



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **MAN/00UB/OCE/2020/0003 and  
MAN/00DB/OC9/2020/0003**

**Property** : **Flat 1,2,3,4 & 6, 60 Regent Street,  
Wakefield, WF1 5HR**

**Applicant** : **Ismail Choudry Khan**

**Representative** : **Zarif Solicitors**

**Respondent** : **RG Securities (No. 2) Ltd**

**Representative** : **Pier Legal Services**

**Type of application** : **Section 24 and 60 of the Leasehold  
Reform Housing & Development Act  
1993**

**Tribunal  
member(s)** : **Judge J White  
Ms S D Latham (valuer)**

**Venue** : **Northern Residential Property First-tier  
Tribunal, 1 floor, Piccadilly Exchange, 2  
Piccadilly Plaza, Manchester, M1 4AH**

**Date of  
determination** : **8 July and 7 August 2020**

**Date of Decision** : **7 September 2020**

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**DECISION**

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**The Decision**

1. The Tribunal makes the following determination:

- (i) The price payable by the Applicant to the Respondent for the freehold enfranchisement is £22,357.91.
- (ii) Costs payable by the Applicant to the Respondent are £2,373.10 plus £474.62 32 VAT. Valuation fees payable are £2800 plus £560 VAT. Other incidental disbursements payable amount to £15.12.

### **The Issues**

- 2. This case involves an application made for a determination of the premium to be paid in respect of their collective enfranchisement of 60 Regent Street, Wakefield, WF1 5HR (“the Property”) in accordance with section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”).
- 3. The tenant’s Initial Notice is dated 6 August 2019. The proposed premium is £8,500 together with an additional £2,500 for the appurtenant land. The participating tenants are the lessees of Flats 1,2,3,4 & 6. The lessee of Flat 5 is not participating, the property having been repossessed. The reversioner’s Counter-Notice is dated 9 October 2019 and admits the right to collective enfranchisement. The reversioner proposes a premium of £22,350 together with an additional £70,000 for the appurtenant land.
- 4. There is a separate application under section 60(1) the Act by the tenant for the determination of the costs payable by the tenants.
- 5. On 28 February 2020, the Tribunal issued Directions. In accordance with those directions both parties’ solicitors submitted a bundle of documents in relation to the premium payable and Costs. The reversioner Respondent asked the tribunal to determine outstanding debts payable in accordance with section 24 (8)(d) of the Act.
- 6. The Tribunal convened on 8 July and 7 August 2020 without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection or hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective. The Directions stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected.

### **The Applicants Case**

- 7. The tenants of Flats 1,2,3,4 and 6 made an application to purchase the Property on 6 August 2019. Their proposed purchase price was

£8,500 for the freehold Premises and £2,500 for the appurtenant land.

8. The proposed price was supported by a valuation report of Walker Singleton Chartered Surveyors. It was inspected by S N Molloy on 12 April 2018. The valuer noted that the Property appears to be in reasonable condition externally. It is noted that masonry paint is flaking and there are water stains at high level and around the entrance door which could lead to damp penetration. Only Flat 2 was inspected internally and was poorly presented cosmetically with damp stains on the front wall. The valuer was provided with undated photos of the other flats. Flats 1-4 were in reasonable condition. Flat 6 were in poor state with bathroom fittings removed and extensive damage to the wall plaster. There were signs of damp penetration through the ceiling. The inspection revealed poor levels of cleaning, maintenance, or active management in the common parts. It was suspected that the fire alarm was not routinely tested. The rear yard was overgrown and untidy.
9. The basis of the valuation was an assessment of 18 comparables with gross yields of between 3.32 and 7.88%. The Respondent purchased the freehold on 10 June 2016 for £19,000 representing a gross yield of 6.6%. The gross rent of the lease is £1260 per year (£210 per flat). They have adopted a gross yield of 6% for the rent in perpetuity giving a capital value of £21,000. There is no development value and no marriage value.
10. They consider that the value of £21,000 is “under normal circumstances” and any ongoing dispute would have a detrimental effect on the marketability and price paid for the freehold in the open market. They consider that the market value in those circumstances is £10,000.
11. The valuer provides further opinion in a letter dated 22 July 2019, following an instruction to clarify the value and to split the value between the building and the land. They state that normal circumstances mean no issues outstanding and the property being maintained to a reasonable standard. They then split the value between the building (£16,000) and the land (£5000). They have further inspected the Property and noted its current state and that they believe no fire risk assessment has ever been carried out.
12. Their view is that this ongoing dispute and poor state is likely to put off the majority of potential buyers and a prudent buyer is likely to deduct the cost of reinstating the common parts into a safe and habitable condition. Such a sum is likely to be in the value of £10,000 providing a value of £11,000 split between the building (£8500) and the appurtenant land (£2,500). They state that looking at the value of

the land in isolation is hypothetical only as it forms part of one title. The rear yard is approximately 198 sqm with a brick outbuilding. It is unsurfaced and overgrown. It is accessible by car and suitable for car parking or a garden. Only the remaining flat owner might purchase it at over value. It has no development potential.

13. The tenant denies that the service charge has been demanded and that all the debt claimed is due as set out below.
14. They deny that all the costs claimed are reasonable as set out below.

### **The Respondents Case**

15. In the Counter Notice dated 9 October 2019 the Respondent states that the value is £22,350. In addition, the value of the appurtenant land is £70,000.
16. They then rely on the undated valuation of Jeremy Levy, an expert valuer. He produced a report. In his conclusion he states that the premium for the building is £22,350 and the value of the appurtenant land is £2,500. He considers the development value to be nil. There is no marriage value due to the length of the lease.
17. He has provided a Long Lease value of £55,000 each for the two-bedroom flats and £60,000 for the three bed roomed. A total of £350,00. He has considered two comparables. One sold for 50,000 in March 2018 in a well-maintained condition and a one bedroom for £,44,950 in a reasonable condition. Both had 95-year leases. The freehold vacant possession of the Property is valued at 1% higher than the long lease value giving a value of £338,350. He has determined a deferment rate of 5% providing a reversion sum of £1,375.
18. The number of years unexpired on the lease is 112.85 providing a ground rent payable of £1260. A capitalisation rate of 6% provides a Capital value of £20,971.
19. This provides a premium of £22,350 (£1,375 plus £20,971).
20. The Respondents have provided no justification for the original sum of £70,000 for the appurtenant land. This was clearly fanciful, and they say in their Statement of Case at paragraph 3 that they now rely on the Experts reports of Mr Jeremy Levy[2].
21. They claim arrears and costs as set out below.

## **The Determination**

### **The Property**

22. The nature of the property is not disputed between the parties. The property is a mid-terrace four story building comprising of six self-contained flats. The building is of brick construction and rendered. All windows are double glazed. There is a small yard to the front with a small lawn area. At the rear is a small residents carpark enough for 4 cars together with a communal storage shed. The area contains the individual refuse wheelie bins for the flats
23. All flats have contained separate bedrooms, a living room with kitchen and shower room with WC. Flat 1 has 3 bedrooms. It is in the basement and has its own front door with no access to communal parts. All other flats contain 2 bedrooms and are accessed through the front door. Flat 2 and 3 are on the ground floor. Flat 4 and 5 are on the first floor. Flat 6 is on the second floor and has a separate kitchen. The premises are in a state of disrepair as set out above.
24. The area is residential and within one mile of the town centre and within walking distance of two mainline stations.
25. All the leases are granted for terms of 125 years from 14 June 2007. The unexpired term for all six flats is 112.85 years. The current ground rent is £210 per annum fixed for the duration of the term.

### **The Premium**

26. There are 3 issues in relation to the premium payable
- (i) How to treat the appurtenant land.
  - (ii) What is the effect of the condition of the property and dispute between the parties?
  - (iii) What is the correct overall approach to the valuation?

### **The Appurtenant Land**

27. The parties have split the value into two parts. The value of the Lease of the building and land or appurtenant property. In accordance with s1 (7) appurtenant property is "*property in relation to a flat, means*

*any garage, outhouse, garden, yard or appurtenances belong to, or usually enjoyed with, the flat*". It is part of the relevant premises in accordance with s1 (2) and (3). It is part of the acquired interest in accordance with s2 as the qualifying tenant has exercised the right of collective enfranchisement to acquire it.

28. The initial reply to the Notice valuing the Appurtenance as £70,000 is unsustainable. It is not supported by the Respondents own valuer. In fact, bother valuers agree that its value is £2500. The Respondent has added this to the value of the Lease, despite purchasing the freehold as a whole and has not provided any basis for the separate valuation nor any reasoning. They have not stated why they have added it to the value, particularly as they have denied that there is any development value.
29. The Applicant has included it in the value, though separated it on request. Their starting point was £5000 and have provided no clear reasoning for halving the value, apart from their general view of condition.
30. The Tribunal determines that the land is intrinsic to the use of the building due to the nature of the land, its size and use. As S Molloy says its main purpose is for carparking and storage of bins. There is plenty of on street car parking in the vicinity and no demand over supply. The reversioner have offered no arguments to the contrary.
31. The appurtenant land is part of the Landlords Estate Title Number WYK639371 and the tenants are given rights over it as set out in the First Schedule of the lease. Similarly, clause 5 (vi) details the landlord's covenant to "*maintain repair and decorate pathways garden and common parts.*" The tenants are obliged to pay a proportion of the costs in accordance with the Fourth Schedule. The appurtenant land cannot be stripped out during the term and the Tribunal therefore values each of the individual flats with the benefit of the appurtenant land reflected.

### Condition

32. Mr Singleton deducts 50% of the value for the condition and dispute between the parties. The only dispute the Tribunal is aware of is outstanding arrears and that no maintenance or repair work has been undertaken, including no fire safety test. The debt has no bearing on the value of the land as set out below. The condition of the Property is described generally as fair with some issues of dampness, particularly in the top flat. A deduction is not justified taking into account a number of factors, including the length of outstanding leases, generally fair condition and that the condition should already have been reflected in accordance with Cadogan v Sportelli and

others [2007] 1 EGLR 153. It made clear that obsolescence and condition are reflected in the vacant possession value and the risk premium (see paragraph 91). This is confirmed in Midland Freeholds Limited's and Speedwell Estates Limited's Appeals [2017] UKUT 494 (LC). At paragraph 24 AJ Trott stated "*It is only in exceptional cases that the risk of deterioration will not be reflected in the freehold vacant possession value of a property. Age or current poor condition are insufficient to justify any additional allowance.*". This is clearly not such an exceptional case.

33. In addition, in determining the issue of the effect of repair and fire safety, the Tribunal finds that there is sufficient scope within the service charge detailed in Fourth Schedule of the leases for matters of repair to be undertaken and recharged.

#### Premium Payable

34. As the section 13 Notice was served on 6 August 2019 this is the deemed date of valuation.
35. Valuation is made in accordance with Schedule 6 s2 of the Act as set out in Appendix 1. It is agreed that there is no marriage value and no compensation payable. The unexpired term of the leases is 112 .85 years, and the Tribunal agrees there is no marriage value. Similarly, there is no hope value to be attributed to Flat 5 as the unexpired term is 112.85 years as decided in Cadogan Estates Ltd v 26 Cadogan Square Ltd 3 WLR 542 k(2007)
36. The Tribunal considered the comparable sales of freehold ground rents proposed by the tenant Applicant but considers the term and reversion valuation approach as being the most appropriate, as determined in the Sportelli case. The valuer on behalf of the tenant, only undertook a valuation of the rent in perpetuity . Both parties agree on the yield of 6% for the term rent and the Respondent has adopted 5% for the reversion. This is also in line with the Sportelli case.
37. The Tribunal considered the comparables provided by the Respondent's valuer, Jeremy Levy, and agrees with the valuation placed on each flat. The comparables are long leasehold, situated in close proximity to the subject property and also have shared communal gardens. The sales do however highlight that there has been a significant fall in market value since the majority of the Applicant leaseholders purchased their flats. The value of the Property is therefore £335,000 with the 112.85-year unexpired lease. The freehold is worth 1% more being unencumbered.

38. The Tribunal was unable to identify any other loss to the freeholder likely to result from the acquisition of any appurtenant property or foregone development rights as part of the enfranchisement.
39. The Tribunal, in using the agreed rates for term valuation and the rates used in the Respondents reversion, determines the price payable for the freehold reversion of the Property including the rear garden and parking area to be in the sum of £22,357.91.
40. The Tribunal considers this sum is in line with the purchase price of £19,000 paid for the Property by the Respondent on 10<sup>th</sup> June 2015 and changes in the market since that date.
41. A copy of the valuation is appended to this decision at Appendix 2.
42. The terms of the Transfer are agreed by the parties and the Tribunal makes no determination in this regard.

#### Other Matters

43. The Respondent seeks a determination in relation to outstanding debts in accordance with s24(8)(d).
44. The debt is broken down as follows:
  - (i) Flat 1: £1,146.94 Unpaid charges from 1 January 2018-24 March 2021. Purchased 14 June 2007 for £95,000
  - (ii) Flat 2: £2,201.16 Unpaid charges from 29 May 2015 -24 March 2021. The Applicant states that the current Leaseholder purchased the Flat in December 2015 and £265.71 is prior to this period. Purchased 14 June 2007 for £85,000
  - (iii) Flat 3: £1,280.81 Unpaid charges from 17 May 2017 -24 March 2021 . The Applicant states that the current Leaseholder purchased the Flat in January 2018 and £103.87 is for a period prior to this. Purchased 14 June 2007 for £85,000
  - (iv) Flat 4: £1,146.94 Unpaid charges from 1 January 2018 -24 March 2021. Purchased 14 June 2007 for £85,000
  - (v) Flat 5: £333.92 Unpaid charges from 1 January 2020 -24 March 2021. This Flat has been repossessed and the



Applicant denies that any sum is due. Purchased 14 June 2007 for £85,000

- (vi) Flat 6: £831.44 Unpaid charges from 1 January 2019 -24 March 2021
45. These debts amount to £6, 941.21 The Respondent states that there is a total of £4,759.51 outstanding arrears of service charges. It is unclear how that sum was arrived at and is not explained by the Respondent.
46. The outstanding charges include annual ground rent, building insurance with admin charge. In addition, Flat 1, 2, 3, 4, 6 have unpaid Subletting Charges, including registration. Flat 2 has various reminder charges including referral to solicitor. The subletting, reminder and administration fees are denied.
47. The determination of such matters is beyond the scope of this matter. They do not relate to a term of acquisition in accordance with s24 (8) of the Act. They do not relate to *“the extent of the property to which those interests relate or the rights to be granted over the property”* (b) or *“the amounts payable as the purchase price for such interests”* (c).
48. The Tribunal can determine the terms of the acquisition and this can include *“the apportionment or conditions or other matters in connection with the severance of any reversionary interest”* in accordance with s24(8)(d). The matters set out above are not such matters. They do not relate to apportionment or conditions. They cannot relate to other matters in connection with the severance. Any unpaid charges and rents remain due after severance and so are not in connection with the severance of any reversionary interest.
49. It is relevant that there is no provision equal to the supplementary provisions relating to vesting orders where the relevant landlord cannot be found. In such cases the Tribunal could determine an appropriate sum including *“any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).”* (s27(5)(b)). The absence of such a provision elsewhere supports the Tribunals view that it is not a matter we can deal with here.

50. Any ongoing disputes concerning the service charge may be resolved by applying to the Tribunal under a separate application under s27 of the Landlord & Tenant Act 1985. Alternatively, leaseholders have the option to apply for The Right to Manage through the Commonhold and Leasehold Reform Act 2002 .

### **Costs**

51. The Applicant makes a separate application for determination of the costs payable by the tenants under section 60(1) of the Act (as set out in Appendix 1). There have been two previous aborted applications for enfranchisement. It is not disputed that these should be considered within this application. The first relates to a claim notice dated 24 October 2018. The second a notice dated 3 December 2018.
52. In Metropolitan Property Realisations v Moss [2013] UKUT 415, Martin Rodger QC, the Deputy President, gave guidance on the approach to be adopted:

*“9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.*

*10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.*

*11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable.”*

53. In Dashwood Properties Limited v Beril Prema Chrisostom-Gooch 2012 UKUT 215 (LC) the Upper Tribunal said *“The value of a dispute and the amount to be gained, or lost, by a party, is always*

*a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.”*

### **The first application: claim notice dated 24 October 2018**

54. Laura Cleasby is a Grade A fee earner and has claimed £280 per hour. The solicitor guideline hourly rate for a national Grade A fee earner in national area 2 covering Wakefield and outer Leeds is £201 per hour. She has carried out 4.2 hours work, and this is capped by the Respondent at £550 plus VAT of £110. It is agreed by the Applicant. It is supported by a costs schedule. The valuation fee of £1500 plus VAT of £300 claimed in that schedule relates to an inspection on 14 December 2018 and is supported by an Invoice. It is also agreed. The Tribunal found these costs were incurred in accordance with s60 and to be reasonable.

### **The second application: claim notice dated 3 December 2018**

55. There is a second solicitor noted as Grade A but with only 6 years PQE with initials JC at £250 per hour. This appears to be an error as she is also noted to be called Laura Cleasby but named as Jemma Cox elsewhere. Both undertook work. The total hours claimed are 8.6 hours totalling £2,375 and capped at £2,275 plus VAT of £455 and special delivery of £7.62. The valuation is £300 plus £60 VAT dated 19/3/19. This work is particularised as a desktop update valuation.
56. The Applicant disputes these costs on a number of grounds.
- (i) A second valuation report is unreasonable, particularly as a copy has not been supplied. The Tribunal considers that a desk top valuation report is reasonable, due to professional duties to ensure a true and accurate valuation and is standard practice. The charges are reasonable and allowed.
  - (ii) It is unclear if the work was undertaken by an in-house team and there is no signed statement of truth. The Tribunal considers that there is flexibility in the rules, and this is not fatal to the claim for costs.
  - (iii) The rates of the fee earners as national guidelines should be followed. The Tribunal considers that standard guideline rates should be used, due to location and proportionality with the price payable and issues raised. Section 60(2)

provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; it is likely to be carried out more cheaply, if the landlord was personally liable. Jemma Cox should be £177 per hour in accordance with the standard rates.

(iv) That much of the work should be disallowed. Much of the work is duplicated. That 5 emails dated between 14 January and 5 May 2019 were in fact sent by a paralegal. An appropriate paralegal rate is £111 per hour. There is duplication of review of title documents of 186 minutes and 33.5 hours when already completed in Claim 1 at 156 minutes. Almost an hour is claimed for pursuing the second valuers report (not disclosed). 48 minutes for a second counternotice is claimed. There are numerous unexplained attendances on the Landlord during periods of inactivity.

57. The Tribunal considers that much of the work is not particularised or justified and would not have been undertaken if the costs were to be incurred personally by the Landlord. There is a dispute in relation to unconnected matters in relation to the condition, outstanding charges, and fire safety. These costs are not “incidental” in accordance with s60(1)(c). Taking account duplication and unexplained work hours are reduced to 2 hours. It is reasonable to suggest that a Grade B fee earner undertake the work due to the general complexity of these matters, though no particular legal argument has been made out and a local rate is therefore applied. Costs of £354 plus VAT of £70.80 are payable.

#### **Current application: claim notice dated 8 August 2019**

58. The total hours claimed are 15.4 hours totalling £3850 and capped at £3,250 plus VAT of £650 and special delivery of £7.62. All work is carried out by Jemma Cox.

59. The valuation fee supported by an invoice and is £1000 plus £200 VAT. It states that there was a second inspection on 2 October 2019

60. The Applicant disputes these costs on a number of grounds.

(i) They dispute that more than one valuation fee should be claimed and only one valuation has been undertaken. The Tribunal considers that due to the time elapsed between the notices then another inspection and valuation is reasonable. Again, this is standard practice when more than a year has elapsed. The valuer has claimed less than the first invoice. All reports were necessary as the Respondent was required

to undertake a valuation on each Notice submitted. It appears that the Applicant decided not to proceed on the other occasions and should bear the costs. The valuation fee of £1000 plus VAT of £200 is reasonable and allowed.

- (ii) The Applicant disputes the rates of the fee earner as above. All work was undertaken by a Grade B fee earner. The Tribunal agrees that a reasonable fee for a Grade B fee earner at standard rates is £177 per hour as set out above. Again, no unusual or complex points appear to have been picked up by the solicitors. The matters at issue set out above have not been set in argument beyond mere factual disputes.
- (iii) The Applicant disputes much of the fees as a duplication as above. The Tribunal agrees that much of the work is duplication and there is numerous unexplained correspondence. The dispute in relation to unconnected matters cannot be claimed. It is reasonable to suggest that the Respondent had to undertake some work in relation to the notice and rechecking that documents were up to date and still applicable as well as attendance and preparation in relation to the same.

61. Taking this into account the Tribunal has reduced the hours to 5 hours plus 3 hours 18 minutes for the conveyance; a total of 8 hours 18 minutes. Costs of £1469.10 plus VAT of £293.82 is allowed.

### **Conclusion**

- 62. The determination of the Tribunal is that the total price payable for the enfranchisement of the Property and appurtenant is £22,357.91.
- 63. Cost payable are £2,373.10 plus £474.62 VAT. Valuation fees payable are £2800 plus £560 VAT. Disbursements payable are £15.12.

**Judge J White**  
**7 September 2020**

## ***RIGHTS OF APPEAL***

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.

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.

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.

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 1: The Law***

Schedule 6 of the 1993 Act establishes the method for the acquisition of a residential freehold reversion. Paragraph 2 of Schedule 6 of the 1993 Act provides as follows:

*“(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 shall be nil*

Paragraph 3 of Schedule 6 provides:

- (1) Subject to the provisions of this paragraph, the value of the freeholders' 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-*
    - (1) subject to any leases subject to which the freeholder's interest in the premises is to be acquired by the nominee purchaser, but*
    - (2) 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 purchase of the freehold'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) a 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 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 any 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.*
- (4) Where a lease of any flat or other unit in the specified premises is to be granted to the freeholder in accordance with section 36 and Schedule 9, the value of his interest in those premises at the valuation date so far as*

*relating to that flat or other unit shall be taken to be the difference as at that date between-*

- (a) the value of his freehold interest in it, and*
- (b) the value of his interest in it under that lease, assuming it to have been granted to him at that date;*

*and each of those values shall, so far as is appropriate, be determined in like manner as the value of the freeholder's interest in the whole of the specified premises is determined for the purposes of paragraph 2(1)(a).*

- (5) The value of the freeholder's interest in the specified premises shall not be increased by reason of-*

- (a) any transaction which-*

- (i) is entered into or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before this date), and*
- (ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by a qualifying tenant of a flat contained in the specified premises: or*

- (b) any alteration on or after that date of the terms on which any such superior interest is held.*

- (6) Sub-paragraph (5) shall not have the effect of preventing an increase in value of the freeholder's interest in the specified premises in a case where the increase is attributable to any such leasehold interest with a negative value as mentioned in paragraph 14 (2).*

*Paragraph 4 provides-*

- (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 there 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.*

*2(A) 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.*

*Paragraph 6 of Schedule 6 provides for the price payable for an intermediate interest.*

Determination for costs is contained in section 60 of the Act. Section 60 provides, insofar as relevant for the purposes of this decision:



*“(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—*

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;*
- (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*
- (c) the grant of a new lease under that section;*

*but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.*

*(3) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*

## ***Appendix 2: The Valuation Calculation***

### **Property:60 Regent Street Wakefield WF1 5HR**

<b>Valuation Date</b>	1.8.19
<b>Lease term</b>	14.6.07- 13.6.2132
<b>Term Unexpired</b>	112.85
<b>Ground Rent Payable to 13.6.2132</b>	£1,260 pa
<b>Market Value With Current Lease</b>	
	Flat 1 £60,000
	Flat 2 £55,000
	Flat 3 £55,000
	Flat 4 £55,000
	Flat 5 £55,000
	Flat 6 <u>£55,000</u>
<b>Total</b>	<b>£335,000</b>
<b>Freehold Value + 1%</b>	<b>£338,350</b>

**Term**

Ground rent	£	£1260pa	
YP 112.85 years @ 6%		£16.6434	£20,970.68

**Reversion**

Freehold vacant possession value		£338,350	
PV £1 in 112.82 years @ 5%		0.0041	£1,387.23

**Total** **£22,357.91**