2873

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/OCE/2013/0260**
Property	:	**Flats 62-81 Townshend Court, Townshend Road, London NW8 6LB**
Applicant	:	**Townshend Court Limited**
Representative	:	**Mr C Fain of counsel Rae Nemazee LLP, solicitors Mr J Mellor, surveyor**
Respondent	:	**Townshend Business Flat (TBF) Limited**
Representative	:	**Mr P Harrison of counsel Philip Ross & Co, solicitors Mr G Tsielepis, surveyor**
Type of Application	:	**For the determination of the premium and transfer terms on a collective enfranchisement under section 24 (1) Leasehold Reform Housing and Urban Development Act 1993 (the "Act")**
Tribunal Members	:	**Judge J Pittaway Mrs H Bowers**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16 April 2014**

DECISION

Decisions of the Tribunal

1. The Premium

The Tribunal **determines** in accordance with section 32 and Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 that the **premium for the enfranchisement is four hundred and thirty three thousand five hundred and sixty eight pounds (£433,568).**

A copy of the Tribunal's calculation of the premium is attached as Appendix 1.

2. Transfer

The parties having advised the Tribunal at the start of the hearing that they had settled the form of transfer the determination of the Tribunal is no longer required as to its form.

Background

1. By an application dated 19 November 2013 the Applicant applied to determine the premium on a collective enfranchisement of the Property, which is a pair of joined five story blocks, with two flats on each floor of the two blocks, in total twenty flats

2. The Tribunal issued directions on 6 December 2013.

3. At the Hearing on 1 April 2014 the Tribunal had before it
   - 3.1. Three files of documents (a core bundle and two files of leases);
   - 3.2. Valuation reports of Mr Mellor and Mr Tsielepis
   - 3.3. Skeleton arguments from both counsel.

4. At the start of the hearing the parties confirmed that the form of transfer had been agreed between the parties and its terms were no longer in dispute.

5. As evidenced by the statement of agreed facts and issues, before the hearing the parties had agreed
   - 5.1. The respondent has accepted the applicant's right to purchase the Property and the appurtenant land, which includes the small front garden area and part of the rear communal garden.
   - 5.2. A valuation date of 15 June 2012
   - 5.3. Freehold capital values of the flats as follows
     - 5.3.1. Flats 62-65 inclusive and 72-81 inclusive: £500,000 each
     - 5.3.2. Flats 66-71 inclusive: £485,000 each
   - 5.4. A deferment rate to value the reversion of 5%
   - 5.5. That no marriage value is payable
   - 5.6. That the appurtenant property is valued at £500
   - 5.7. The leases of flats 68, 70, 71, 72, 73, 75, 76, 77, 80, and 81 at both the valuation date and the hearing date had terms expiring on 25

March 2100 with ground rents of £50 p.a. rising to £100 on 25 March 2020 and £150 on 25 March 2060. (the "**Old Leases**")

5.8. That the lease of flat 69 at both the valuation date and the hearing date had a term expiring 15 March 2148 at a ground rent of £100 p.a. rising to £200 on 26 July 2030, £400 on 26 July 2055, £800 on 26 July 2080 and £1,600 on 26 July 2105.

6. At the start of the hearing the parties did not agree whether, in calculating the price payable for the freehold, which leases of flats 62- 67 (inclusive), 74, 78 and 79 should be taken into account.
   6.1. The applicant contended that the relevant leases were those in existence for these flats at the valuation date (with similar terms and rents to those for the flats referred to at 5.6 above)
   6.2. The respondent contended that the relevant term and rent was that of the leases in existence in respect of those flats at the date of the hearing (having been granted in or around March 2013) which have terms expiring 24 June 3011 at rents of £2,500 p.a. without any review. (the "**New Leases**")

7. During the hearing the applicant agreed with the respondent that the premium for the collective enfranchisement should be calculated on the basis of the terms of the New Leases for the flats for which New Leases had been granted, not the Old Leases.

8. The only issue before the tribunal was therefore the capitalisation rate used to value the ground rents income. At the start of the hearing
   8.1. The applicant contended that the appropriate rates were
      8.1.1. 8% for the ground rents with reviews; and
      8.1.2. 9% for the ground rents without reviews (the New Leases).

   8.2. The respondent contended that the appropriate rates were
      8.2.1. 6.5% for ground rents with reviews (except for flat 69)
      8.2.2. 6% for the ground rents without reviews (the New Leases) and flat 69.

Evidence

1. Mr Mellor submitted in his report and valuation that the value of the capitalised ground rent is usually a minor part of the valuation. He attached to his report a table, which summarised previous determinations of the Leasehold Valuation Tribunal/ Residential Property Tribunals (as the case may be) where capitalised ground rent had been an issue. He submitted that this table showed that different tribunals come to different reasons and that the decisions showed no standard approach and no consistency in the reasons given.

2. Mr Mellor referred to dicta in the *Earl Cadogan –v- Sportelli* ("*Sportelli*") (where the Upper Tribunal had commented that the decision was not concerned with capitalisation of ground rent) that, in relation to capitalisation rates, market evidence should be more readily available

(than for deferment rates) and that capitalisation rates are determined by different criteria to those relevant to determining the deferment rate.

He also referred to the decision in *Nicholson –v- Wilks* ("*Nicholson*") where the Upper Tribunal accepted that the factors relevant to determining the capitalisation rate are the length of the lease, the security of recovery, the size of the ground rent and the existence and nature of any review of the rent. They stated that these are so different from those that are relevant to the deferment rate that there can be no valuation rationale to adopt the deferment rate as the capitalisation rate, unless adopting the same rate would make no significant difference.

3. Mr Mellor therefore submitted that market evidence provides the best evidence for capitalisation rates. He attached to his report a schedule summarising his analysis of auction sales and private purchases of ground rent investments. The table included 26 auction sales and five private sales. He only included those transactions subject to review to fixed known sums, with minimum unexpired terms of at least 115 years (because he submitted that where unexpired terms are in excess of 115 years investors pay little regard to reversionary values), with a variety of lot sizes, for sales in the period 2010 to 2013 and located primarily in London. The table gave rates which assumed no reversionary value, and rates which took into reversionary value, which he assessed using the appropriate deferment rate (5% in London, higher elsewhere) From these he reached an average capitalisation rate of 7.9% disregarding any reversionary value, and average capitalisation rates taking account of reversionary value of 9.1% for auction sales and 8.2% for investor purchases.

   The table included five properties, which would not qualify for freehold enfranchisement under the Act as the commercial element of the properties exceeded 25%. Mr Mellor considered that these reflect the "No Act World" even though the individual flat tenants retain a compulsory (statutory) entitlement to purchase a lease extension. Mr Mellor submitted that the average rate for these properties was evidence that there was "No Act World" effect on market evidence of ground rent sales.

4. Mr Mellor submitted that location is irrelevant to the capitalisation rate as a ground rent investment is the right to receive an income stream over a period of time; to which location of the building is irrelevant.

5. On the basis of the above Mr Mellor submitted that a rate of 8% was appropriate for the leases that had the ground rents subject to review.

6. Insofar as the New Leases are concerned, as they are for terms of 999 years Mr Mellor considered their reversionary value to be nil. He contended that the substantial ground rent of £2500 p.a. would make these more attractive to a ground rent investor than smaller rents, and would warrant a lower capitalisation rate. However as the rents are not subject to review they will not keep track with inflation and this should therefore increase the capitalisation rate. He submitted that these two factors cancel each other out.

During the hearing Mr Mellor conceded that historic failure to pay service charge was not a factor affecting the capitalisation rate in the present application. This had the effect of returning his capitalisation rate for these leases (originally contended at 9%) to 8%.

Mr Mellor stated in his report that he had not found market evidence for ground rent investments for fixed rents at larger sums with long unexpired lease terms. On cross-examination by Mr Harrison he submitted that in the absence of market evidence the appropriate course was to compare the New Lease ground rents to the lower ground rents of the Old Leases.

7. Mr Harrison cross-examined Mr Mellors on his table, questioning whether five examples of "No Act World" comparables were sufficient and querying the very different yield for Cygnet House (of 12.1%). Mr Mellor did not agree that five examples were insufficient. Mr Harrison put to Mr Mellor that arrears incurred after the valuation date should not affect the valuation and Mr Mellor concurred.

8. Mr Tsielepis adopted a different approach in his report in arriving at his capitalisation rates. He took an average available yield of eight undated gilts, as at the date of valuation, of 3.79%. He then adjusted this to reflect various factors, referred to in the tribunal decision *Union Wharf –v- Meranti Limited* (*"Union Wharf"*), which make ground rent investments less attractive than gilts. He proposed an overall upwards adjustment of between 2.25% and 2.75% resulting in a capitalisation rate of 6.04% and 6.54% which he rounded to 6% and 6.5% respectively.

9. Mr Tsielepis submitted that the approach adopted by tribunals in two previous cases were relevant to the upwards adjustments that he made.

   In the *Union Wharf* case the value of the capitalisation rate was significant and it was a case where the tribunal had based the capitalisation rate on an average funds yield of 3.76% adjusted by a further 3% to reflect differences in illiquidity, indivisibility, cost of management and risk, resulting in a capitalisation rate of 6.76% (applied as 6.5%)

   In *Sapphire Court Freehold Limited –v- Freehold Mangers (Nominees) Limited (*"*Sapphire"*) the only point in dispute was the capitalisation rate which the tribunal determined it at 6.75%.

   On cross-examination Mr Tsielepis confirmed that he had based his adjustments of 2.25% and 2.75% on the *Union* and *Sapphire* cases.

10. Mr Tsielepis considered the New Leases to be more desirable by reason of the size of their ground rents arguing for a capitalisation rate for them (and flat 69) of 6% with a capitalisation rate of 6.5% for the remaining flats. He did not give any reasons for including flat 69 with the New Leases and in cross-examination conceded that flat 69 was similar to the Old Leases not the New Leases.

11. Mr Tsielepis stated that in his experience capitalisation rates are usually agreed between 5% and 7% but he provided no evidence to substantiate this statement.

12. Mr Tsielepis then considered transactional evidence with reference to four properties where the sales price achieved reflected yields of 6.75% (23/25 Mortimer Street), 6.23% (1 Bakers Row) 6.23% (2-26 Bryanston Mews West) and 5.3% (7-18 Dauphine Court) which he adjusted by 1% to allow for reversionary value bringing its yield to 6.3%. He submitted that while gilts were the more appropriate starting point these were useful to set the "upper parameters" before adjusting for a "No Act world"., and that his proposed yields of 6% and 6.5% are in line with these yields.

    Mr Fain cross-examined Mr Tsielepis on his use of only four comparables. Mr Tsielepis explained that these were only relevant for setting the upper parameters of the adjusted yields. Mr Tsielepis said that he had chosen comparables closer to the valuation date but otherwise had no specific reason for his choice.

13. Mr Fain examined Mr Mellor on Mr Tsielepis' comparables two of which had not been included in Mr Mellor's Table; Mr Mellor distinguished 2-26 Bryanston Mews because it involved underleasehold interests and they and the Headlease only had unexpired terms of 71 years and required overmuch analysis to put in on a par with his other comparables. Dauphine Court needed to include a reversionary value because there were only 99 years left; the terms were too short to be suitable comparables.

14. In cross examination on the effect of location on yields Mr Tsielepis accepted that the factors referred to in *Nicholson* were relevant in arriving at the relevant capitalisation rate.

15. In response to questioning by Mr Harrison Mr Tsielepis disagreed with Mr Mellor that no adjustment should be made for the "No Act World" and he did not consider Mr Mellor's "No Act World" evidence reliable without back-up.

16. In his closing submissions Mr Fain submitted that location was irrelevant to the capitalisation rate and that the upper tribunal had not included it in the factors referred to in *Nicholson*.

    He referred to the decision of the Lands Tribunal in *Blendcrown Ltd –v- Church Commissioners for England* (paragraph 52) in which the tribunal said that other LVT decisions might form part of a broad picture but that they are not evidence in themselves and are no substitute for evidence.

17. Mr Harrison in his closing submissions referred to the decision of the Upper Tribunal in *31 Cadogan Square Freehold Limited and another –v- The Earl of Cadogan ("31 Cadogan")*, in particular paragraphs 72-79; that hearsay evidence remains evidence, particularly when served on the other

party before the hearing, so that earlier tribunal decisions may be relevant, the question of weight being for the tribunal. He submitted that Mr Tsielepis did not rely too heavily on the *Union Wharf* case, as he had put forward his own evidence in respect of gilts.

18. Both counsel agreed that in the event that there was a change in circumstances after the tribunal's determination but before completion (such as a variation of the rent payable under the New Leases) the parties were at liberty to re-apply to the tribunal under s24 of the Act.

Inspection

Neither party requested an inspection and the Tribunal did not consider an inspection to be necessary.

Reasons for the Tribunal's determination

1. Neither dicta in the Upper Tribunal, not previous decisions of the Leasehold Valuation Tribunal are binding on the tribunal. The tribunal acknowledges the submission by Mr Harrison, based on the decision of the Upper Tribunal in *31 Cadogan Square,* that previous decisions of the tribunal are evidence but also note that in that case the upper tribunal stated that the weight to be given to such evidence is a matter for the tribunal. In this case the applicant referred the tribunal to dicta in the upper tribunal decisions in *Sportelli* and the respondent referred the tribunal to the decisions of the leasehold valuation tribunal in *Union Wharf* and *Sapphire.*

   In paragraph 8 of *Sportelli* the upper tribunal stated that that case did not have direct application to capitalisation rates, commenting that they are determined by different criteria to those that are relevant to the deferment rate. This approach was confirmed again by the Upper tribunal in *Nicholson.* The tribunal consider that the view expressed by the Upper Tribunal in *Sportelli* (at the same paragraph) that market evidence should be more readily available for capitalisation rates indicates that the Upper Tribunal believed such market evidence could be an appropriate means of ascertaining such rates.

2. In this case the tribunal accept the determination of the Upper Tribunal in *Nicholson* as to the factors to be taken into account in determining the capitalisation rate, and have had regard to the dicta of the Upper Tribunal in *Sportelli* and *Nicholson* in preference to following the Leasehold Valuation Tribunal determinations in *Union Wharf* and *Sapphire.*

3. The tribunal prefer to adopt Mr Mellor's approach of basing his capitalisation rate on market evidence in preference to Mr Tsielepis' approach of adopting an average available yield of eight undated gilts with an overall upwards adjustment of between 2.25% and 2.75%.

4. In *Nicholson* the Upper Tribunal stated the factors relevant to the determination of the capitalisation rate (as stated in paragraph 2 of "Evidence" above) and Mr Tsielepis accepted this at the hearing.

The Old Leases

5. The tribunal therefore preferred Mr Mellor's approach to calculating the capitalisation rate for the Old Leases, by reference to market evidence, to the approach adopted by Mr Tsielepis. *Sportelli* does not require gilts to be used in the calculation of capitalisation rates, and Mr Tsielepis produced no evidence to justify his percentage increase over the gilt rate that he had adopted, save by reference to the *Union Wharf* and *Sapphire* determinations. The tribunal wished to adopt the method in this case that involved the fewer adjustments and which was therefore closer to reality.

6. In passing the tribunal note and concur with the tribunal in *Union Wharf* that there are criticisms of both methods, but consider the market evidence approach to be the better in this particular case.

7. The tribunal have therefore taken Mr Mellor's Table of "Market Evidence of ground rent sales" ("**Mr Mellor's Table**") as the best starting point before them for ascertaining the capitalisation rate of the Old Leases, in particular the five properties described as being "No Act" by reason of their having more than 25% commercial space. They have had regard to Mr Harrison's submission that, of these, Cygnet House Kingston appears to have a disproportionately higher yield (at 12.1%) and note on looking at the details for that property provided by Mr Mellor that it is in fact leasehold and that his analysis is based on the gross rent reserved, not the net rent, which may have distorted the yield. For that reason (and not because of its location) the tribunal has discounted this property. The average yield of the remaining four properties, assuming no reversionary value, is 7.4%.

8. The tribunal have then calculated the average yield of the remaining 21 ground rents sold at auction, which average a yield of 7.79%. The average yields from the two different data sets could be explained by the "Act World" and the "No Act World" scenarios. To the Tribunal this seems entirely logical, in that properties in the "Act World" may be susceptible to acquisition via collective enfranchisement. This higher risk of acquisition is reflected in the higher yields. Whilst the "No Act World" transactions would still be subject to the risk of individual lease extensions, this is an aspect within the overall ground rent investment, for which compensation would be received. Given these considerations, the tribunal have therefore adopted a capitalisation rate of 7.4% for the Old Leases.

Flat 69

9. The tribunal consider that the capitalisation rate for flat 69 should be ascertained on the same basis as the Old Leases; it has a similar pattern of rent review and while its ground rent increases to a larger sum than the

ground rents of the Old Leases the difference is not material and lies within the parameters contemplated by Mr Mellor's Table

The New Leases

10. The parties had agreed that the New Leases be used to calculate the premium for the collective enfranchisement so the tribunal had no jurisdiction to determine, and have therefore made no determination, whether it was correct to value the relevant flats on the basis of the New Leases.

11. The tribunal accept Mr Harrison's submission that a ground rent of £2,500 per flat as reserved by the New Leases, is more attractive to ground rent investors than smaller sized rents, warranting a lower capitalisation rate.

    The tribunal also notes Mr Mellor's submission that a rent that is not subject to review may be subject to increased capitalisation rates. The rents in the New Leases are not dynamic; they are not linked to market rents and they are not index linked. However, these rents are significant annual sums per flat and the overall management of such a ground rent investment would be much less onerous than an investment with small, fixed ground rents.

    Neither party offered any evidence as to by how much the capitalisation rate should be reduced. As an expert tribunal the tribunal considers that a 1% differential is reasonable to reflect this, giving a capitalisation rate for the New Leases of 6.4%.

The Law

The relevant statutory provisions are set out in Appendix 2 to this decision.

Name: Judge Pittaway **Date:** 16 April 2014

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APPENDIX 1

FIRST TIER TRIBUNAL'S VALUATION
IN ACCORDANCE WITH THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 AS AMENDED

Flats 62-81 Townshend Court
Townshend Road
London, NW8 6LB

Flats 68, 70, 71, 72, 73, 75, 76, 77, 80 & 81

Freeholder's Present Interest
Term

Term 1			
Rent Reserved	£500		
YP to 1st review 7.78 years @ 7.4%	5.759		
		£2,879	
Term 2			
Rent Reserved	£1,000		
YP to 2nd review 40 years @ 7.4%	12.742		
PV of £1 @ 7.4% in 7.78 years	0.574		
		£7,314	
Term 3			
Rent Reserved	£1,500		
YP to 3rd review 40 years @ 7.4%	12.742		
PV of £1 @ 7.4% in 47.78 years	0.033		
		£631	
Reversion			
FH reversion	£4,955,000		
PV of £1 in 87.78 years @ 5%	0.0138		
		£68,379	
			£79,203

Flat 69

Freeholder's Present Interest
Term

Term 1			
Rent Reserved	£100		
YP to 1st review 16.78 years @ 7.4%	9.436		
		£944	
Term 2			
Rent Reserved	£200		
YP to 2nd review 25 years @ 7.4%	11.248		
PV of £1 @ 7.4% in 16.78 years	0.302		

		£679		
Term 3				
Rent Reserved	£400			
YP to 3rd review 25 years @ 7.4%	11.248			
PV of £1 @ 7.4% in 41.78 years	0.051			
		£229		
Term 4				
Rent Reserved	£800			
YP to 4th review 25 years @ 7.4%	11.248			
PV of £1 @ 7.4% in 66.78 years	0.0086			
		£77		
Term 5				
Rent Reserved	£1,600			
YP to 5th review 50 years @ 7.4%	13.14			
PV of £1 @ 7.4% in 91.78 years	0.0014			
		£29		
Reversion				
FH reversion	£485,000			
PV of £1 in 141.78 years @ 5%	0.001			
		£485		
			£2,443	

Flats 62, 63, 64, 65, 66, 67, 74, 78, & 79

Freeholder's Present Interest

Term				
Term 1				
Rent Reserved	£22,500			
YP 999 years @ 6.4%	15.641			
		£351,922		
Reversion				
FH reversion	£4,470,000			
PV of £1 in 999 years @ 5%	0			
		£0		
			£351,922	
Total Premium Payable				**£433,568**

APPENDIX 2

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

S 24 Applications where terms in dispute or failure to enter contract.

Where the reversioner in respect of the specified premises has given the *nominee purchaser* [RTE company]—
(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or
(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),
but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the *nominee purchaser* [RTE company] or the reversioner, determine the matters in dispute.
(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the *nominee purchaser* [RTE company].
(3) Where—
(a) the reversioner has given the *nominee purchaser* [RTE company] such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
(b) all of the terms of acquisition have been either agreed between the parties or determined by [the appropriate tribunal] under subsection (1),
but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the *nominee purchaser* [RTE company] or the reversioner, make such order under subsection (4) as it thinks fit.
(4) The court may under this subsection make an order—
(a) providing for the interests to be acquired by the *nominee purchaser* [RTE company] to be vested in *him* [it] on the terms referred to in subsection (3);
(b) providing for those interests to be vested in *him* [it] on those terms, but subject to such modifications as—
(i) may have been determined by [the appropriate tribunal], on the application of either the *nominee purchaser* [RTE company] or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and
(ii) are specified in the order; or
(c) providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);
and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.
(5) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
(6) For the purposes of this section the appropriate period is—
(a) where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;
(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1)—
(i) the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, or
(ii) such other period as may have been fixed by the tribunal when making its determination.
(7) In this section "the parties" means the *nominee purchaser* [RTE company] and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter "the terms of acquisition", in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the *nominee purchaser* [RTE company], 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).

S 32 Determination of price.

(1)Schedule 6 to this Act (which relates to the determination of the price payable by the nominee purchaser in respect of each of the freehold and other interests to be acquired by him in pursuance of this Chapter) shall have effect.

SCHEDULE 6 PART II FREEHOLD OF SPECIFIED PREMISES

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

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

(c)any amount of compensation payable to the freeholder under paragraph 5.

(2)Where the amount arrived at in accordance with sub-paragraph (1) is a negative amount, the price payable by the nominee purchaser for the freehold shall be nil.

Value of freeholder's interest
3(1)Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions—
(a)on the assumption that the vendor is selling for an estate in fee simple—

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

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

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

(c)on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d)on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7.

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

(a)the nominee purchaser, or

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

(ba)an owner of an interest which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or

(c)an owner of an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).

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

(3)In determining that amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of the interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

Freeholder's share of marriage value

4(1)The marriage value is the amount referred to in sub-paragraph (2), and the freeholder's share of the marriage value is 50 per cent. of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be so acquired, being an increase in value—

(a)which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b)which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

(2A)Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.

(3)For the purposes of sub-paragraph (2) the value of the freehold or any intermediate leasehold interest in the specified premises when held by the person from whom it is to be acquired by the nominee purchaser and its value when acquired by the nominee purchaser—

(a)shall be determined on the same basis as the value of the interest is determined for the purposes of paragraph 2(1)(a) or (as the case may be) paragraph 6(1)(b)(i); and

(b)shall be so determined as at the valuation date.

(4)Accordingly, in so determining the value of an interest when acquired by the nominee purchaser—

(a)the same assumptions shall be made under paragraph 3(1) (or, as the case may be, under paragraph 3(1) as applied by paragraph 7(1)) as are to be made under that provision in determining the value of the interest when held by the person from whom it is to be acquired by the nominee purchaser; and

(b)any merger or other circumstances affecting the interest on its acquisition by the nominee purchaser shall be disregarded.