FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BG/LON/00BD/OCE/20019/0184**
Property	**:**	**48 Cedars Road, Hampton Wick, Kingston upon Thames, Surrey KT1 4BE**
Applicant	**:**	**48 Cedars Road Freehold Limited**
Representative	**:**	**Mr Philip Sissons (Counsel)**
Respondent	**:**	**Estates Finance Limited**
Representative	**:**	**Mr Ben Maltz (Counsel)**
Type of Application	**:**	**Application under section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Mr Jeremy Donegan – Tribunal Judge** **Mr Neil Martindale FRICS – Valuer Member**
Date and venue of Hearing	**:**	**03 March 2020** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**06 April 2020**

DECISION

Decisions of the Tribunal

The Tribunal determines that the total price payable for the freehold of 48 Cedars Road, Hampton Wick, Kingston upon Thames KT1 4BE ('the Property') is £28,710 (Twenty-Eight Thousand, Seven Hundred and Ten Pounds).

The background

1. This application concerns a collective enfranchisement claim for the Property, which comprises a detached house and grounds. The house has been converted into four flats; all of which are let on long leases. The main part of the house (at the front) is arranged over ground, first and second floors. The rear sections step down with two and one-storey projections. There is a small front garden and two garden areas to the rear, one of which is demised to Flat 2. There is a paved driveway to the east of the house, which leads to the rear gardens. To the east of the driveway is a dustbin area and four unmarked, parking bays ('the Parking Spaces').

2. The respondent is the freeholder of the Property. The leaseholders of Flats 1, 2 and 4 served an initial notice on the respondent on 15 October 2018, pursuant to section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). This claimed the freehold of the Property and the applicant company was named as the nominee purchaser. The leaseholder of Flat 3 is not participating in the enfranchisement claim.

3. The initial notice proposed the following purchase price:

   (a) £16,500 for the freehold interest in the specified premises, being the house;

   (b) £4,000 for the additional freehold, being the grounds.

4. The initial notice was accompanied by two plans; Plan 1 showed the specified premises, edged red and Plan 2 showed the additional freehold, hatched in green and blue.

5. On 18 December 2018 the respondent served a counter-notice ('the First Counter-Notice') on the applicant, pursuant to section 21 of the Act. This admitted the right to enfranchise the specified premises but stated an intention to apply for an order under section 23(1), on the grounds the respondent intended to redevelop the whole or a substantial part of the specified premises. No such application was made and the respondent served a further counter-notice on 12 April 2019 ('the Second Counter-Notice'). This admitted the right to

enfranchise the specified premises and to acquire parts of the additional freehold. However, it disputed the right to acquire the Parking Spaces and the proposed purchase price. At paragraph 4, the respondent made the following counter-proposals:

> *"(1) There is no entitlement to acquire the four car parking spaces under section 1(2)(a) of the Act, as neither the condition in section 1(3)(a) or section 1(3)(b) is satisfied in respect of the said car parking spaces.*
>
> *(2) The purchase price of £33,788 for the freehold interest in the Specified Premises.*
>
> *(3) The purchase price of £99,561 for the Additional Freehold."*

6. The Second Counter-Notice did not propose the grant of any permanent rights under section 1(4)(a) of the Act.

The Tribunal application and directions

7. The Tribunal received an an application under section 24(1) of the Act on 18 September 2019. Directions were issued on 08 October 2019. Following completion of listing questionnaires, the application was listed for hearing on 03 and 04 March 2020.

8. Directions 2-4 dealt with the terms of the transfer deed and required the respondent to submit a draft by 22 October 2019, which the applicant was to return by 05 November with any amendments in red. The respondent was then to provide the applicant with a list of disputed terms by 12 November.

9. Directions 5-7 dealt with valuation evidence and required the valuers to exchange calculations and meet by 22 October 2019, exchange statements of agreed facts and disputed issues by 26 November and exchange expert reports at least two weeks before the hearing.

10. On 19 February 2020, the applicant's solicitors wrote to the Tribunal requesting an extension of time for service of their expert report until 26 February. The letter stated that their expert was away and a key document, being a planning appeal decision dated 11 February 2020, had only just become available. It went on to suggest that an extension would not prejudice the respondent. By a letter dated 21 February the parties were notified that Judge Vance had refused the extension.

11. The relevant legal provisions are set out in the appendix to this decision. The relevant lease provisions are referred to below.

The leases

12. The hearing bundle included official copies of the freehold and leasehold titles, the original leases for all four flats and lease extension deeds for Flats 2, 3 and 4.

13. The Tribunal was referred to the relevant provisions in the Flat 1 lease but all four leases have materially identical terms. The lease was granted by Pelham Properties Limited (*"Landlord")* to Margaret Webster Brown Getting (*"Leaseholder")* on 31 October 1998. The particulars include the following definitions:

"*BUILDING*	*The house converted into four self contained flats known as 48 Cedars Road aforesaid its curtilage and all additions to it shown edged blue on Plan 1 annexed hereto*
FLAT	*The Flat on the ground floor of the Building all is described further in Part 1 of the First Schedule shown edged red on Plan 2 annexed hereto together with the basement in the building and the stairs thereto*
CAR PARK SPACE	*The space numbered 1 on Plan 1*".

14. The blue edging on Plan 1 encompasses the house and all of the grounds. The space numbered 1 is delineated with dashed lines, as are the other spaces.

15. The Common Parts are defined in clause 1.1.3 as:

"*The Common Parts means the footpath leading to the Building the entrance hall and the dustbin area and garden*".

16. The demise is at clause 2 and is recited below:

"2. DEMISE

The Landlord acknowledges receipt of the Premium and DEMISES the Flat to the Leaseholder together with the rights set out in Part II of the First Schedule but reserving the rights set out in Part III of that schedule TO HOLD to the Leaseholder for a term of nine-nine years from the 29th September 1987 YIELDING AND PAYING the Annual Rent of £100 in advance on 29th September in each year"

17. The Leaseholder's covenants are at clause 3 and include an obligation "*To comply with the Regulations in the Third Schedule*" (cl.3.13.3.)

18. The Leaseholder's rights are at Part II of the First Schedule and include:

> "*1. A right for the Leaseholder and all persons authorised by him (in common with the Landlord and all others having the like right)*
>
> *(1) of way on foot only over the Common Parts*
>
> *(2) to maintain a dustbin in the area designated from time to time by the Landlord with a right of access thereto*
>
> *(3) to use the entryphone system and the communal television aerial (if any)*
>
> *…*
>
> *5. The exclusive right to part one motor car on the Car Park Space together with the right of access with the motor car thereto".*

19. The Landlord's reserved rights are at Part III of the First Schedule and include:

> "*3. The right to build or develop alter or deal with the Building and any property6 not included in this Lease which may from time to time during the Perpetuity Period be owned by the Landlord in any manner whatsoever provided that the amenity of the Flat or the access of light or air to it is not diminished*".

20. Regulation 11 in the Third Schedule requires the Leaseholder:

> "*Not to permit to enter upon or park a car in any Car Park Space save that allocated to the Leaseholder*".

21. The leases of Flats 2, 3 and 4 have all been extended to 189 years from 29 September 1987. The extension deeds for Flats 3 and 4 are in near identical form. The deed for Flat 2 is different but none of the deeds vary the Leaseholder's rights, the Landlord's reserved rights or the Regulations.

The hearing

22. The hearing took place on 03 March 2020 and the Tribunal reconvened the following morning, in the absence of the parties, to make its

decision. The applicant was represented by Mr Sissons and Mr Maltz appeared for the respondent. The leaseholders of Flats 1 and 4 also attended the hearing, as did Dr Andreas Virnik who is a director of the respondent company.

23. The Tribunal was supplied with a hearing bundle that contained copies of the application, directions, initial notice, counter-notices, various title documents, the Transfer, draft transfer deeds, a statement of agreed facts from the two valuers and an expert report from the respondent's valuer, Mr Matthew Gawne MRICS. The bundle did not include any valuation evidence from Mr Sweeting.

24. The statement of agreed facts revealed that all; but one of the valuation issues had been agreed, including the valuation date of 15 October 2018 and the term and reversion value of the specified premises of £24,710 (£24,220 for Flat 1 and £490 for Flats 2, 3 and 4). The only disputed issue was the respondent's claim for development hope value ('DHV'), relating to the possible construction of a two-storey side extension to the east of the house.

25. Immediately before the hearing the Tribunal was supplied with helpful skeleton arguments/written submissions from Mr Sissons and Mr Maltz. These identified the issues for determination by the Tribunal as:

    (a) Is the applicant entitled to acquire the freehold title of the Parking Spaces?

    (b) Is the respondent entitled to DHV in relation to the additional freehold and, if so, how much?

26. At the start of the hearing, Mr Sissons explained that the applicant would not be adducing any expert valuation evidence in the light of Judge Vance's decision, as communicated on 21 February 2020. However, the respondent's claim for DHV was disputed and he wished to cross-examine Mr Gawne on this issue.

27. Mr Maltz then made an application to adduce further evidence being drawings from a revised planning application for the side extension submitted on 02 March 2020 and Mr Gawne's reworked valuation calculations, based on that application. The revised application had only just been made, as the respondent had been awaiting the outcome of an appeal against a previous planning refusal. The appeal was dismissed on 11 February 2020. The evidence was new and this was not a case of delayed disclosure.

28. Mr Sissons opposed the application. He had only received the further evidence that morning and would have not opportunity to consider this with the applicant's valuer, who was not attending the hearing.

29. After a short adjournment, the Tribunal informed the parties that it would not admit the further evidence. The late disclosure would prejudice the applicant and it was of little relevance, given that the revised planning application was made almost 18 months after the agreed valuation date.

30. Having dealt with these preliminary matters, the Tribunal then heard submissions from both counsel and oral evidence from Mr Gawne who spoke to a proof of evidence/report dated 18 February 2020. He is a senior valuation surveyor at Shaw and Company (Surveyors) Limited and is a Member of the Royal Institution of Chartered Surveyors. He became a Chartered Surveyor and RICS Registered Valuer in October 2015. His work includes leasehold enfranchisement valuations for landlords and tenants in the Central, South-West and London areas. His evidence, both written and oral, was clear, measured and reasoned.

31. During the course of the hearing, both counsel confirmed that the Tribunal was not required to determine the form of the transfer deed. This had not been agreed but would turn, at least in part, on the Tribunal's decision on the Parking Spaces. This will determine if the transfer is of the whole, or part, of the freehold title.

Acquisition of the Parking Spaces

32. Each leaseholder has an exclusive right to park one motor car in his/her space, pursuant to paragraph 5 of Part II of the First Schedule to the leases. Mr Sissons submitted that the respondent has no right to exclude or relocate these rights and would not benefit from retaining the spaces. He contended that the applicant was entitled to acquire the spaces by virtue of sections 1(2)(a) and (3) of the Act.

33. Mr Sissons submitted that the Parking Spaces fall within section 1(3)(a) because they are appurtenant property within section 1(7) and (for each flat) are demised by the lease of a qualifying tenant. There are two possible analyses:

    (a) The leases confer exclusive possession of the spaces, as each leaseholder has an exclusive right to park throughout the term and he/she can exclude the respondent from any meaningful use of the space; or

    (b) If there is no exclusive possession then they create a leasehold easement, which is a demise of an incorporeal hereditament for a term of years. This is a separate estate in land and the rights over the Parking Spaces are a separate and distinct demise from the demise of each flat.

34. In relation to the second argument, Mr Sissons referred to the use of the word 'demise' in the heading and body of clause 2 of the leases. The right to park is a demise of a legal easement. There are two types of demise; the demise of physical property (a corporeal hereditament) and the demise of rights over land (an incorporeal hereditament). Mr Sissons relied on on paragraphs 1.047 ***of Woodfall, Landlord and Tenant*** and 3.008 of ***Aldridge Leasehold Law***. The former states "*Ways and other easements are generally accepted as incorporeal hereditaments*" and the latter states "*An easement is within the definition of land in the Law of Property Act 1925, and accordingly a lease of one will create an interest equivalent to a term of years absolute.*"

35. Mr Sissons also relied on various authorities, including ***Cadogan v McGirk [1996] 4 All ER 643***, ***Land Reclamation Co Ltd v Basildon DC [1979] 1 WLR 106*** and ***Kettel v Bloomfold Ltd [2012] L. & T.R. 30***.

36. In ***McGirk*** the Court of Appeal concluded that a storeroom on a different floor to a flat was not part of the flat or an "*outhouse*" but was "*appurtenance*" and should be included in the new lease of that flat. In so deciding Millet LJ said at page 302:

"*Parliament cannot sensibly have intended to distinguish between a right to make use of a storage or other space and an actual demise of the space. If the appellants' construction of the Act is right, a tenant of an upstairs flat who was granted the right to park his car in a numbered space on the forecourt of the block of flats would be entitled to have a similar right on the grant of a new lease of the flat, whereas a tenant who had an actual demise of a parking space would not.*"

37. ***Land Reclamation*** involved the lease of a right of way. At page 110C, Brightman J said:

"*The Law of Property Act 1925, section 1, recognises that a legal easement may be created for an interest equivalent to a term of years absolute, and it does not matter whether the term is seven years or seven hundred years.*"

38. ***Kettel*** addressed the status of parking rights for eight flats at City Walk, London. Each flat had a designated space and the rights granted in the leases included "*the sole right to use the car parking space for the purpose of parking a taxed car or motorbike*". The freeholder wrote to the leaseholders, requiring them to accept alternative spaces and later fenced off the parking area. The leaseholders successfully applied for injunction with HHJ Cooke finding that an express easement to park had been granted and there had been a substantial interference with that easement. The leaseholders contended "*that the right granted to use each space amounted to exclusive possession of it,*

and so a demise rather than an easement appurtenant to the demise of the flat itself" (paragraph 10). This was rejected with the Judge finding, at paragraph 20, "*the rights granted to use the car parking spaces in each of the claimants' leases cannot sensibly be construed as a demise of that space.*" Mr Sissons submitted that the leaseholders' case had been framed incorrectly, as there can be a demise of an easement.

39. Mr Sissons contended that the word "*demised*" in section 1(3)(a) is well capable of including the grant of an exclusive right to park even if that grant only creates a leasehold easement. He urged the Tribunal to adopt that interpretation otherwise leaseholders with exclusive rights, falling short of exclusive possession, would be in a worse position than those with communal rights who can rely on section 1(3)(b).

40. Alternatively, Mr Sissons relied on section 1(3)(b) arguing that the Parking Spaces are "*property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises*." His rationale was that the right to park at Paragraph 5 of Part II of First Schedule included "*the right of access with the motor car thereto*." He suggested that the constrained room on the driveway and the absence of a turning area meant that the right of access must include a right to manoeuvre over other spaces not in use. Each leaseholder has a right to cross other spaces when it is convenient to do so, which amounts to a communal right to access. If this is the case then the applicant is entitled to acquire the Parking Spaces. The respondent could have offered permanent rights, as an alternative, in the Second Counter-Notice but did not do so.

41. On questioning from the Tribunal, Mr Sissons acknowledged that leaseholders are not to enter upon or park in spaces other than their allocated space (paragraph 11 of the Third Schedule). Further, the development reservation at paragraph 2(ii) of Part III of the First Schedule applies to the Building, being the house and all the grounds.

42. Mr Maltz submitted that the Parking Spaces do not fall within section 1(3)(a) or (b), as they are not demised by the leases nor is the right to use the spaces a right in common with the occupiers of the other premises. This is consistent with paragraph 4 of the Second Counter-Notice.

43. Mr Maltz contended that the word 'demised' in section 1(3)(a) should be given its ordinary and natural meaning. The Court of Appeal did not construe this word in ***McGirk*** and the decision is not authority for a wider interpretation. Mr Maltz relied on the following:

    (a) Paragraph 5.001 of ***Woodfall*** provides "*In order to constitute a demise, the lease must grant a right to the exclusive possession of lands or tenements for a determinate terms*."

(b) In ***Kettlel*** the grant of an exclusive right to park in a designated space was held to be an easement; rather than a demise.

(c) Paragraph 20.-04 of ***Hague: Leasehold Enfranchisement*** (6th edition) simply states "*the appurtenant property must be demised by the lease of a flat held by a qualifying tenant*" and does comment on the meaning of 'demised'.

(d) ***McGirk*** concerned a lease extension claim under the Act, rather than an enfranchisement claim and the Court was principally focused on the meaning of "*appurtenances*" in section 62(2). There is no requirement that appurtenances must be demised in that section, unlike section 1(3)(a).

(e) Millett LJ's comments at page 302 of ***McGirk***, as relied upon by Mr Sissons were *obiter dicta* without any reference to section 1(3)(a).

44. In relation to section 1(3)(b), Mr Maltz pointed out the absence of any evidence to suggest the Parking Spaces cannot be used without driving over the other spaces. If three of the four spaces are occupied the fourth space can still be used. Mr Maltz also highlighted the restriction on entering upon or parking in other spaces at paragraph 11 of the Third Schedule to the leases.

45. On questioning by the Tribunal, Mr Maltz accepted there was a degree of imbalance between subsections 1(3)(a) and (b) but, in his words, "*that is the wording of the statute*".

The Tribunal's decision

46. The applicant is entitled to acquire the Parking Spaces, pursuant to sections 1(2) and 1(3)(a)of the Act.

Reasons for the Tribunal's decision

47. It is convenient to deal with section 1(3)(b) first. The Tribunal agrees with Mr Maltz; the leaseholders are not entitled to use the spaces "*…in common with the occupiers of other premises*". Rather, they each have an exclusive right to park one car in their designated space. The restriction at paragraph 11 of the Third Schedule makes it clear they cannot enter upon or park in other spaces. In practice they may drive across other spaces, when available, for ease of access but there is no right to do so. To the contrary, this is expressly prohibited. Further, there was no evidence of such usage and no suggestion that implied rights had been acquired.

48. The Tribunal also agrees with Mr Maltz that the ***McGirk*** is of limited assistance, as it concerned a lease extension claim under Chapter II of the Act rather than an enfranchisement claim under Chapter I. Section 62(2) is framed in different terms to section 1(3)(a) and refers to "*…appurtenances belonging to, or usually enjoyed with, the flat and let to the flat with the tenant…".* Having said that, the Tribunal accepts Mr Sissons' submission that the Parking Spaces are appurtenant property within section 1(7), as each designated space is an appurtenance usually enjoyed with the corresponding flat.

49. Each leaseholder has an exclusive right to park one motor car in his or her designated space, pursuant to paragraph 5 of Part II of the First Schedule to the leases. This is a right to use the space, rather than exclusive possession of the space. The right does not exclude use by the respondent, which is the freeholder of the Parking Spaces and the Tribunal was not referred to any other lease term that might exclude such use. The Tribunal rejects the submission that the leases confer exclusive possession of the Parking Spaces. Rather, the right in question is a legal easement for a term of years absolute.

50. The Tribunal then considered whether the spaces are 'demised' by the leases. The language used in section 2 clearly supports Mr Sissons' case. The Landlord "*…DEMISES the Flat to the Leaseholder together with the rights set out in Part II of the First Schedule…".* The words *"together with"* indicate an intention to demise the Flat and the rights. In ***Kettel*** HHJ Cooke found that a similarly worded clause amounted to a demise of the premises and the grant of rights (paragraph 17). His reasoning, at paragraph 16, was:

"*it does not make sense to speak of "demising" a right such as the right to passage of electricity, or the of lateral support to a building. Even if it could be considered that this language was intended to provide the landlord "demises…the sole right to use the car parking space for the purpose of parking a taxed car…", that is not the same as demising the car parking spaces itself. One could still have to answer question, what is the nature of the "sole right" referred to."*

However, ***Kettel*** can be distinguished, both on its facts and the way the claim was framed. It concerned an injunction application to prevent the freeholder from building over parking spaces, rather than an enfranchisement claim. The leaseholders contended that the right to use each space amounted to a demise, rather than an easement. There was no consideration of whether a legal easement can be demised.

51. The word 'demised' is not defined in Chapter I of the Act. The Tribunal agrees with Mr Maltz that it should be given its ordinary and natural meaning but differs over what that meaning is. A demise of property is not limited to a conveyance by lease and also includes the grant of legal rights for a term of years. The Tribunal notes that section 62(2) of the

Act refers to appurtenances "*…let to the tenant with the flat…"* whereas section 1(3)(a) refers to appurtenant property *"…demised by the lease…"*. Demised clearly has a wider meaning than let.

52. The Tribunal has found that the exclusive right to park in the leases is a legal easement for a term of years. This is an estate in in land which is capable of subsisting or of being conveyed or created at law, pursuant to section 1(1) of the Law of Property Act 1925. The Tribunal agrees with Mr Sissons that the grant of a legal easement is a demise of an incorporeal hereditament for a term of years. It follows that the parking rights were demised by the original leases. These rights are unaffected by the lease extensions for Flats 2, 3 and 4, as they have been imported into the new, extended leases.

DHV

53. The respondent contends there is scope to develop the Property by building a side extension to the east of the house. The extension itself would not encroach on the Parking Spaces but the two adjacent spaces would need to be relocated to facilitate vehicular access to the rear of the Property.

54. Mr Gawne addressed DHV in his report and oral evidence. The former set out the planning history, which can be summarised as follows:

29 June 2007	Planning permission granted to create two additional studio flats. The development did not commence within the three-year duration period.
07 October 2010	Application to extend planning permission refused.
08 August 2012	Planning permission refused for two slightly larger studio flats.
15 July 2019	Application for outline planning permission for one unit comprising a two-storey, two-bedroom house with a GIA of 558 square feet.
05 September 2019	Outline planning permission refused.
11 February 2020	Appeal against refusal dismissed.

55. In addition there is the latest planning application made on 02 March 2020. In cross-examination Mr Gawne explained that the application is for a two-storey, one-bedroom house with a GIA of 480 sq.ft.

56. The figures in Mr Gawne's report were based on a two-bedroom house with a GIA of 523 sq.ft. and are summarised below. The report was prepared before the latest planning application and Mr Gawne's revised figures, based on that application, were not admitted.

57. Mr Gawne analysed various comparable (all local flat sales) to arrive at a GDV of £350,000, based on £669 per sq.ft. He then derived the site value in two ways. Firstly he adopted a range of 30—40% of GDV, which he considered to be appropriate for developments of this type, where planning permission is in place. This produced a range of £105,000-140,000. Mr Gawne had also undertaken a residual valuation, which incorporated various costs and risks to arrive at a residual land value of £115,641. He then deferred this figure for the anticipated duration of the build (15 months) using a finance costs rate of 7%. This produced a site value of £106,00. This was at the lower end of the £105,000-140,000 range and was consistent with an offer made by Birchwood Commercial to purchase the freehold for £105,000, made on the basis that planning permission would be sought and approved prior to purchase. A copy of the offer letter, dated 15 January 2020, was appended to Mr Gawne's report.

58. Mr Gawne discounted his site value by 50% to reflect planning risk. The discount was based on a two-page letter from Mr Lloyd Jones MRTPI of LRJ Planning Limited to Dr Vinik, a copy of which was exhibited to Mr Gawne's report. The date on the letter (22 November 2019) is clearly incorrect as Mr Jones commented on the planning appeal decision dated 11 February 2020 and the Inspector's reasons for dismissing the appeal. These reasons included the height and width of the proposed extension, the lack of a set-back from the existing front elevation and the detrimental impact on the occupiers of 46 Cedars Road. In the final paragraph Mr Jones concluded "*…I am extremely confident that with some minor revisions to the scheme that we will secure planning permission for a new dwelling at the site. It is my professional opinion that the issues raised by the Inspector are not insurmountable to resolve."*

59. In section 13 of his report Mr Gawne advanced two alternative figures for DHV; £53,000 and £45,000. The former assumed there "*…is a reasonably strong argument that the leases do not prohibit the proposed development…"* and did not include any additional adjustment for legal issues. Rather, Mr Gawne simply applied the 50% planning risk discount to the site value of £106,000. The latter assumed "*…the legal position is considered contentious…"* and Mr Gawne made a further deduction of £15,000 before applying the planning risk discount. This represents the anticipated cost of securing

the relocation of two of the Parking Spaces, either by way of inducements to the affected leaseholders (£7,500 per space) or the respondent's costs "*…in defending the legal position*."

60. In cross-examination and questioning from the Tribunal Mr Gawne said his figures assumed the respondent had a strong legal argument to relocate the spaces. He had not considered a third scenario, where the leases prohibited the proposed development. He accepted this could "*sink the whole ship*" but said there might still be some DHV.

61. Mr Gawne based his inducement figures on the value of parking spaces in the local area, which he put at £20,000-30,000. He did not rely on specific comparables but said that lock-up garages in the area were being marketed at £30,000-35,000. He accepted that the affected leaseholders were likely to be hostile and the inducements would have to be higher if they could block the development. He acknowledged that he had not factored in the cost of dealing with any objections or right to light claim from 46 Cedars Road but believed that the impact on this property had been addressed in the latest planning application.

62. In cross-examination Mr Sissons questioned the use of LRJ Planning, who are based in Newport in South Wales. He also highlighted the incorrect date in Mr Jones letter and a wrong post code in the letter heading.

63. Mr Gawne accepted that reductions in the size of the extension, to address the Planning Inspector's concerns, would reduce the GDV of the new house. The design in the latest planning application, has reductions in height and width but not length, resulting in a reduced GIA of 480 sq.ft. However, it was not appropriate to simply apply the price per square foot (£669) to this area, as smaller properties have higher floor area values. When pressed, Mr Gawne suggested a reduction in the GDV to £320,000 but made the point that build costs would be lower for a smaller extension. The build costs in his residual valuation were based on a floor area of 523 sq.ft and been calculated using the Building Costs Information Service ('BCIS') of the RICS.

64. Mr Gawne stated that in the latest design the extension is set back from the existing front elevation by one meter, to address another of the Planning Inspector's concerns. He had also factored in the cost of ecology and biodiversity measures, as raised by the Inspector, in the external works cost in his residual valuation. Overall, Mr Gawne considered that the latest planning application would have 'good' prospects of success if it addressed all of the concerns raised in the appeal decision.

65. Mr Sissons and Mr Maltz both addressed the DHV claim in their written and closing submissions. They agree that loss of development is a recoverable head of compensation under Schedule 6 to the Act but

relied on different paragraphs. Mr Sissons referred to paragraph 5(3) in his skeleton argument whereas Mr Maltz referred to paragraph 13(3). The latter appears to be correct, as it relates to the diminution in value of any interest in "*other property*" whereas the former concerns the freeholder's interest in "*the specified premises*". However, nothing turns on this point as the two paragraphs are drafted in very similar terms.

66. Mr Sissons first considered the respondent's ability to undertake the development, given the need to annex two of the Parking Spaces for vehicular access to the rear. There is no express right to build on, or relocate, these spaces within the leases. Mr Sissons submitted that there is no implied right to relocate the spaces, relying on ***Kettel***, where the same question arose. At paragraph 33 HHJ Cooke held "*In general, a servient landowner has no right unilaterally to extinguish an easement over one area of land on provision of an equivalent over another – see Greenwich Healthcare NHS Trust v London and Quadrant Housing Trust [1998] 1 W.L.R. 1749 – and I held in Heslop v Bishton [2009] EWHC 607 (Ch) that obstruction of the easement originally granted did not cease to be actionable in principle because of the availability of an alternative easement, even in equally convenient.*" At paragraph 35 he went on to find there "*…is no basis for reading an express grant over a space which is clearly identified as being subject to a right to alter which has not been expressly stated."*

67. Mr Sissons drew support from an First-tier Tribunal ('F-tT') decision dated 13 April 2015, concerning a lease extension claim for Flat 3 at the Property (case reference DD/LON/00BD/LOR/2014/1729). The respondent sought to introduce a new lease clause reading "*PROVIDED THAT upon giving reasonable notice to the Tenant the Landlord is at liberty to provide an alternative car parking space together with rights of access thereto and where such alternative car parking space does not reduce or impede the Tenant's right to park under the terms of this clause."* Mr Sissons contended that this amounted to a tacit admission that the respondent has no right to relocate the spaces.

68. The F-tT refused the new lease clause, finding that it did not come within sections 57(6)(a) or (b) of the Act. At paragraph 27 it said "*Although we fully appreciate that the landlord's inability to relocate the car parking space is clearly not ideal form the landlord's point of view we did not consider that the lease in its current form could be considered objectively defective.*" It then went to say (at paragraph 28) "*Even if the landlord obtains planning permission it is our view that any right to develop must be subject to the Applicant's fixed easement."* Mr Sissons suggested that the F-tT decision, whilst not a binding authority, is persuasive.

69. Mr Sissons submitted that the proposed extension would amount to a substantial interference with the leaseholders' rights of access to the

Parking Spaces. The development reservation at paragraph 3 of Part III of the Second Schedule to the leases should be construed strictly against the respondent, as the freeholder (***Paragon Finance Plc v City of London Real Property Co Ltd [2002] 1 P. & C.R. 36***}. It does not justify an entitlement to relocate the spaces.

70. Alternatively, the reservation does not justify any development leaving the leaseholders without reasonable access to those spaces. Mr Sissons drew support from ***Overcom Properties v Stockleigh Hall Residents Management Ltd [1989] 58 P. & C.R. 1***, which also concerned a development reservation. The freeholder introduced a new parking scheme for the forecourt at the property that interfered with the leaseholders' express rights of access. Vinelott J held that the reservation justified works which would otherwise interfere with these rights but did not justify acts "*which would for practical purposes destroy the easement*". The freeholder could obstruct these rights provided the leaseholders were left with "*reasonable access*".

71. Mr Sissons suggested that the proposed extension in this case would create "*an extremely narrow alley*", leaving no room for cars to manoeuvre in and out of the Parking Spaces. This would particularly affect the northermost space, furthest from road. Further, the 2019 application involved the creation of a new parking space outside the front window of Flat 1 and this could have an impact on the amenity of that flat and the access of light or air to it, contrary to the development reservation.

72. Mr Sissons then considered the prospect of obtaining planning consent for the extension. He drew attention to the absence of any current consent, the refusals in 2012 and 2019, the absence of formal, expert planning evidence and the limited scope of Mr Jones' letter. He submitted that the letter did not justify Mr Gawne's extremely optimistic prospect of success figure of 50%. Mr Sissons also pointed out that the respondent had only put forward one proposed development and had failed to secure planning for that development. He invited the Tribunal to find there is no realistic prospect of development and no DHV.

73. Finally, Mr Sissons addressed the amount of any DHV. If, contrary to his first two points, the Tribunal finds there is a prospect of future development then such development would be uneconomic. It would be "*more trouble than its worth*". The 50% deduction for planning risk is wildly optimistic and should be increased. Further, the £15,000 inducements to overcome legal issues assumed that only two leaseholders would be affected by the development. Whilst only two spaces have to be relocated, all four leaseholders would be affected by the reduction in the width of the driveway. All four might seek compensation, as might the owner of 46 Cedars Road. The inducements would far exceed £15,000 and the leaseholders would,

more realistically, seek to recoup 50% of any development profit. If the respondent chose to litigate, rather than pay inducements then the legal costs would far exceed £15,000. Taking these factors into account there is no DHV or it is negligible and should be a 'gambling chip' type figure.

74. Mr Maltz acknowledged that the proposed development would require the relocation of the front two spaces. He contended that the respondent has the right to relocate these by virtue of the development reservation at paragraph 3 of Part III of the First Schedule to the leases. He also drew support from ***Overcom*** where Vinelott J held that the proposed parking scheme was permissible notwithstanding the substantial interference with the leaseholders' express rights of access. This was a recognition that changes to layout are not an impediment to a right to develop.

75. Mr Maltz distinguished the facts in ***Kettel*** where no development right was reserved to the freeholder. He also distinguished the F-tT decision relating to Flat 3, which concerned the application of section 57(6) of the Act. The respondent had sought the new lease clause to achieve certainty and avoid this type of dispute. Further, the comment at at paragraph 28 of the decision had been made without consideration of ***Overcom***.

76. Mr Maltz cast doubt on the proposition in ***Paragon***, that reservations are to be construed strictly against the grantor, in the light of the Supreme Court's decision in ***Arnold v Britton [2015] UKSC 36***.

77. Mr Maltz submitted that the respondent is entitled to DHV even if it does not have a mandatory right to relocate the front two spaces. There is a very real prospect it could negotiate terms with the affected leaseholders, as envisaged by Mr Gawne. It would only be necessary to compensate these two leaseholders, rather than all four, as access to the rear two spaces would become easier once the front two were moved.

78. Mr Maltz relied on the planning history before and after the valuation date. The respondent has made two planning applications and appealed the 2019 refusal since the initial notice was served. Mr Jones' letter addressed the reasons for the appeal decision and a revised planning application had been submitted on 02 March 2020. All of this suggests the respondent has been given favourable planning advice. Some form of development is conceivable and the issue is whether this had sufficient value to make the Property attractive to the hypothetical purchaser ('HP').

79. Mr Maltz submitted that Mr Gawne's evidence was credible and should be accepted. His approach was methodical and he had properly factored in planning risk and the legal issues when assessing DHV. Further, there was no competing valuation evidence from the applicant.

80. Alternatively, the Tribunal could attach a 'gambling chip' value to the additional freehold. In ***Trustees of Sloane Stanley Estate v Carey-Morgan [2011] UKUT 415 (LC),*** the Upper Tribunal upheld the Leasehold Valuation Tribunal's assessment of a nominal £10,000 for the prospect of building a penthouse on the roof of the building being enfranchised, even in the absence of a planning application or planning evidence. In this case the applicant had proposed £4,000 for the additional freehold in the initial notice, which demonstrates there is some value to the development potential.

81. In response, Mr Sissons pointed out that the claimed value of the development potential **in Carey-Morgan** was much higher (£664,746) yet only £10,000 had been allowed. He accepted it would be "*difficult to contend for a lower figure than £4,000*" in this case. He also accepted that ***Kettel*** did not turn on the construction of a development reservation. However, it is authority for the general proposition that a servient owner has no right to unilaterally extinguish an easement over one area of land on provision of an equivalent easement over another.

82. Mr Sissons submitted that little could be drawn from the respondent's, persistence in seeking planning permission for the Property. This was a subjective approach and it was difficult to understand the purpose of the latest planning application, given the respondent will not be building the proposed extension.

The Tribunal's decision

83. The Tribunal determines that the price payable for the additional freehold, being all of the grounds at the Property, is £4,000 (Four Thousand Pounds).

Reasons for the Tribunal's decision

84. The agreed valuation date is 15 October 2018. The issue for determination is what compensation, if any, is payable for loss of development value resulting from the acquisition of the respondent's interest in the Property (paragraphs 5(1)-(3) of Part I of Schedule 6 to the Act). In deciding this issue the Tribunal considered what sum the well advised and well informed HP would have paid for DHV on 15 October 2018. Before making a bid they would have inspected the Property and checked the planning history. They would have discovered the lapsed 2007 consent and the 2012 refusal; both of which related to the proposed construction of two studio flats.

85. The Tribunal accepts that some development is physically viable at the Property. This is borne out by the 2007 consent and the HP would have been aware of this when making his bid. The Tribunal was not supplied

with copies of this consent or the associated drawings but assumes it would also have involved relocating two of the Parking Spaces and re-routing and narrowing part of the driveway.

86. Having discovered the development potential the HP's next step would be to obtain legal and planning advice. The former would include consideration of the parking and access rights and the development reservation. It is unnecessary for the Tribunal to decide if the reservation prevents the relocation and re-routing/narrowing part of the driveway. Rather, it is sufficient to consider what legal advice would have been given. Inevitably, this would have been cautious and the HP would have been informed that the proposed development could breach the parking and access rights; notwithstanding the development reservation. Their lawyer would have considered the authorities relied upon by both counsel and warned of the risk of claims for breach of easement and derogation of grant and the uncertain outcome of such claims. The lawyer may also have considered the F-tT decision for Flat 3 and advised on the risk of a Court coming to the same conclusions on the parking right. Undoubtedly, he or she would have advised the HP on the substantial costs and risks of litigation. Having regard to the Tribunal members' professional experience, these costs would far exceed £15,000.

87. Mr Gawne's figures assumed there was no legal impediment to development or no substantial impediment. He did not address the possibility that the leaseholders could block the development and what impact that would have on DHV. The HP, having obtained cautious legal advice, would have considered this possibility.

88. It is difficult to say what planning advice would have been given in October 2018, as there was very little planning evidence before the Tribunal. The 2007 consent and 2010 and 2012 refusals were not appended to Mr Gawne's report or included in the bundles; just the 2019 refusal and the 2020 appeal decision. Mr Jones' letter was brief and only addressed the appeal decision. It did not comment on what planning advice would have been given in 2018 or the planning history at that time. Further, it was not a formal expert report and Mr Jones did not give oral evidence, so there was no opportunity to test his evidence.

89. The planning advice would have been based on the Property's planning history and physical characteristics. It would also have taken account of the planning history for neighbouring properties and the local planning policies. The respondent has not addressed the last two issues and its planning evidence was extremely limited. All that can be said is the HP would have been advised that consent had previously been granted for two small studios but this had lapsed and the application for larger studios had been refused. They would also have been advised that no planning applications had been made since 2012.

90. Mr Gawne's assessment of DHV was based on the development of a two-storey house, rather than the original consent for two small studios. There was no evidence that the respondent contemplated this development in October 2018. It is very unlikely that the HP would have incurred the expense of instructing an architect and/or planning consultant to advise on alternative schemes, prior to making a bid, given the modest term and reversion value of the Property. Had it done so, the advice would also have been cautious. This is borne out by the subsequent refusal of the 2019 planning application and the dismissal of the appeal.

91. In addition to obtaining legal and planning advice, the HP would also have factored in the likely opposition from the leaseholders, possible opposition from 46 Cedars Road and the absence of any development by the respondent. The respondent has been the registered freeholder since 06 January 2011. If the Property could be profitably developed, without significant legal or planning obstacles, then it is surprising this step has not been taken in the last nine years.

92. Taking all of these factors into account, the Tribunal concluded that no compensation is payable to the respondent for loss of development value. However, it does allow the sum of £4,000 for the additional freehold, being all of the grounds at the Property. This was the sum proposed in the initial notice and was not resiled from, either before or at the hearing.

Summary

93. The Tribunal has determined that the price payable for the additional freehold is £4,000 and the parties have agreed the term and reversion value of the specified premises at £24,710. It follows that the total price payable for the freehold of the Property is £28,710 (Twenty-Eight Thousand, Seven Hundred and Ten Pounds).

Name: Tribunal Judge Donegan **Date:** 06 April 2020

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

The Law of Property Act 1925 (as amended)

Section 1 Legal estates and equitable interests.

(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are—

(a) An estate in fee simple absolute in possession;

(b) A term of years absolute.

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

(b) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;

(c) A charge by way of legal mortgage;

(d) and any other similar charge on land which is not created by an instrument;

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

(3) All other estates, interests, and charges in or over land take effect as equitable interests.

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates," and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as "an estate owner" and his legal estate is referred to as his estate.

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(6) A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as "equitable interests," and powers which by

this Act are to operate in equity only are in this Act referred to as "equitable powers."

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

(10) The repeal of the Statute of Uses (as amended) does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

…

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 1 The right to collective enfranchisement

(1) This chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf -

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as "the right to collective enfranchisement".

(2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises") -

a) the qualifying tenants by whom the rights is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either –

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(4) The right of acquisition in respect of the freehold of any of such property as is mentioned in subsection (3)(b) shall, however, be taken to be to

satisfied with respect to that property, if on the acquisition of the relevant premises in pursuance of this Chapter, either –

(a) there are granted by the person who owns the freehold of that property –

(i) over that property, or

(ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease; or

(b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.

(5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise that right.

(6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if –

(a) the owner of the interest requires the minerals to be excepted, and

(b) proper provision is made for the support of the property as it is enjoyed on the relevant date.

(7) In this section –

"appurtenant property", in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, ,or usually enjoyed with, the flat;

...

"the relevant premises" means any such premises as are referred to in subsection (2).

(8) In this Chapter, "the relevant date", in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

...

Section 13 Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving notice of the claim under this section.

(2) A notice given under this section ("the initial notice") –

(a) must

(i) in a case to which subsection 9(2) applies, be given to the reversioner in respect of those premises; and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which –

(i) …

(ii) is not less than one-half of the total number of flats so contained;

…

(3) The initial notice must -

(a) specify and be accompanied by a plan showing –

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a)

…

Section 21 Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely –

(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;

(b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;

(c) contain such a statement as is mentioned in paragraph (a) or (b) above but stat that an application for an order under subsection (1) of section 23 is to be made by such an appropriate landlord (within the meaning of that section) as is specified in the

counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition

(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –

(i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and

(ii) any additional leaseback proposals by the reversioner;

(b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b) any such counter-proposal relates to the grant of right or the disposal of any freehold interest in pursuance of section 1(4), specify –

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be;

(c) state which interests (if any) the nominee purchaser is required to acquire in accordance with subsection (4) below;

(d) state which rights (if any) any relevant landlord desires to retain–

(i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser, or

(ii) over which any property in which he has any interest which the nominee purchase is to be required to acquire in accordance with subsection (4) below,

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

(e) include a description of any provision which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7.

...

Section 23 Tenants' claim liable to be defeated where landlord intends to redevelop

(1) Where the reversioner in respect of the specified premises has given a counter-notice under section 21 which complies with the requirements set out in subsection (2)(c) of that section, the court may, on the application of any appropriate landlord, by order declare that the right to collective

enfranchisement shall not be exercisable in relation to those premises by reason of that landlord's intention to redevelop the whole or a substantial part of the premises.

(2) The court shall not make an order under subsection (1) unless it is satisfied –

(a) that not less than two-thirds of all the long leases on which flats contained in the specified premises are held are due to terminate within the period of five years beginning with the relevant date; and

(b) that for the purposes of redevelopment the applicant intends, once the leases in question have so terminated –

(i) to demolish or reconstruct, or

(ii) to carry out substantial works of construction on,

the whole or a substantial part of the specified premises; and

(c) that he could not reasonably do so without obtaining possession of the flats demised by those leases.

(3) Any application for an order under subsection (1) must be made within the period of two months beginning with the date of the giving of the counter-notice to the nominee purchaser; but, where the counter-notice is one falling within section 22(1)(a), such an application shall not be proceeded with until such time (if any) as an order under section 22(1) shall become final.

...

(6) Where –

(a) the reversioner has given such a counter-notice as is mentioned in subsection (1), but

(b) either –

(i) no application for an order under that subsection is made within the period referred to in subsection (3), or

(ii) such an application is so made but is subsequently withdrawn,

then (subject to subsection (8)), the reversioner shall give a further counter-notice to the nominee purchaser within the period of two months beginning with the appropriate date.

...

Section 24 Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

(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 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 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

...

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...

(2) Subject to subsection (3), references in this Chapter to a flat, in relation to a claim by a tenant under this Chapter, include any garage, outhouse, garden, yard and appurtenances, belonging to, our usually enjoyed with, the flat and let to the tenant with the flat on the relevant date (or, in a case where an application is made under section 50(1), on the date of the making of the application).

...

SCHEDULE 6

PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER

...

Value of freeholder's interest

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

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

(i) subject to any leases subject to which the freeholder's interest in the specified 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 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 any improvement carried out at his own expense by the tenant or by any predecessor it 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 an subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with an subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7

...

Compensation for loss resulting from enfranchisement

5 (1) Where the freeholder 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 of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and

(b) any other loss or damage which results therefrom to the extent that it is referable to his 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 specified premises to the extent that it is referable as mentioned in that paragraph.

(4) In sub-paragraph (3) "development value", in relation to the specified premises, means any increase in the value of the freeholder's interest in the premises, 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 premises.

(5) Where the freeholder will suffer loss or damage to which this paragraph applies, then in determining the amount of compensation payable to him under this paragraph, it shall not be material that –

(a) the loss or damage could to any extent be avoided or reduced by the grant to him, in accordance with Section 36 and Schedule 9, of a lease granted in pursuance of Part III of that Schedule, and

(b) he is not requiring the nominee purchaser to grant any such lease.

...

Price payable for other interests

10 (1) Where the nominee purchaser is to acquire any freehold interest in pursuance of section 1(2)(a) or (4) or section 21(4) then (subject to paragraph (3) below) the price payable for that interest shall be the aggregate of –

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

(b) any share of the marriage value to which the owner of the interest is entitled under paragraph 12, and

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

...

Compensation for loss on acquisition of interest

13 (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 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 a 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 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 the relation to the 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 premises.