.8	subject to paragraph 5.1 of the Fifth Schedule of the Lease, not to interfere with the Transferee's ability to carry out its obligations or duties in relation to Durrels House;	Not necessary
	Disputed	12.8.1.9	to ensure that the Transferee is provided with a copy of the practical completion certificate promptly upon certification of practical completion of the Building Works;	Not necessary
	Disputed	12.8.1.10	as part of the New Flat Works at its own cost the Transferor	Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		will resurface the area edged red on the Plan with the Bauder system (or such other system having the same or better quality and warranty as shall be reasonably acceptable to the Transferor) and construct new drainage gullies and the Transferor shall ensure that all manufacturers and suppliers warranties relating to such new roof surface, gullies and their installation are assigned to **or** in the name of the Transferee; and	
	Disputed	12.8.1.11 not later than ten (10) nor earlier than twenty (20) working days before the New Flat Works Commencement Date the Transferor shall deliver to the Transferee a schedule of condition of the roof of Durrels House prepared by an architect surveyor or other appropriate professional independent of the Transferor; and	Not necessary
	Disputed	12.8.2 the Transferor and the Transferee agree that the service charges payable by the owners of the other flats and premises at Durrels House shall not include the cost of any works recoverable by the Transferor	Not necessary

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		from the building contractor, members of the professional team and/or any sub-contractors whether directly under any collateral warranty and/or under any guarantee obtained by the Transferor or otherwise in connection with the carrying out of the Building Works.	
	Disputed	12.9 LIFTS 12.9.1 The Transferor and Hemphurst Limited confirm:	Not necessary
	Disputed	12.9.1.1 the westmost of the two passenger Lifts has been replaced or extended as envisaged by the Fifth Schedule to the Lease; and	Not necessary
	Disputed	12.9.1.2 that the Transferee has no liability to contribute towards the cost of the works as described in clause 12.9.1.	Not necessary
	Disputed	12.9.2 Hemphurst Limited has joined in this transfer to confirm Hemphurst Limited's approval to the matters described in this clause 12.9.	Not necessary
	12.12 NOTICE *	12.10 NOTICE	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Agreed	Except in the case of emergency:	
		12.10.1 the Transferee, its agents or workmen shall give at least 24 hours prior written notice to the Transferor prior to the Transferee, its agents or workmen entering upon any part of the Property which would adversely affect the privacy of the occupier of the New Flat; and	
		12.10.2 the Transferee, its agents and workmen shall cause as little disturbance to the privacy of the occupier of the New Flat as reasonably possible while carrying out and discharging their duties in relation to the Property.	
	12.11 AMENDMENTS TO THE LEASE *	12.11 AMENDMENTS TO THE LEASE The parties further agree that the Lease is amended so that:	
	Disputed	12.11.1 paragraph 4.1 of the Fifth Schedule is deleted;	Not necessary
	Agreed	12.11.2 reference in paragraph 4.2 and paragraph 5.2 of the Fifth Schedule to 'Building Control Notice' is replaced with 'Building Completion Notice';	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
	Disputed	12.11.3 the 'Building Completion Notice' is to be issued by an architect or chartered surveyor appointed by the Transferor from time to time to inspect, sign off and otherwise approve the New Flat Works; and	Not necessary
	12.10.2 the words "PROVIDED THAT in the case of emergency no notice shall be required" are added at the end of the definition of Requisite Notice in clause 1 of the Lease	12.11.4 the words "PROVIDED THAT in case of emergency (or where there are grounds to reasonably believe that it is a case of emergency) no notice shall be required" are added at the end of the definition of Requisite Notice in Clause 1 of the Lease.	We accept the Grovehurst draft
	Execution EXECUTED as a deed by GROVEHURST PROPERTIES LIMITED acting by two directors or a director and its secretary EXECUTED as a deed by DURRELS HOUSE LIMITED acting by two directors or a director and its secretary	Execution EXECUTED as a deed by GROVEHURST PROPERTIES LIMITED acting by two directors or a director and its secretary EXECUTED as a deed by DURRELS HOUSE LIMITED acting by two directors or a director and its secretary EXECUTED as a deed by HEMPHURST LIMITED acting by two directors or	

Para No	HEMPHURST and GROVEHURST/PG DRAFTING	DHL/CHH DRAFTING	LVT's comments
		a director and its secretary	
		WARNING If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both. Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register. Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.	
		© Crown copyright (ref: LR/HO) 07/09	

IN THE LEASEHOLD VALUATION TRIBUNAL **Ref: LON/00AW/OCE/2007/0058**

APPENDIX TWO TO THE TRIBUNAL'S DECISION

HEMPHURST LIMITED (1) and GROVEHURST PROPERTIES LIMITED (2) (Applicant) v DURRELS HOUSE LIMITED (Respondent)

SCOTT SCHEDULE VERSION OF SALE AGREEMENT

Para No	HEMPHURST and GROVEHURST/ PG Drafting	DHL/CHH DRAFTING	LVT's Comments
	Agreed	**A G R E E M E N T** (Incorporating the Standard Conditions of Sale (Fifth Edition)) Agreement Dated: _____ _____	
	Agreed	First Seller: HEMPHURST LIMITED (company number 01721540) of Hallswelle House, 1 Hallswelle Road, London NW11 0DH	
	Agreed	Second Seller: GROVEHURST PROPERTIES LIMITED (company number 02152672) of Hallswelle House, 1 Hallswelle Road, London NW11 0DH)	
	Agreed	Buyer: DURRELS HOUSE LIMITED (company number 05621172) of 80 Durrels House, 28-46	

			Warwick Gardens, London W14 8QB	
	Agreed	The First Property:	the freehold interest in those parts of the property known as Durrels House, 28-46 (even) Warwick Gardens, London W14 8QB ("Durrels House") more particularly described in panel 3 of the TP1 relating to title number NGL165124 annexed ("Transfer One")	
	Agreed	The Second Property	the freehold interest in those parts of Durrels House more particularly described in panel 3 of the TP1 and relating to title number NGL607712 annexed ("Transfer Two")	
	Agreed	The Third Property	the freehold interest in those parts of Durrels House more particularly described in panel 2 of the TR1 relating to title number BGL46701 annexed ("Transfer Three")	
	Agreed	The Fourth Property	the leasehold interest in those parts of Durrels House more particularly described in panel 2 of the TR1 relating to title number BGL46743 annexed ("Transfer Four")	
	Agreed	The Fifth Property	the leasehold interest in those parts of Durrels House more particularly described in panel 3 of the TP1 relating to title	

		number BGL46855 annexed ("Transfer Five")	
	Agreed	The Property the First Property the Second Property the Third Property the Fourth Property and the Fifth Property	
	Agreed	Incumbrances on the Property: (1) the covenants conditions rights and other matters (other than financial changes) contained or referred to in the registered titles NGL165124 issued on [•] 2012 at [time]; NGL607712 issued on [•] 2012 at [time]; BGL46701 issued on [•] 2012 at [time]; BGL46743 issued on [•] 2012 at [time]; and BGL46855 issued on [•] 2012 at [time];	
	Agreed	(2) the leases ("the Leases") set out in the First Schedule of Transfer One, the Schedule of Transfer Two and the Schedule of Transfer Three and all tenancies and other rights of occupation affecting the Property and all deeds and documents supplemental or ancillary thereto so far as such leases are subsisting and capable of taking effect	
	Agreed	(3) the covenants conditions and other provisions contained in the form of transfers annexed	
	Agreed	Title Guarantee: limited title guarantee	
	Completion Date: 2012	Completion Date:	We accept the Grovehurst draft

	being a date 20 working days following the date of this Agreement		]	
	Agreed	Contract Rate:	4% above Bank of England base rate	
	Determined by the LVT	The First Property Price:	£3,083,638.00	
	Determined by the LVT	The Second Property Price:	£760.00	
	Determined by the LVT	The Third Property Price:	£2,800.00	
	Determined by the LVT	The Fourth Property Price:	£1.00	
	To be determined by the LVT	The Fifth Property Price:	£22,000	
	To be determined by the LVT	Total Property Price:	£3,109,199	
	To be determined by the LVT	Deposit:	£31,091.99 (being an amount equal to 10% of the Total Property Price)	
	To be determined be the LVT	Balance:	£2,798,279.10 (being the Total Property Price less the Deposit)	
	Agreed	The Act:	Leasehold Reform, Housing and Urban Development Act 1993 (as amended)	
	Agreed	Initial Notice:	a notice dated 1st August 2006 given under section 13 of the Act and claiming the freehold and leasehold interests in the Property	
	Agreed	Terms of Acquisition:	has the meaning given in	

		section 24(8) of the Act	
	Agreed	Transfers: means Transfer One Transfer Two Transfer Three Transfer Four and Transfer Five and copies of which are annexed to this Agreement	
	Services Contracts: the contracts for the provision of services at the Property, listed in Schedule 2		We accept the Hemphurst and Grovehurst draft
	Agreed	Occupational Tenants: the tenants under the Leases	
	Agreed	Trust Deed means the Trust Deed dated 19 November 1971 made between (1) The Prudential Assurance Company Limited and (2) Morgan Grenfell Trustee Services Ltd (and as varied by subsequent deeds) referred in the Leases	
	Agreed	Transferring Employees: means those employees employed at the Property immediately prior to the Completion Date being the persons whose names are set out in Schedule 1.	

	Agreed	TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)	
	Agreed	Liabilities:	any claims, actions, debt, proceedings, demands, awards, losses, damages, costs (including, without limitation, legal costs), liabilities, penalties, fines, interest or expenses that may be suffered or incurred by an indemnified party	
	Agreed	Seller's Solicitors:	(who act for both the First Seller and the Second Seller) Pemberton Greenish LLP of 45 Cadogan Gardens London SW3 2AQ	
	Agreed	Buyer's Solicitors:	Cripps Harries Hall LLP of Wallside House, 12 Mount Ephraim Road, Tunbridge Wells, Kent TN1 1EG	
	Agreed	This Agreement records the Terms of Acquisition agreed between the parties pursuant to the Initial		

		Notice	
1.	Agreed	AGREEMENT FOR SALE 1.1 Subject to the terms and conditions herein the First Seller shall sell the First Property to the Buyer for the First Property Price and the Second Seller shall sell the Second Property the Third Property the Fourth Property and the Fifth Property to the Buyer for the Second Property Price, Third Property Price, Fourth Property Price and Fifth Property Price respectively each with the Title Guarantee and subject to the Incumbrances on the Property but otherwise with vacant possession on completion	
	1.2 Completion of the sale and purchase of the Property shall be indivisible and completion shall only take place if the Total Property Price and all other sums specified in this Agreement which have become, on or before the Completion Date, due and payable by the Buyer under this Agreement are paid by the Buyer to the Seller's Solicitors	1.2 Completion of the sale and purchase of the Property shall be indivisible and completion shall only take place if the Total Property Price and all other sums specified in this Agreement which have become, on or before the Completion Date, due and payable by the Buyer under this Agreement are paid by the Buyer to the Seller's Solicitors or, to the extent that such sums are being disputed by the Buyer, are paid by the Buyer to an escrow account held in the joint names of the Buyer's Solicitors and Seller's Solicitors pending the outcome of such dispute.	We accept the Hemphurst and Grovehurst draft
2.	Agreed	STANDARD CONDITIONS AND INTERPRETATION 2.1 This Agreement incorporates the Standard Conditions of Sale (Fifth Edition) and where there is a conflict between the Standard Conditions and this Agreement this	

		Agreement prevails	
	Agreed	2.2 Where the context so admits terms used or defined in this Agreement have the same meaning as they have when used in the Standard Conditions	
3.	Agreed	INCUMBRANCES The Property is sold subject to the Incumbrances on the Property and the Buyer will raise no requisition or objection on them or otherwise on the title to the Property as disclosed by this Agreement save as a result of replies to the usual pre-completion searches and requisitions on title	
4.	DOCUMENTS 4.1 On or as soon as reasonably practicable after completion the First Seller and the Second Seller will supply to the Buyer's Solicitors:	DOCUMENTS 4.1 On or as soon as reasonably practicable after completion the First Seller and the Second Seller will deliver by hand (with any electronic data being saved to a disk delivered by hand) to the Buyer (or to any other person as the Buyer had directed in writing to the First Seller and the Second Seller before the Completion date)	We accept the Hemphurst and Grovehurst draft
	Agreed	4.1.1 Rent authority letters in the form annexed addressed to each of the Occupational Tenants	
	Disputed	4.1.2 All of the following if any of which are in the possession of the First Seller and the Second Seller, their managing agents in respect of the Leases or, in each case, under the control of the First Seller, the Second Seller and/or such	Not necessary

		managing agents (except any that are in the possession of any Occupational Tenants)	
	Agreed	4.1.2.1 the counterparts of the Leases	
	Agreed	4.1.2.2 all deeds and other documents granted supplemental to the Leases	
	Agreed	4.1.2.3 the health and safety file for the Property and	
	Disputed	4.1.2.4 all other documentation held by the managing agents for the Property (save those managing agents' own working papers) which is relevant to the discharge of the landlord's obligations under the Leases and the ongoing management of the Property	Not necessary
	Agreed	4.2 Any document sent through the post or the Document Exchange following completion shall be at the risk of the Buyer	
	Agreed	4.3 The Seller's Solicitors shall be entitled to retain possession of the title deeds so long as completion monies due to the First Seller and/ or the Second Seller including interest remain unpaid	
5.	Agreed	THE TRANSFERS The transfers of the Property shall be in the form of	

		the Transfers and each party to the Transfers shall execute each transfer in duplicate	
6.	Agreed	MISREPRESENTATION 6.1 The Buyer admits that the Buyer has inspected or caused the Property to be inspected and enters into this Agreement solely on the basis of such inspection and the express terms hereof and not in reliance on any representation or warranty or statement whether written oral or implied made by or on behalf of the First Seller or the Second Seller (save for written information supplied by the Sellers' Solicitors or their written replies to the Buyer's Solicitors written enquiries)	
	Agreed	6.2 This Agreement and the conditions schedules and other documents expressly referred to and any variation of or addition to the provisions of these presents agreed in correspondence between the parties hereto (or their solicitors) and which expressly refers to this Agreement form and include the entire basis and terms of the contract between the parties hereto and are hereby incorporated herein	
7.	REIMBURSEMENT OF SELLERS' COSTS The Buyer shall on completion pay pursuant to section 33 of the Act the legal costs of the First Seller and the Second Seller in the sum of £50,000 (inclusive of VAT and disbursements) and valuation costs of the First Seller and the	REIMBURSEMENT OF SELLERS' COSTS[1] The Buyer shall on completion pay pursuant to section 33 of the Act the legal costs of the First Seller and the Second Seller in the sum of £[ ] (inclusive of VAT and disbursements) and valuation costs of the First Seller and the Second Seller in the sum of £[ ] (inclusive of VAT	To be agreed or decided

[1] Details now received, for approval.

	Second Seller in the sum of £25,000 (inclusive of VAT and disbursements)	and disbursements)	
8.	Agreed	NOTICE TO COMPLETE If the Seller's Solicitors serve a notice to complete the Buyer shall pay upon completion in addition to the amount required to complete the sum of £250 (plus VAT) towards the Seller's Solicitors costs for the preparation and service of that notice and this provision is reciprocal in favour of the Buyer	
9.	Agreed	APPORTIONMENTS OF GROUND RENT AND SERVICE CHARGE 9.1 Apportionment of the ground rents of the Property will be made as at completion (such date to be apportioned to the First Seller)	
	Agreed	9.2 If at completion there are any arrears of: 9.2.1 ground rent due to the First Seller from any Occupational Tenants the Buyer will account to the First Seller for such arrears	
	Agreed	9.2.2 service charge due to the First Seller from any Occupational Tenants the First Seller and/or the Second Seller will if required by the Buyer formally assign to the Buyer the right to collect such arrears from the Occupational Tenants but the First Seller and the Second Seller make no warranty as to the recoverability of any service charge arrears	

	9.3 Subject to the provisions of clause 9.4 hereof the First Seller or its managing agent will on completion hold any service charge fund (which means the money actually paid by the Occupational Tenants and held by or on behalf of the First Seller in respect of or on account of any service or management charge or otherwise by way of contribution towards any common facilities and including any reserve or sinking fund) to the order of the Buyer and pay that money to the Buyer or as the Buyer or the Buyer's Solicitors may direct within 7 days of receiving such request		We accept the Hemphurst and Grovehurst draft
	9.4 On completion the First Seller will be entitled to deduct from the said service charge fund all amounts actually properly expended or properly incurred by it or its managing agent in the proper provision of services in accordance with the Leases to or for the Property		On completion the First Seller is entitled to deduct from the said service charge fund all amounts actually and reasonably expended or incurred by it or its managing agent in the proper provision of services in accordance with the Leases to or for the Property
	Agreed	9.3 The First Seller or its managing agent will prepare and supply to the Buyer within 14 days of actual completion an account of all	
	Agreed	9.3.1 expenditure recoverable from the Occupational Tenants under and in accordance with the Leases and Trust Deed but not paid for at completion; and	

	Agreed	9.3.2 deductions made from the funds held by the First Seller and/or its managing agent under and in accordance with the Leases and Trust Deed on or before the Completion Date.	
	9.5.3 the amounts referred to in clause 9.4		We accept the Hemphurst and Grovehurst draft
	Agreed	9.4 Save as provided in this clause the provisions of Standard Condition 6.3 shall apply	
10.	Agreed	INSURANCE 10.1 The First Seller shall in addition to all obligations on its part arising under the Leases maintain from the date of this Agreement up to completion such insurance cover as is required to be effected pursuant to the Leases	
	Agreed	10.2 On completion the First Seller will cancel (or procure to be cancelled) the insurance of the Property	
	Agreed	10.3 The First Seller will at the Buyer's written request obtain or consent to an endorsement on the First Seller's insurance policy for the Property of the Buyer's interest as contractual purchaser, subject to the insurer being willing to make the endorsement and subject to the Buyer paying the First Seller on demand any additional premium or brokers fees due for the endorsement	

	Agreed	10.4 The First Seller will be under no obligation to seek any refund from the Occupational Tenants of any additional premium due or paid in relation to any increased cover requested by the Buyer or for any endorsement on the policy of the Buyer's interest	
	Agreed	10.5 No damage to or destruction of the Property nor any deterioration in its condition, however caused, will entitle the Buyer either to any reduction of the Total Property Price or to refuse to complete on the Completion Date or to delay completion	
	Agreed	10.6 If in the period between the date of this Agreement and completion, the Property is damaged or destroyed by a risk against which the First Seller has insured:	
	Agreed	10.6.1 the First Seller will made a claim under the First Seller's insurance policy in respect of that damage or destruction	
	Agreed	10.6.2 to the extent that any insurance money in respect of the damage or destruction is paid to the First Seller before completion and to the extent that the First Seller is not under any statutory or contractual obligation to use any insurance money received by it to repair or rebuild the Property before completion, the First Seller will hold the insurance money received by it on trust for the Buyer and will pay the money to the Buyer on	

		completion to use in accordance with the terms of the Leases	
	Agreed	10.6.3 to the extent that any insurance money in respect of the damage or destruction is paid to the First Seller after actual completion, the First Seller will hold the insurance money on trust for he Buyer and will, as soon as is reasonably practicable, pay it to the Buyer to use in accordance with the terms of the Leases	
	Agreed	10.6.4 to the extent that any insurance money in respect of the damage or destruction has not been paid the First Seller before actual completion, the First Seller will, to extent permitted by the policy and at the Buyer's expense, assign to the Buyer all rights to claim under the policy, the assignment being in the form reasonably required by the Buyer	
	Agreed	10.7 If, following the cancellation, the First Seller's insurers refund the First Seller any premium paid in respect of any period after the date of the cancellation, the First Seller will at the First Seller's discretion either:	
	Agreed	10.7.1 pay or allow the refund to the Buyer to hold on trust for and to account to the Occupational Tenants in accordance with the terms of the Leases; or	

	Agreed	10.7.2 pay or allow the refund to the Occupational Tenants in accordance with the terms of the Leases	
	Agreed	10.8 The Buyer will apply any insurance money paid to it by the First Seller under this clause in accordance with the terms of the Leases and will keep the First Seller indemnified against any claims arising from any breach	
	Agreed	10.9 On completion, there will be no apportionment between the First Seller and the Buyer of any insurance rents received or receivable from the Occupational Tenants under the terms of the Leases	
	Agreed	10.10 The Buyer will keep the First Seller indemnified against any outstanding or additional premiums or other costs of insurance that may become due to the First Seller's insurers after completion but which relate to a period of insurance before completion	
11.	FURTHER FINANCIAL PROVISIONS 11.1 Within 14 days of the date of this Agreement the Seller is to supply to the Buyer a provisional financial statement detailing the Seller's reasonable estimate of the amount payable by the Buyer on completion to include apportionments of ground rent and service charges payable by Occupational Tenants	FURTHER FINANCIAL PROVISIONS 11.1 Within 14 days of the date of this Agreement the Seller is to supply to the Buyer a provisional financial statement detailing the Seller's best estimate of the amount payable by the Buyer on completion to include apportionments of ground rent and service charges payable by Occupational Tenants	We accept the Hemphurst and Grovehurst draft
	Agreed	11.2 No later than 14 days before the actual completion date the Seller is to supply to the	

		Buyer a final financial statement (re) confirming the amount payable by the Buyer on the Completion Date to include apportionments of ground rent and service charges payable by the Occupational Tenants	
12.	Agreed	LAND REGISTRY 12.1 On completion the Buyer shall provide the Seller with signed and completed applications (on forms UN2 or any later versions that may apply) to remove all entries in respect of the Initial Notice registered against the Seller's title at entries 2 and 3 of the charges register of the First Property at entries 2 and 3 of the charges register of the Second Property and at entries 1 and 2 of the charges register of the Fifth Property	
	Agreed	12.2 The Seller will arrange for the applications specified in clause 12.1 hereof to be lodged with the Land Registry	
	Agreed	12.3 The Buyer will ensure that any requisitions raised by the Land Registry in connection with the applications specified in clause 12.1 hereof are dealt with promptly and properly	
13.	Agreed	LAW OF PROPERTY (MISCELLANEOUS PROVISIONS) ACT 1994 The covenants implied under section 2 of the Law of Property (Miscellaneous Provisions) Act 1994 are amended so that the words "at his own cost" in section 2(1)(b) of that Act are replaced by the words "at the cost of the person to whom the disposition is made"	

14.	Agreed	NON MERGER After completion this Agreement will remain in full force with regard to anything remaining to be done performed or observed as specified herein	
15.	SERVICES CONTRACTS 15.1 The First Seller warrants to the Buyer as at the date of this Agreement that Schedule 2 lists details of all of the contracts for the provision of services at the Property	CONTRACTS FOR SERVICES 15.1 The First Seller represents and warrants as at the date of this Agreement to the Buyer that Schedule 2 lists details of all of the contracts for the provision of services at the Property (the "Services Contracts").	We accept the Hemphurst and Grovehurst draft
	15.2 Within 14 days of the date of this Agreement the First Seller shall supply to the Buyer's Solicitors copies (where such exist in writing) all documents comprising the Services Contracts;	15.2 Within 14 days of the date of this Agreement the First Seller shall deliver to the Buyer details of all contractual terms of the Services Contracts (including copies of each document setting out such terms).	We accept the Hemphurst and Grovehurst draft
	15.3 Following the date of this Agreement the First Seller agrees with the Buyer that the First Seller shall not amend vary or supplement the terms of the Services Contracts (save as provided at clause 15.4 hereof).	15.3 The First Seller represents and warrants to the Buyer as at the date of this Agreement that it has not at any time after 30 September 2012 agreed, accepted, acknowledged or entered into and covenants with the Buyer that the First Seller shall not at any time on or after the date of this Agreement agree, accept, acknowledge or enter into any amendment, variation, modification or supplement to the terms of the Services Contracts (other than in accordance with clause 15.4).	We accept the Hemphurst and Grovehurst draft
	15.4 Without undue delay following the date of this Agreement the First Seller will serve the requisite notice in order to terminate the Services Contracts on	15.4 If the Buyer requests the First Seller in writing at least 30 days prior to the Completion Date, the First Seller will use its reasonable endeavours to assist the Buyer (or the	We accept DHL's draft

	or as soon as reasonably possible after the Completion Date AND for the avoidance of doubt any early termination fees payable to the suppliers of the Services Contracts or other proper sums necessary to secure the early termination as aforesaid shall in all cases comprise a valid service charge item at the Property and shall be recoverable as such by the First Seller	Buyer's proposed managing agent for the Property) to seek to transfer the Services Contracts specified in the request to the Buyer.	
	15.5 In the event that it shall not be possible to terminate any or all of the Services Contracts on or to prior to the Completion Date then the Services Contracts shall continue in full force and effect and the Buyer warrants to the First Seller that the Buyer shall allow the Services Contracts to continue until such time as the Services Contracts shall be terminated and the Buyer shall ensure that all payments due to the suppliers under the Services Contracts shall be made in accordance with the terms of the Services Contracts AND upon the First Seller's request the Buyer shall promptly supply copies of all communication relevant to any Services Contracts to the First Seller.	15.5 The First Seller acknowledges and agrees that in relation to Services Contracts which are not transferred to the Buyer at the Completion Date, those Services Contracts remain the responsibility of the First Seller and any amounts payable in relation to those Services Contracts shall not constitute a service charge item except to the extent such amounts are properly within the First Schedule of the Trust Deed of the Leases (and, without limitation, any termination fees are not within such First Schedule)	We accept the Hemphurst and Grovehurst draft
16.	Agreed	MANAGEMENT	

		16.1 The First Seller shall manage the Property until the Completion Date in accordance with its normal management practices	
	Agreed	16.2 The First Seller shall notify the Buyer of	
	Agreed	16.2.1 any application for consent or	
	Agreed	16.2.2 the service of any notice by any Occupational Tenant relating to any of the Leases and shall send to the Buyer a copy of any such document	
	16.3 The First Seller shall not without the Buyer's consent (not to be unreasonably withheld or delayed or given subject to any unreasonable condition):	16.3 The First Seller shall not without the Buyer's consent:	We accept the Hemphurst and Grovehurst draft
	Agreed	16.3.1 grant, or agree to grant any lease, tenancy, deed of variation, occupational licence or any other deed or document relating to the Property;	
	16.3.2 grant or agree to grant any licence or consent under any of the Leases (except where the First Seller shall be obliged to do so pursuant to its obligations as Landlord under the Leases);	16.3.2 grant or agree to grant any licence or consent under any of the Leases;	We accept the Hemphurst and Grovehurst draft
	Agreed	16.3.3 accept or agree to accept the surrender of any of the Leases;	
	Agreed	16.3.4 take any steps to forfeit any of the	

		Leases; and/or	
	16.3.5 carry out any works to the Property other than those that are necessary to be effected pursuant to an obligation on the First Seller under the Leases in accordance with its obligations as landlord under the Leases.	16.3.5 carry out any works to the Property other than those which are necessary to be done prior to the Completion Date pursuant to a mandatory obligation on the First Seller under the Leases and shall carry out those works in accordance with its obligations as landlord under the Leases.	We accept the Hemphurst and Grovehurst draft
	Agreed	16.4 The First Seller shall not without the Buyer's prior written consent (in the Buyer's absolute discretion) propose any level of premium to any Occupational Tenant or agree any premium with or accept or retain any premium from any Occupational Tenant in respect of any new lease, lease extension or concurrent lease at the Property	
	Agreed	16.5 The First Seller shall not complete any transactions pursuant to any such applications without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed) and if such consent is so given (or if the Buyer's consent is unreasonably withheld or delayed) then the First Seller shall be at liberty to complete the transaction and when the transaction is completed the schedule details relevant to the property in the Transfers shall be modified accordingly	
	Agreed	16.6 The Buyer shall be bound by all transactions which have been agreed in principle by the Buyer pursuant to the provisions of this clause 0 at the date of actual completion and	

		shall do all acts to implement such transactions including the execution of any documents	
	Agreed	16.7 The Buyer shall indemnify the First Seller upon a full indemnity basis in respect of any liability to any tenant which the First Seller suffers by reason only of the delay or default on the part of the Buyer in consenting to any proposed transaction pursuant to the Landlord and Tenant Act legislation	
	Agreed	16.8 The covenants for indemnity by the Buyer in the Transfers in relation to the Leases shall be extended to include such further documents as may after the date of this Agreement be entered into by the First Seller in accordance with the provisions of this clause	
17.	Agreed	TUPE 17.1 The parties acknowledge and agree that the sale and purchase of the Property pursuant to this Agreement will constitute a relevant transfer for the purposes of TUPE and the Transferring Employees will transfer from the employment of the First Seller (as the case may be) to the Buyer with their existing statutory rights and contractual terms intact (except insofar as such terms relate to any occupation pension scheme) insofar as any change to contractual terms that the Transferring Employees may be consulted about prior to the Completion Date	
	Agreed	17.2 The Buyer will indemnity and keep the First Seller indemnified against all Liabilities arising	

		out of or in connection with	
	Agreed	17.2.1 Any act or omission of the Buyer after the Completion Date relating to the employment or termination of employment of the Transferring Employees after that date	
	Agreed	17.2.2 Any claim relating to or concerning any alleged breach by the Buyer of its obligations under regulation 13(4) of TUPE in respect of the Transferring Employees only	
	Agreed	17.2.3 Any claim by any Transferring Employee relating to or concerning any alleged change by the Buyer of the terms and conditions of employment working conditions or engagement as a result of the sale of the Property and	
	Agreed	17.2.4 Any claim by any Transferring Employee who would have had the right to transfer to the Buyer pursuant to TUPE but who has treated his contract of employment as having been terminated by the First Seller pursuant to TUPE regulation 4(9)	
	17.3 Within 14 days of the date of this Agreement the First Seller shall supply to the Buyer's Solicitors copies of all documentation (where such exist) comprising the employment contracts and any additional related	17.3 Within 14 days of the date of this Agreement the First Seller shall deliver to the Buyer details of all contractual terms of the employment of the Transferring Employees (including copies of each document setting out such terms).	We accept Hemphurst and Grovehurst's draft

	terms of employment for the Transferring Employees.		
	17.4 Following the date of this Agreement the First Seller agrees with the Buyer that the First Seller shall not amend vary or supplement the terms of employment of the Transferring Employees.	17.4 The First Seller represents and warrants to the Buyer as at the date of this Agreement that it has not at any time after 30 September 2012 agreed, accepted, acknowledged or entered into and covenants with the Buyer that the First Seller shall not at any time on or after the date of this Agreement agree, accept, acknowledge or enter into any amendment, variation, modification or supplement to the terms of the employment of the Transferring Employees.	We accept the Hemphurst and Grovehurst draft
	Agreed	Schedule 1 List of Transferring Employees Karl Dye — Head Porter P McDonagh — Porter J Seabourne — Porter Alvis de Lima — Cleaner	
	Agreed	Schedule 2 Maintenance Contracts **Supplier/Contractor** — **Description** British Gas Business — Main Building electricity supply Abbatt Property Services — Supplier of	

			temporary staff	
		Excellent Plants Ltd	Landscape gardener	
		S & F Services Ltd	Fan maintenance	
		RC Cutting & Company Limited	Lightning Conductor	
		Initial Washroom Solutions	Towels for porters washroom	
		Bunzi Cleaning & Hygiene Supplies	Supplier of cleaning supplies	
		MRS Cleaning Services	Window cleaner	
		Pests Eliminated	Pest control	
		Thames Water Utilities Ltd	Waste water supplier	
		Gerald Kreditor & Co	PAYE, Service charge accountant	
		Force Fire Consultancy Ltd	Fire Consultancy, common parts, service of dry riser	

		BT Payment Services Ltd	Porters and lift telephones	
		Wilo (UK) Limited	Pump maintenance	
		Lynton Services Mayfair (1994) Ltd	Water Hygiene and water tank maintenance	
		EDF Energy Customers plc	Electricity supply porters areas	
		HNG	Managing agents	
		PowerRod	Planned Preventative Maintenance waste pipes	
		Accord Lift Services Ltd	Maintenance of the 3 lifts	
		Chubb Fire	Fire extinguishers	
		SIGNED .... First Seller/Second Seller/Buyer		
		WARNING: This is a formal document designed to create legal rights and legal obligations. Take advice before		

		using it.	
		The Lessee Flat Durrels House [ ] Our ref ASC/DJWG/13409.13 Dear Sir or Madam **Flat Durrels House** We act for Hemphurst Limited. Please note that with effect from today's date our client's interest in your property has been transferred to Durrels House Limited and, on behalf of our client, we authorise and require you to pay all future rents and other sums due under your Lease of your property, including any arrears and any documents supplemental or relating to such Lease, to Durrels House Limited or as they may direct. Yours faithfully **Pemberton Greenish LLP**	