

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**SR/LON/00AG/OCE/2025/0002**
Property	**:**	**81-88 Langbourne Mansions, Langbourne Avenue, London N6 6PU**
Applicant	**:**	**81-88 Langbourne Mansions Freehold Company Limited**
Representative	**:**	**Ms Nicola Muir (Counsel) instructed by Comptons Solicitors LLP**
First Respondent	**:**	**Charles Christopher Hunter, Stephen Paul Diver and Paul Ayre as Trustees of the RM Jolly Children's Settlement 1979**
Representative	**:**	**Mr James Fieldsend (Counsel) instructed by Gordons LLP**
Second Respondent	**:**	**The Mayor and Burgesses of the London Borough of Camden**
Representative	**:**	**Ms Ellodie Gibbons (Counsel) instructed by Paris Smith LLP**
Type of application	**:**	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge J P Donegan** **Mr R Waterhouse FRICS (Valuer Member)**
Date of hearing	**:**	**13 and 14 October 2026**
Date of decision	**:**	**24 November 2026**

DECISION

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Summary of the Tribunal's decision

A. The purchase price payable for the collective enfranchisement of Block E, 81-88 Langbourne Mansions, Langbourne Avenue, London N6 6PU ('Block E') is £120,250 (One Hundred and Twenty Thousand, Two Hundred and Fifty Pounds). Of this sum £105,250 (One Hundred and Five Thousand, Two Hundred and Fifty Pounds) is payable to the first respondents ('R1') and £15,000 (Fifteen Thousand Pounds) is payable to the second respondent ('R2').

B. The Tribunal adopts the valuation calculations of Mr Andrew Balcombe FRICS, copies of which accompany this decision.

Background

1. These proceedings arise from an enfranchisement claim for Block E, which is four-storey, purpose-built block of eight flats on a wider estate known as 1-88 Langbourne Mansions ('the Estate'), adjacent to Highgate Cemetery and Dartmouth Park. The Estate contains eight detached blocks of flats, including Block E, 32 garages and three cycle sheds. R1 is the freeholder of the Estate and R2 is the tenant under a head lease ('the Head Lease'). The applicant ('A') is the nominee purchaser of Block E.

2. Of the eight flats in Block E, six (Flats 81,82, 83, 84, 87 and 88) are held on long underleases and two (Flats 85 and 86) are held 'in-hand' by R2 and sublet on short public sector tenancies. I refer to Flats 81,82, 83, 84, 87 and 88 collectively as 'the Acquired Long Lease Flats' and Flats 85 and 86 as 'the Acquired Camden Flats'.

2. On 10 June 2024, the underlessees of the Acquired Long Lease Flats gave an initial notice under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act'). They proposed a price of £91,225 for the freehold interest in the specified premises, as coloured red on the notice plan, £100 for appurtenant land coloured green and £18,407 for R2's intermediate leasehold interest. The notice named A as the nominee purchaser and proposed mandatory leasebacks of the Acquired Camden Flats.

3. On 27 August 2024, R1 gave a s.45 counternotice, admitting the enfranchisement claim, accepting some of the proposals in the initial notice (including the mandatory leasebacks) but disputing others. Their counterproposals as to the price were £860,000 for the freehold of the specified premises, £10,000 for the freehold of the appurtenant land and £18,500 for R2's intermediate leasehold interest.

4. On 06 November 2024, R2 gave notice of separate representation pursuant to paragraph 7(1) of Schedule 1 to the Act.

5. On 19 November 2024, A applied to the Tribunal for a determination of the terms of acquisition pursuant to s.24.

6. The relevant legal provisions are set out in the appendix to this decision.

The issues

7. On 13 October 2026, A filed a joint statement of agreed facts that had been signed by all three valuers on 12 October. The following valuation matters were agreed:

Valuation date:	11 June 2024
Term date Flat 83:	23 June 2102 (78.03 years unexpired)
Term date Flats 81 & 87:	12 October 2111 (87.335 years unexpired)
Term date Flats 82, 84 & 88:	18 December 2114 (90.52 years unexpired)
Flats to be retained by R2:	85 & 86
Term date of Head Lease:	24 December 2114 (90.535 years unexpired)
Ground rents:	£50 pa, representing £10pa fixed for Flats 81, 82, 84, 87 & 88 and £0 for Flat
Head rent for Estate:	£454,545.45 pa

8. Although not explicitly stated in the joint statement, the parties also agreed the freehold vacant possession values ('FHVP') of all eight flats, the market rents (where appropriate), the capitalisation and deferment rates and end allowances.

9. In relation to the application of the Act, the parties agreed:

   (a) The statutory scheme with respect to mandatory leasebacks under s.56 and Schedule 9 does not apply to Flats 85 and 86.

   (b) In accordance with s.2, A will acquire the Head Lease insofar as it demises Block E and the Long Lease Flats ('the Acquired Head Lease').

   (c) R2 will retain the Head Lease insofar as it demises the remainder of the Estate, including the Acquired Camden Flats.

   (d) The collective enfranchisement of Block E will sever R1's freehold title of the Estate and the Head Lease.

   (e) In order to determine the enfranchisement price, it will be necessary to apportion the rent under the Head Lease ('the Head Rent') first to Block E and then to the Acquired Head Lease. The first apportionment is required to value the freehold interest and the second to value the Acquired Head Lease.

10. The following valuation matters were not agreed:

(a) The apportionment of the Head Rent for Block E. R1 states it should be £50 pa whereas R2 states it should be £50,118 pa.

(b) The apportionment of the Head Rent for the Acquired Head Lease. R1 states it should be £50 pa whereas R2 states it should be £37,283 pa.

(c) If R1's apportionment is accepted, the parties agree the resulting price at £120,250 with £105,000 payable to R1 for the specified premises, £250 payable to R1 for the appurtenant land and £15,000 payable to R2 for the Acquired Head Lease.

(d) If R2's apportionment is accepted, the parties cannot agree whether the resultant negative value of the Acquired Head Lease should (as A and R2 contend), or should not (as R1 contends), be set against the positive value of R1's interest.

(e) If it should, the parties agree the resulting price at £124,650, all of which is payable to R1.

(f) If it should not, then R1's valuation is £888,753, of which £883,676 is payable to R1 and £5,077 is payable to R2. This is not agreed by A and R2.

11. The issues to be determined by the Tribunal are (a) the apportionment of the Head Rent for Block E and the Acquired Head Lease, and (b) if R2's apportionment is accepted, the application of the 'netting off' provisions at paragraph 14(2) of Schedule 6 to the Act.

12. The Tribunal application also sought a determination of the terms of the conveyancing documents (see paragraph 23, below).

The Head Lease

13. The Head Lease was granted by Reed & Hoad Limited to The Mayor Aldermen and Councillors of the Metropolitan Borough of St Pancras on 25 December 1964 for a term of 150 years from that date. The demised premises are described as "*ALL THOSE pieces or parcels of Land situate in the Parish of St. Pancras TOGETHER with the buildings erected or on some part or parts thereof as the same is for identification only and not of delimitation delineated and edged pink on the Plan annexed hereto*". The lease-plan shows the Estate in two sections with four blocks and communal grounds to the north of Langbourne Avenue and four blocks and communal grounds to the south. Block E is in the south section.

14. The rent for the first year of the term was £17,045 pa increasing to £23,410 pa for the second to fifth years, £23,865 for the sixth to tenth years and £25,000 pa for the eleventh to fortieth years. Thereafter the rent is to be determined in accordance with clause 4, which provides:

"4. (i) The rent hereby reserved shall be subject to review at the end of the 40th of year of the term hereby created (such year called "the year of review")

and if on such review it shall be found that the then annual rental value of the demised premises (as hereinafter defined) shall be either greater or smaller than rent of Twenty Five Thousand Pounds (£25,000. 0. 0.) the said rent shall be increased or decreased (as the case may require) as from the determination of the year of review by the amount of such excess or shortfall

(ii) The annual rental value of the demised premises to be determined in the year of review shall for the purposes of this Clause be deemed to be twenty five one hundred and tenths of the best exclusive rents which could be obtained in the open market by a willing landlord letting a site comprising the aggregate of the demised premises and the premises leased to the Lessee by two Leases of even date herewith by Queensway Land Company Limited and Studleygrange Property Company Limited which maintains identical provisions as those in this Lease to a willing tenant on a Building Lease for development on the following assumptions:-

(a) that such site is cleared of all buildings

(b) that planning permission has been obtained for development of the site in the year of but immediately prior to the notice

(c) that the development for which planning permission has been obtained is for a user which is the most favourable that might reasonably be expected to have been granted to the willing landlord having regard to then existing planning restrictions or proposals but disregarding the existence of this lease

(d) that the provisions of the Building Lease are mutatis mutandis identical with those contained in the present demise and in the two Leases before referred to with the exception of this present clause

(e) that the Building Lease is for a term of 110 years

(f) that no premium is to be paid for the grant of the Building Lease by the willing tenant

(iii) If no agreement is reached between the parties or their respective Surveyors by the end of the year of the review as to the annual rental value as hereinbefore defined then the question shall be referred to the decision of a single arbitrator to be appointed by the President for the time being of the Royal Institution of Chartered Surveyors in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof and until such decision (if it should not be made until after the rent day next following the expiry of the year of review) the Lessee shall pay rent at the rate of Twenty Five Thousand Pounds (£25,000. 00. 00.) and the increase or decrease (if any) shall be adjusted with the half-year's rent due next after the date of such decision

(iv) Upon such rent being revised as aforesaid a memorandum shall be endorsed on this Lease of such revision".

15. A rent schedule is attached to the Head Lease, showing the rents for the various flats, garages and cycle sheds at the date of grant. It also includes the lease durations with brief details of future rent increases and reviews. Based on the schedule the total rents were in the region of £26,000 pa and exceeded the Head Rent for the first 40 years of the term.

16. The current Head Rent is £454,545.45 pa. This was determined by review on 21 November 2005. The rent review memorandum records the rent was reviewed in accordance with the Head Lease.

17. Since the Headlease was granted, a substantial proportion of the flats have been sold on long underleases, under the Right to Buy ('RTB') legislation (Housing Acts 1980 and 1985). This has reduced the rents receivable by R2.

18. At the agreed valuation date the rents for the 88 flats, receivable by R2 as the head lessee, totalled £410,392.32 pa.

The hearing

19. The hearing took place, by video, on 13 and 14 October 2026. Ms Muir appeared for A, Mr Fieldsend appeared for R1, and Ms Gibbons appeared for R2. They were accompanied remotely by some of their clients. Mr Paul Joyce and Mr Peter Gammie, solicitors for R1 and R2 respectively, also attended.

20. The Tribunal was supplied with three digital bundles; a main hearing bundle, a supplemental bundle and a bundle of authorities. All three counsel also supplied helpful skeleton arguments. On the morning of the hearing, A's solicitor filed the joint statement of issues from the valuers.

21. The Tribunal heard oral evidence from two of the valuers, Mr Andrew Balcombe FRICS for R1 and Mr Prosper Marr-Johnson MRICS for R2. There was no oral evidence, or expert report, from A's valuer, Mr Steven Harding MRICS of SRVO Valuations & Surveys, as his methodology was essentially the same as that of Mr Marr-Johnson. However, he signed the joint statement, setting out the agreed figures for the options 1 and 2 (see paragraph 27, below).

22. The Tribunal also heard detailed closing submissions from all three counsel.

23. By the end of the hearing, the parties had largely agreed the conveyancing documents. I directed A to notify the Tribunal whether a final agreement had been reached by 5:00pm on 28 October 2026 (subsequently extended to 04 November 2026). In an email dated 04 November, A's solicitor advised the two transfer deeds, one for the freehold of Block E and one for the Acquired Head Lease, had not been agreed. The parties have since agreed the transfer for the freehold of Block E. I will issue separate directions for the determination of the disputed transfer terms for the Acquired Head Lease.

24. Given that the hearing was conducted by video, the Tribunal members did not inspect Block E or the Estate. Rather they relied on photographs

and plans in the expert reports together with official copies of the freehold and Head Lease title plans; as included in the main and supplemental bundles.

The valuers' evidence

25. Mr Balcombe is a Fellow of the Royal Institution of Chartered Surveyors and was previously a Fellow of the Chartered Institute of Arbitrators. He has been a qualified surveyor for 43 years and has considerable experience of enfranchisement work. He is currently a consultant in the Valuation Advisory Services team at Strettons Limited.

26. Mr Marr-Johnson is a Member of the Royal Institution of Chartered Surveyors and is a Registered Valuer. He qualified as a surveyor in 1991 and also has considerable experience in enfranchisement work. He is an equity partner in Marr-Johnson & Egerton.

27. Mr Balcombe spoke to a report dated 23 September 2026, in which he outlined three options:

    Option 1: Price if the apportioned Head Rent of Block E is £50 pa

    £120,250 (£105,250 to R1 and £15,000 to R2)

    Option 2: Price if the apportioned Head Rent of Block E is £50,118 pa with negative value of Acquired Head Lease netted off

    £124,660 (all payable to R1)

    Option 3: Price if the apportioned Head Rent of Block E is £50,118 pa with no netting off

    £888,750 (£883,650 to R1 and £5,100 to R2)

    His report includes detailed valuation calculations for all three options.

28. Mr Balcombe primarily relies on option 1. Option 2 represents Mr Marr-Johnson's approach. Option 3 is Mr Balcombe's approach if the Tribunal accepts Mr Marr-Johnson's apportionment of the Head Rent

29. In his report, Mr Balcombe suggested the Head Rent apportionment for both Block E and the Acquired Head Lease should be £50 pa, representing the total ground rent for the six Acquired Long Lease Flats and the rental income R1 will lose on the disposal of the Acquired Head Lease. He suggested this is "*logical and fair to all parties and properly reflects the change in the parties' representative positions*". His reasoning is:

    (a) Of the 88 flats at the Estate, 41 are sublet on long underleases producing £420 pa and 47 are sublet on public sector tenancies producing £410,392.32 pa.

    (b) On the disposal of the Acquired Head Lease, R2 will retain 35 flats sublet on long underleases producing £270 pa and 47 sublet on

public sector tenancies producing £410,342.32 (£410,392.32 less £50).

(c) Given R2 will no longer receive the £50 rental income for the six Acquired Long Lease Flats, it is right that this is the amount to be deducted.

(d) R2 will still collect £410,342.32 pa, of which £22,431.24 will be from the Camden Acquired Flats.

(e) R2 will not be prejudiced by this apportionment whereas options 2 or 3 produce results that are massively unfair to R1 or A. Such results do not reflect what would happen in a market negotiation of apportionment and purchase and do not make commercial sense.

30. The report also addressed the other approaches to apportioning the Head Rent**.** Option 2 (apportionment of £50,118 pa for Block E) reflects the ratio of the total rateable values ('RVs') of the eight flats in Block E relative to the total RVs for all 88 flats held under the Head Lease. If accepted, this would reduce the Head Rent payable to R1 by £50,118 pa. Mr Balcombe does not consider this appropriate, given there is a mix of long underleases with nominal ground rents and flats let on short tenancies (with much higher rents). The shortfall between the current rents receivable under the Head Lease (total £410,392.32) and the rent payable (£454,545.45) is of R1's making. The rents it charges for the public sector tenancies are substantially below market value. For example, the rents for the Acquired Camden Flats are £11,499.28 pa (Flat 85) and £10,931.96 pa (Flat 86) are less than half those agreed for Flats 81, 83 and 87 which are sublet at £23,400, £26,400 and £28,800 pa, respectively. If this difference is extrapolated across all the public sector tenancies, the total rental income would exceed £800,000 and there would be no shortfall.

31. In Mr Balcombe's opinion, a purchaser of the freehold of Block E would not agree option 2, as this would result in them paying £888,750 for the freehold (on the open market). The only logical apportionment that is fair to all parties is £50 pa. In his words "*Why consider an artificial approach to the question of Apportionment which materially and negatively affects one party where there is an entirely logical assessment to be made?"*

32. If the apportioned Head Rent for Block E is £50,118 pa, based on RVs, Mr Balcombe accepts the apportionment for the Acquired Head Lease of £37,238 pa. His option 2 assumes the negative value of the Acquired Head Lease value should be deducted from the freehold value, leaving a net sum of £124,860, all of which is payable to R1. Option 3 assumes no deduction, resulting in a total price of £888,750, of which £883,650 is payable to R1 and £5,100 to R2.

33. In his oral evidence, Mr Balcombe verified the contents of his report. He was then cross-examined by Ms Gibbons at some length. He

acknowledged his report did not specifically refer to the expert evidence provisions at rule 19 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') nor the valuation provisions at Schedule 6 to the Act. He was challenged on his use of R2's rental income loss, as this is not referred to in Schedule 6 but said this was fundamental to the valuation exercise. Ms Gibbons' suggested he had not focussed on what would be paid in the market for the Acquired Head Lease, as required by paragraph 6 of Schedule 6. He disagreed, contending the market value was based on the factual background including the rental income.

34. Mr Balcombe did not include the rents for the Acquired Camden Flats when arriving at his Head Rent apportionment, on the basis R2 will continue to receive this income following the disposal of the Acquired Head Lease.

35. Ms Gibbons suggested Mr Balcombe had reverse engineered his apportionment by focusing on the ground rents for the Acquired Long Lease Flats and had neglected to consider a sale in the market. A willing seller would not devalue their retained interest in the Head Lease by apportioning only £50 per annum to the interest being sold. Mr Balcombe's apportionment would be a "*great deal*" for R1, as it would sell one of the eight blocks but only lose £50 of Head Rent. However, it would be bad deal for R2 at it would continue to pay all but £50 of the Head Rent, increasing the burden on the other blocks at the Estate and devaluing its retained interest.

36. Ms Gibbons questioned why Mr Balcombe's apportionment did not reflect the rent review provisions in the Head Lease. Many of the RTB leases had been granted by the time of the 2005 review but this had no bearing on the review, as this was based on the cleared site rental value of the Estate. The rents receivable by R1 have no bearing on the Head Rent.

37. Mr Balcombe's answer was that but for the RTB sales, the rental income from the 88 flats would substantially exceed the current Head Rent. This income has reduced dramatically due to those sales but R2 has been compensated by way of premiums for the underleases. Further, R2 could increase the rents on the remaining public sector tenancies, albeit there might be a limit to the rents that can be charged.

38. Mr Balcombe accepted the apportioned Head Lease Rent for the Acquired Long Lease Flats would be £37,283 pa, if the apportioned Head Rent for Block E is £50,118 pa. as advanced by Mr Marr-Johnson. However, he disputed this apportionment approach as it would be unfair to R1.

39. The general thrust of Ms Gibbons' cross-examination was that Mr Balcombe had not valued the Acquired Head Lease in accordance with

paragraph 6(6) of Schedule 6. Rather, he had focused on the final outcome (the price payable for that interest) and worked back to ensure the price was fair and logical.

40. Ms Muir briefly cross-examined Mr Balcombe on his option 3, suggesting a hypothetical purchaser would not pay £888,750 for a block of eight flats, where the only income was £50,118 pa. He did not accept any flaw in his methodology. Rather, he stood by this figure as R2 would be losing c£50,000 of rental income and must be compensated for this. The high figure arises from the onerous rent review provisions in the Head Lease.

41. In re-examination, Mr Balcombe confirmed the only difference between his options 2 and 3 was the application of the netting off provisions. Option 2 includes netting off. Option 3 does not. In both options, the value of R1's interest (ignoring marriage value) is £842,755.

42. In response to my questioning, Mr Balcombe said he was unsure of the basis for the counternotice figure (£860,000) but believed this had been proposed following input from R2.

43. Mr Marr-Johnson spoke to a report dated 01 October 2026, which referred to both Rule 19 of the 2013 Rules and Schedule 6 to the Act. He adopted much of the terminology in Mr Balcombe's report, with his valuation being option 2 (£124,660 all payable to R1). Assuming the Head Rent for the Acquired Camden Flats remains payable after the collective enfranchisement, there is no diminution in value for R1 or R2 for the duration of the Head Lease. It is therefore necessary to apportion the Head Rent to identify the amount payable for these flats. Once this done, all other valuation factors for these flats can be ignored (with the exception of their limited FHVP values) for the period to the expiry of the Head Lease.

44. Mr Marr-Johnson considered four methods to apportion the Head Rent:

Method A - apportion the rent in accordance with the rent schedule attached to the Head Lease

Method B – split the rent equally by the 88 flats on the Estate

Method C – split the rent equally by the total number of secure (public sector) tenancies

Method D – apportion the rent based on the RVs for all flats on the Estate, as currently listed with R1.

45. Mr Marr Johnson identified problems with each of methods A, B and C (rent schedule incomplete, varying sizes and values of individual units/blocks and acquisition of a significant number of units on RTB leases) but not method D. He adopted the latter approach, which

resulted in an apportioned Head Rent for Block E of £50,118 pa. A table setting out the various RVs is included in his report.

46. Based on an apportioned Head Rent of £50,118 pa, the apportioned rent for the Acquired Long Lease Flats (also based on RVs) is £37,283 pa. The difference (£12,835 pa) is the Head Rent proportion that R2 would continue to pay for Flats 85 and 86. These figures produce a freehold value of £842,755 and an Acquired Head Lease value of minus £759,243. Mr Marr-Johnson has applied the netting off provisions at paragraph 14(2) of Schedule 6, so the negative value of the latter is deducted from the positive value former, following the approach of the Upper Tribunal ('UT') in ***Trustees of the Alice Cooper-Dean Charitable Foundation v Greensleeves Owners Ltd [2015] UKUT 320 LC***. This leaves a freehold price of £124,650, all payable to R1. Given the value of the intermediate leasehold interest ('ILI') is a negative amount, the sum payable to R2 is nil in accordance with paragraph 14(1).

47. Mr Marr-Johson did not prepare a valuation based on option 3, as the resulting price would be so large the collective enfranchisement claim would collapse.

48. Mr Marr-Johnson verified the contents of his report and was then cross-examined by Mr Fieldsend, also at some length. He was unable to comment on the calculation of the current Head Rent, as he was not involved in the 2005 review. In relation to his four apportionment methods, he only listed shortcomings for A, B and C, as he could not identify any failings for D. He explained that A's valuer, Mr Harding, had some input in the method D calculations, having suggested an adjustment for the garages and bike sheds. He accepted this method was not perfect. Ideally, the apportionment would be based on the market value of all flats, but this approach was unrealistic due to access issues and the substantial work involved.

49. Mr Marr-Johnson accepted the RVs are historic and might not reflect the current condition of the flats. There was also a data issue in that one RV was missing and had to be estimated. However, he considered method D the best of the four approaches. He had not included Mr Balcombe's approach, as an apportionment method, as this did not address the Head Rent.

50. Mr Fieldsend challenged Mr Marr-Johnson's valuation approach, suggesting it was not based on a hypothetical negotiation as required by Schedule 6. There is no mention of this, nor the apportioned Head Rent that would be agreed on such a negotiation, in the report. The apportionment would have to be agreed by the hypothetical freeholder, hypothetical head lessee and hypothetical purchaser. The report does not say the hypothetical negotiation would lead to the RV approach. Further, there is no valuation analysis of the loss of ground rent from the Acquired Long Lease Flats.

51. Mr Marr-Johnson was also questioned on the shortfall between the current Head Rent and the rents receivable. He could not say if R2 was achieving maximum rents for the public sector tenancies but accepted the current rents for Flats 85 and 86 are below market value. He also accepted the negative rental flow does not automatically mean the Head Lease has a negative value. The hypothetical purchaser would look at the rents it could achieve, not just current rents, and any other ways to extract value.

52. Based on Mr Marr-Johnson's apportionment, the Acquired Head Lease has a negative value of £759,243. Mr Fieldsend suggested the apportionment would be unattractive on a hypothetical negotiation. The hypothetical head lessee would have to pay a reverse premium over £700,000 and the hypothetical freeholder and hypothetical purchaser would both be concerned the reverse premium might be insufficient to meet the rent shortfall of c£37,000 pa (the difference between the apportioned Head Rent for the Acquired Long Lease Flats and the ground rent income).

53. Ms Muir cross-examined Mr Marr-Johnson on the rent review provisions in the Head Lease, suggesting they were unusual and reviews are typically based on market rents. He accepted the provisions were generous from the landlord's perspective and R1 had benefitted from the reviewed rent for the last 20 years.

54. In re-examination, Mr Marr-Johson said apportioning the Head Rent based on the ground rents was not appropriate and hypothetical parties in the market would follow his methodology.

55. A's valuer, Mr Harding, did not produce an expert report nor attend the hearing. However, the main bundle included his valuation calculation. His figures are slightly different to Mr Marr-Johnson's, resulting in a total freehold price (after netting off) of £117,676. However, he signed the joint statement which agreed the price at £124,650, based on R2's apportionment.

Closing submissions

56. All three counsel made oral submissions, refining and expanding on their skeleton arguments. It is convenient to deal with the these in two parts; (a) Head Rent apportionment and (b) netting off. The latter included arguments under the Human Rights Act 1988 ('HRA') and Article 1 Protocol 1 ('A1P1') of the European Convention on Human Rights.

57. As to apportionment, I queried if the Tribunal was constrained by the two approaches advanced by the valuers or whether we could adopt an alternative approach. In her submissions, Ms Gibbons referred to the UT's decision in ***Arrowdell Ltd v Coniston Court (North) Hove***

Ltd [2007] LRA/72/2005. At paragraph 23, the Tribunal identified "*three inescapable requirements*" for the use of the Tribunal's knowledge and experience:

"*Firstly, as a tribunal deciding issues between the parties, it must reach its decision on the basis of evidence that is before it. Secondly, it must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. Thirdly, it must give reasons for its decision.*"

The only apportionment evidence was the that from the valuers, so the Tribunal must adopt one of their apportionments.

Head Rent apportionment

58. Referring to Mr Balcombe's report, Ms Muir said A was "*agnostic*" on options 1 or 2, as there was little difference in the sums payable by her client, with option 1 slightly lower. She identified two major difficulties with option 3. Firstly, it does not take account of the netting off provisions at paragraph 14(2) of Schedule 6 and secondly, it gives rise to a figure that is not the market value. The hypothetical purchaser would not pay £888,750 for the freehold and Head Lease interests and this figure cannot be right.

59. In his skeleton, Mr Fieldsend referred to the relevant common law principles on apportionment, as summarised at sections 7:142-144 of ***Woodfall: Landlord & Tenant.*** Where there is a severance by conveyance of the reversionary estate in any land comprised in a lease every condition contained in the lease shall be apportioned. On an assignment of part of the reversion, the assignor and assignee may apportion the rent as between themselves, but this will not bind the tenant unless it agrees or the apportionment is made by the court. Where there has been an assignment of part by the tenant, the provisions of the Landlord and Tenant (Covenants) Act 1995 only apply to a 'new tenancy' granted from 01 January 1996, so do not apply here.

60. Section 7:144 of ***Woodfall*** explains that on an assignment of part by the tenant, "*the amount of rent which the landlord is entitled to recover from an assignee of part is that part of the whole rent which the court thinks fairly attributable to the part in question, and not necessarily the part of the rent which the assignees have agreed between themselves*." I queried if the hypothetical negotiation would take account of the likely outcome of any court proceedings (to determine the apportionment). Mr Fieldsend thought not but accepted the negotiated apportionment must be fair.

61. Mr Fieldsend's skeleton explained the Tribunal's must determine the apportionment the parties to the hypothetical negotiation would agree. This jurisdiction derives from s.91(1) of the Act. Apportionment is required to determine price (s.91(2) and/or (e)). The parties to the

hypothetical negotiation would be R1 as the disponor of the reversion of part, R2 as the assignor of part of the Head Lease and A as the disponee of part of the reversion and assignee of part of the Head Lease.

62. In his oral submissions, Mr Fieldsend highlighted that Mr Marr-Johnson's report did not refer to a market valuation or address what would be in the mind of the parties in the hypothetical negotiation. All three would have to agree the apportionment of the Head Rent. They would not agree £50,118pa as this would lead to a significant shortfall between the rent payable and the rents receivable. This shortfall would require R2 to pay a substantial reverse premium, A would be concerned the reverse premium might be insufficient and R1 would be concerned as to A's ability to cover the shortfall over the remaining term. On the other hand, Mr Balcombe's apportionment is neutral and would not shift the burden onto the retained parts of the Estate, as the reduction in the rent payable was the same as the reduction in the rents receivable.

63. In her skeleton, Ms Gibbons explained that Mr Marr-Johnson had apportioned the Head Rent on the assumption the current use of the site is optimal. In the absence of an alternative, justifiable means of apportionment, the RV method is an entirely appropriate approach that would be accepted by the parties and the market. Whilst this produces a negative value for the Acquired Head Lease, it is still a market value for which a reverse premium would be paid by the hypothetical purchaser.

64. Ms Gibbons rejected Mr Balcombe's approach as there is no justification for an apportionment based solely on the ground rents receivable for the Acquired Long Lease Flats. The Head Rent bears no relation to these rents and the perceived unfairness (to R1) is a product of netting off, rather than apportionment. It arises the from the RTB legislation, which has led to a significant shortfall between the Head Rent payable and the rents receivable, and paragraph 14(2). It is not of R2's choosing or making. Further, it has always been open to R1 to agree to accept a lower Head Rent to avoid the creation of a negative value, but it has chosen not to do so.

65. Ms Gibbons acknowledged there is no legal guidance on how to apportion Head Rent, but referred to ***Smith v Jafton Properties Ltd [2011] EWCA Civ1251***, which considered the effect of severance. At paragraph 28 Lewison LJ concluded:

"*In my judgment the cases thus far establish the following propositions at common law:*

i) The assignee's liability to pay the rent and perform the obligations of the lessee depend on privity of estate alone;

ii) If the assignee is the assignee of part only of the leased property then the rent and other obligations for which he is liable are those referable to the part of the leased property assigned to him;

iii) He is not liable for the rent or other obligations referable to the part of the property that has not been assigned to him;

iv) The rationale for these propositions is that the assignee only has privity of estate as regards the part of the lease property of which he is the assignee. He has no privity of estate as regards that part of the leased property that has not been assigned to him;

v) *The landlord may enter any part of the lease land and distrain for the rent for the whole. But the remedy of distress has nothing to do with privity of estate, save to the extent that a relation of landlord and tenant must exist*."

66. Applying these propositions, the hypothetical purchaser of the Acquired Head Lease Interest would be liable to pay the Head Rent referrable to the part of the lease property assigned to him. There is no suggestion the Head Rent should be apportioned with reference to the rents receivable.

67. In her oral submissions, Ms Gibbons contrasted the two valuers' approaches. Mr Marr-Johnson's report did not explicitly refer to a hypothetical sale in the market, but it did refer to Schedule 6, and this was the basis of his valuation. The relevant question is what the Acquired Head Lease would sell for in the market. This requires an apportionment of the Head Rent. Mr Marr-Johnson looked at the rent review clause, the rent payable under the Head Lease and how this should be split. Conversely, Mr Balcombe does not appear to have followed Schedule 6. There is no mention of this schedule in his report, which focuses on the loss of rental income for R2 and what is fair. Neither of these factors is referred to in Schedule 6. They may be relevant, but the correct approach is to look at the hypothetical sale by a willing seller and how the market would apportion the Head Rent.

68. Ms Gibbons highlighted the seller would retain the remaining parts of the Head Lease and following completion and there will be three separate interests in the Head Lease: (a) the retained parts with the same landlord and tenant, (b) the Acquired Camden Flats with the same tenant but a different landlord and (c) the Acquired Long Lease Flats with a different landlord and tenant. On a hypothetical sale the landlord would be thinking about the value of the retained parts with a view to future sales.

69. Ms Gibbons contrasted the valuers' differing approaches. Mr Balcombe's apportionment of £50 pa is the same for Block E and the Acquired Long Lease Flats. Mr Marr-Johnson's apportionments (£50,118 and £37,283 pa) would necessitate a reverse premium over £700,000 but this is no less a function of the market and no less of a premium. Mr Balcombe says this is unfair to A but there is no unfairness at the point of apportionment. Rather it only arises at the second stage (netting off).

70. Mr Balcombe's approach would reduce the Head Rent payable by R2 by only £50 pa. This would leave a shortfall of £43,782.68 pa between the rent payable (c£454,495) and the rents receivable for the remaining 80 flats (£410,352.32). This would lead to a significantly higher reverse premium than Mr Marr-Johnson's approach.

71. As to the high price for option 3, Ms Gibbons submitted that paragraph 14(2) is directed at precisely this type of unfairness.

Netting off

72. I summarise Mr Fieldsend's submissions first, as it is R1 that relies on HRA arguments. He addressed these in some detail, both in his skeleton and oral submissions. Ms Muir and, to a lesser extent, Ms Gibbons, responded in their oral submissions.

73. The netting off issue only arises if the Tribunal adopts Mr Marr-Johnson's apportionment in which case R1's freehold interest (excluding its 50% share of Marriage Value for Flat 83) is valued at £842,755. In Mr Fieldsend's words "*netting off does not alter or dilute this interest*". The HRA arguments arise because, if netting off applies as R2 contends, R1 will not receive £842,755 for the freehold.

74. In that event, R1's case is:

(a) On ordinary principles of statutory construction that is not how the statutory exercise operates. This argument was rejected by the UT in ***Greensleeves***, so R1 does not argue the point before the Tribunal but reserves the right to do so on any appeal.

(b) Alternatively, if netting off operates as R2 contends:

(i) R1 will not receive compensation reasonably related to the value of its expropriated freehold interest,

(ii) that offends A1P1,

(iii) S.3 HRA requires the Tribunal to interpret the legislation in a way that is consistent with A1P1 so long as this interpretation does not "*go against the grain*" of the legislation,

(iv) S.3 enables a flexible interpretation of the statutory valuation exercise so that in this case there is no netting off,

(v) that interpretation does not go against the grain.

(c) Alternatively, on a conventional interpretation, the amount to be netted off is payable to R1 as compensation as other loss in accordance with the statutory valuation exercise. Again, this argument was rejected by the UT in ***Greensleeves*** and R1 does not argue the point before the Tribunal but reserves the right to do so on any appeal.

(d) Alternatively, a s.3 interpretation of the other loss provisions in the statutory valuation exercise permits payment of that amount to R1.

75. In his skeleton, Mr Fieldsend explained the value of R1's interest is to be determined by applying Part II of Schedule 6 and R2's interest is to be determined by applying Part III. Paragraph 2 sets out the components of the price payable for the freehold. Paragraph 3 provides that the value is "*the amount which…that interest might be expected to realise if sold on the open market by a willing seller….*". Paragraph 5 provides for compensation for other loss.

76. Paragraph 14 provides for netting off, where the value of any intermediate interest is negative. R2 contends this negative value is deducted from the value of any superior interest, when determining the price of that superior interest. If the Tribunal accepts Mr Marr-Johson's apportionment, the value of the Acquired Head Lease is minus £759,243. R2 contends this sum should be deducted from the freehold value (£842,755), relying on paragraph 14(2). This would result in R1 only receiving c£83,000 (excluding 50% of Marriage Value), which offends A1P1. However, that outcome is avoided by a Convention compliant interpretation of paragraph 14.

77. A1P1 states:

"*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

The preceding provision shall not, however, any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.

78. HRA s.3(1) provides:

"*So far as is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights…*".

79. The legal principles that apply to A1P1 were recently considered in ***R. (ARC Time Freehold Income Authorised Funds and others) v Secretary of State for Housing, Communities and Local Government [2025] EWCHC 2751 (Admin); 1 WLR 2373***. They were also considered at paragraph 89 of ***Greensleeves.*** The relevant principles are:

(a) Domestic courts should follow the jurisprudence of the European Court of Human Rights.

(b) A1P1 comprises three rules: (1) the right to peaceful enjoyment of property, (2) a rule against deprivation of possession save in the

public interest and subject to certain conditions, and (3) a rule recognising the state's entitlement to control the use of property in accordance with the general interest.

(c) An exercise of a right to enfranchise involves deprivation of a possession.

(d) Where there is interference with peaceful enjoyment of property, there must be a reasonable relationship between the state's aims and the means it employs. Alternatively, a fair balance must be struck which will not be the case if a party has to be bear "*an individual and excessive burden*".

(e) An assessment of whether the fair balance has been struck, requires consideration of the terms of the compensation payable and the taking of property "without payment of an amount reasonably related to its value" will normally constitute a disproportionate interference that cannot be justified under A1P1.

80. Mr Fieldsend submitted the compensation payable to R1 ceases to be reasonably related to the value of its interest if paragraph 14 operates in the way contended for by R2. The sum it will receive for the deprivation of its freehold interest (c£83,000) will be bear no relationship to its actual value (c£842,000), which is plainly unfair. The taking of property without a payment "*reasonably related*" to its value will normally constitute a disproportionate interference that cannot be justified under A1P1: ***Kanala v Slovakia [2007] ECHR 575***. The compensation must be "*in line*" with the value of the appropriated property: ***Efstathiou v Greece (2006) 43 EHRR 24***.

81. On R2's case, R1's compensation would be reduced by the negative value of the Acquired Head Lease, being a different interest in different ownership. Arbitrary and inflexible rules for reducing compensation are inconsistent with A1P1: ***Papachelas v Greece (2000) 30 EHRR 923***, cited in **R (on the application of Kelsall) v Secretary of State for the Environment, Food and Rural Affairs [2003] EWJC 450 (Admin).** The arbitrary intervention of netting off breaks the necessary link to value.

82. The focus of examination of compliance should be the specific circumstances of the case: ***Vrzic v Croatia (2018) 66 EHRR 30***, so the Tribunal must consider whether the operation of paragraph 14 in the circumstances of this case is compatible with A1P1. If so, can the problem be cured by a process of construction under s.3 HRA?

83. The correct approach to s.3 was considered by the House of Lords in ***Sheldrake v DPP [2004] UKHL43*** and ***Ghaidan v Godin-Mendoza [2004] UKHL 30***. The interpretative obligation is very strong and far reaching, may require the court to depart from the legislative intention of Parliament, may require interpretation "contrary to its actual words" and the process of "*reading down*" can include

reading-in quite lengthy additions framed in language appropriate for a judgment rather than a statute.

84. In this case, Convention compliance can be achieved by a reading down of paragraph 14 to provide that (amongst other possible interpretations): (a) on a proper reading of the provision and on the facts of this case the price payable is £842,755 plus 50% of Marriage Value, (b) that the claimed effect of paragraph 14 does not apply where the intermediate leasehold interest is held by a local authority that has, post grant, granted long leases, or (c) where the ILI is not held by the freeholder or an associated company.

85. A reading of paragraph 14 so as to prevent netting off in this case ensures R1 receives fair compensation reasonably related to the value of its interest, avoids the application of an arbitrary mechanism that breaks this relationship and thus ensures a Convention compliant reading of the provision.

86. An alternative interpretation of Schedule 6 under s.3 HRA which ensures Convention compliance in this case is to write into paragraph 5 words that provide for compensation, which is equivalent to the netted off sum.

87. Mr Fieldsend distinguished the facts in ***Greensleeves***, which concerned a 'two-stage' collective enfranchisement (statutory lease extension claims followed by collective enfranchisement), with a head lease held by a management company in which all flat leaseholders were shareholders. The ground rent under the head lease was £2,400 pa subject to review and the rents under the flat leases, following the statutory extensions, were a peppercorn. This created a negative rental flow, which created a negative value for the ILI of c£200,000. The freehold was valued at c£160,000. Applying netting off meant the leaseholders acquired the freehold for nothing. The UT held this did not offend A1P1, as the reduction in the sum payable to the freeholder was capable of being claimed in the lease extension claims as other compensation under paragraph 5 of Schedule 13. Unfortunately for the freeholder, such compensation had not been sought within the lease extension claims. However, its availability ensured A1P1 compatibility.

88. The current case is not a two-stage collective enfranchisement. It is an "*other possible situation*", as referred to at paragraph 92 of ***Greensleeves***. There is no mechanism in the Act for R1 to claim compensation arising from any netting off, to ensure A1P1 compliance.

89. Ms Muir referred to ***Greensleeves*** in both her skeleton and oral submissions. Two of R1's HRA arguments (paragraph 14(2) can be construed to disregard netting off and any netted off sum should be paid to R1 as compensation for other loss) cannot be pursued before the Tribunal in the light of the UT's decision. At paragraph 51 the UT held

the statutory language is plain and there can be no doubt or dispute as to its meaning. Then at paragraph 53 Sir Keith Lindblom said:

"Paragraph 14(2) is in clear and simple terms. It applies to the situation arising under sub-paragraph (1)(b). That sub-paragraph is also in clear and simple terms. The relevant situation arises when the "value of any intermediate leasehold interest (as determined for the relevant purposes [defined in paragraph 6(1)(b)(i)]) is "a negative amount", so that the value of that interest is deemed for those purposes, to be "nil". In that situation sub-paragraph 14(2) is engaged. Sub-paragraph 14(2) describes the required arithmetic – the subtraction of negative value from positive, leaving none of the negative value out of account but without producing a net value which is less than nil. Mr Rainey did not suggest that there is anything ambiguous or obscure in the language used. Nor could he."

90. Ms Muir pointed out the compensation provisions at paragraph 5 of Schedule 6 only apply to diminution in value or any other loss or damage of the freeholder's interest "*other property*", so cannot apply to Block E. She also pointed out all HRA arguments were rejected in ***Greensleeves***.

91. Turning to the 'reading down' arguments, HRA s.3 only applies where the domestic statute is ambiguous and cannot be used to rewrite or delete legislation. At paragraph 85 of ***Greensleeves***, the UT referred to its decision in ***Nailrile Ltd v Cadogan [2009] 2 EGLR 15*** and the observation of Lord Nicholls of Birkenhead in ***Ghaidan*** that "*the meaning imported by application of section 3 must be compatible with the underlying thrust of the legislation being construed*".

92. Ms Muir submitted that the clear meaning paragraph 14(2) is not contrary to the "*underlying thrust*" of the legislation. The Act confers on leaseholders the opportunity to buy their freehold at the market price. It does not oblige them to pay full compensation to their freeholder.

93. Ms Muir acknowledged that, unlike ***Greensleeves***, this case is not a two-stage collective enfranchisement. However, the distinction is only relevant to the first limb of the s.3 argument. The application of netting off only arises due to the unusual rent review provisions in the Head Lease. It would not arise on a conventional review to a market rate.

94. As to the compensation argument, this issue was raised in ***Greensleeves*** and rejected by the UT.

95. Ms Gibbons limited her HRA submissions, as the application of netting off does not affect R2. She suggested the purpose of paragraph 14 is to redress the balance between freeholders and leaseholders. Netting off the negative value of the ILI against the freehold value is consistent with this purpose. The high freehold value reflects the rental income stream

from the Head Lease, negotiated back in 1964 and an 18-fold increase in the Head Rent in 2005

96. By way of analogy, Ms Gibbons referred to the 'ground rent scandal' affecting properties with excessive/rapidly increasing rents. In ***Arc*** the 1% cap in the Leasehold and Freehold Reform 2024, directed at such rents, was found to be A1P1 compatible.

97. In reply, Mr Fieldsend said it was entirely wrong to liken this case to the ground rent scandal, which involves leases where premiums were paid. No premium was paid on the grant of the Head Lease. The increase in the Head Rent is due to changes in the value of money over time. R1 will lose rental income of c£50,000 (based on Mr Marr-Johnson's apportionment), which leads to the c£842,000 valuation.

98. Mr Fieldsend did not accept a reverse premium would be agreed for the Acquired Head Lease on a hypothetical negotiation. There is no evidence to support this proposition, which assumes the hypothetical purchaser is a local authority and cannot increase the rents for the public sector tenancies.

99. Mr Fieldsend invited the Tribunal to address the HRA arguments in its decision, whether or not R1 succeeds on the apportionment issue.

Freehold value determination

100. The Tribunal determines that the total enfranchisement price payable for the freehold of Block E is £120,250, of which £105,250 is payable to R1 and £15,000 to R2. A breakdown of this figure is given in Mr Balcombe's valuation calculations, copies of which accompany this decision.

Reasons for the Tribunal's determination

101. All parties agree the first step is to determine the apportioned Head Rent for Block E and the Acquired Head Lease. This is a valuation issue and turns on the expert evidence. Having regard to the UT's decision in ***Arrowdell***, the Tribunal must adopt one of the apportionments advanced by Mr Balcombe and Mr Marr-Johnson. Both were credible witnesses with impressive and relevant experience who did their best to assist the Tribunal. However, neither properly grappled with the valuation exercise required by Schedule 6. The value of the ILI is to be determined in accordance with paragraph 7 (paragraph 6(1)(b)(i)). In turn, paragraph 7(i) states that paragraph 3 shall apply. By virtue of paragraph 3(1), the value ILI 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 pay"* subject to the assumptions at sub-paragraphs (a)-(d).

102. This means the apportionment is that which three hypothetical parties (freeholder, head lessee and purchaser) would agree on a hypothetical negotiation, having regard to common law principles. The apportionment must be agreed but, following the reasoning at section 7:144 of ***Woodfall***, must also be fair. This is common sense – none of the hypothetical partes would agree an apportionment that was unfair to them.

103. It is first necessary to apportion the Head Rent for Block E to identify the loss to R1 and determine the freehold price. The difference between this apportionment and the Head Rent is the sum R2 will continue to pay R1 following the collective enfranchisement. It is then necessary to apportion the Head Rent for the Acquired Head Lease, to value this ILI. The difference between the Block E apportionment and the Acquired Head Lease apportionment (if any) is the sum R2 will be liable pay A following enfranchisement

104. Our starting point was to identify the rents receivable by each party following enfranchisement. R1 will receive the Head Rent less the apportioned Head Rent for Block E. R2 will receive the rents for the public sector tenancies, including the two Acquired Camden Flats, plus the ground rents for all long lease flats save the £50 pa for the Acquired Camden Flats. A will receive the difference between the Head Rent apportioned to Block E and that apportioned to the Acquired Head Lease (if any) plus the ground rents for the Acquired Head Lease Flats (£50 pa).

105. The 'deal' to assign part of the Head Lease must go ahead and the Tribunal has a binary choice. It must adopt one of the apportionments advanced by the experts.

106. The reduction in the rents receivable by the hypothetical head lessee is only £50 pa and equates to approximately 0.012% (£50/410,392.32 x 100). This is negligible and would not devalue the retained interest, contrary to Ms Gibbons' submission. Following enfranchisement, the hypothetical head lessee will still receive c99.988% of the previous rent. We find that all hypothetical parties would take this into account in their negotiations. Based on Mr Marr-Johson's evidence, the hypothetical head lessee would look to the hypothetical purchaser to take on £50,118 of the annual Head Rent, necessitating a reverse premium over £700,000, despite only losing 0.012% of it's rental income. We find this highly improbable.

107. It is also highly improbable the hypothetical purchaser, being economically rational, would agree this apportionment, as it would be taking on a liability with a negative rent flow. It would receive a substantial reverse premium but would face the risk this is insufficient to cover the apportioned Head Rent for the remaining 90 years of the

term. Economically, it is very unlikely to go beyond a neutral rent flow as that would be irrational.

108. The hypothetical freeholder is also unlikely to agree this apportionment, as it would be concerned the reverse premium is insufficient and the hypothetical purchaser would run out of funds to pay the apportioned Head Rent.

109. At the valuation date, the shortfall between the rents receivable and payable by R2 was £44,153.13 (£454,545.45 less £410,392.32), which is approximately 10%. Disregarding the enfranchisement claim, this shortfall would reduce over time as the rents for the public sector tenancies increase. Given the duration of Head Lease, it is highly likely the shortfall would turn into a surplus long before the expiry of the term. By way of a sense-check we compared the rents in the schedule accompanying the Head Lease for Flats 85 and 86 (£490 and 330 pa) against the rents on the valuation date (£11,499.28 pa for Flat 85 and £10,931.96 pa for Flat 86. These rents increased more than 20-fold over the 50 years since grant. Further increases can be expected over the remaining term and there will come a point when the Head Lease becomes profitable once again. Again, this is a factor all hypothetical parties would factor into their negotiations. This reinforces our view the hypothetical head lessee would not seek Mr Marr-Johnson's apportionment, requiring it to pay a substantial reverse premium. Rather, it would look to avoid any reverse premium secure in the knowledge the rent flow would become positive over time.

110. Ms Gibbons was critical of Mr Balcombe's apportionment approach as it did not reflect the rent review provisions in the Head Lease but neither did the four approaches considered by Mr Marr-Johson. He simply looked at four options to split the Head Rent and selected the one he considered best, without considering the cleared site rental values of Block E and the Estate.

111. Mr Balcombe's report did not specifically refer to Schedule 6, but his approach is consistent with the valuation requirements of paragraphs 3, 6 and 7. Willing parties to the hypothetical negotiation would seek an apportionment that is "*logical and fair*". Given the hypothetical head lessee would only lose ground rents totalling £50 pa and retain the rents for the Acquired Camden Flats, it is entirely logical to apportion £50 of the Head Rent to Block E and the same amount to the Acquired Long Lease Flats. This would avoid a substantial reverse premium and is a far more likely outcome of the hypothetical negotiation than that advanced by Mr Marr-Johnson.

112. We adopt Mr Balcombe's apportionment. The valuers have agreed agree the resulting enfranchisement price at £120,250 with £105,000 payable to R1 for the specified premises, £250 payable to R1 for the appurtenant land and £15,000 payable to R2 for the Acquired Head Lease.

113. Given our decision on the Head Rent apportionment, it is unnecessary to go on and consider the application of the netting off provisions at paragraph 14 or the HRA arguments. Despite Mr Fieldsend's request, we are unwilling decide these issues, as it would be artificial to do so. We have adopted the apportionment proposed by his client's valuer and are unwilling to go further.

Name: Judge J P Donegan **Date:** 24 November 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

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 2 Acquisition of leasehold interests

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

(a) there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which this paragraph applies by virtue of subsection (2); and

(b) those tenants shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3);

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1(1).

(2) Paragraph (a) of subsection (1) above applies to the interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of a flat contained in the relevant premises.

...

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 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

...

Section 91 Jurisdiction of ... tribunals

(1) Any question arising in relation to any of the matters specified in subsection (2) shall in default of agreement be determined by the appropriate tribunal.

(2) Those matters are –

(a) the terms of acquisition relating to –

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13.

...

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

SCHEDULE 6

PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER

PART II

FREEHOLD OF SPECIFIED PREMISES

...

2 (1) Subject to the provisions of this paragraph where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of –

(a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,

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

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

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

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

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

(a) the nominee purchaser, or

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

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

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

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

...

5 (1) Where the freeholder will suffer any loss of 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 this ownership of any interest in other property.

...

6 (1) Where the nominee purchaser is to acquire one or more intermediate leasehold interests –

(a) a separate price shall be payable for each of those interests; and

(b) (subject to the provisions of this paragraph) that price shall be the aggregate of –

(i) the value of the interest as determined in accordance with paragraph 7, and

(ii) the amount of compensation payable to the owner of that interest in accordance with paragraph 8.

(2) Where in the case of any intermediate leasehold interest the amount arrived at in accordance with sub-paragraph (1)(b) is a negative amount, the price payable by the nominee purchaser for the interest shall be nil.

...

7 (1) Subject to sub-paragraph (2), paragraph 3 shall apply for determining the value of any intermediate leasehold interest for the purposes of paragraph 6(1)(b)(i) with such modifications as are appropriate to relate that paragraph to a sale of the interest in question subject (where applicable) to any lease intermediate between that interest and any lease held by a qualifying tenant of a flat contained in the specified premises.

...

14 (1) Where –

(a) the value of a freeholder's interest in the specified premises (as determined for the relevant purposes), or

(b) the value of any intermediate leasehold interest (as determined for the relevant purposes),

is a negative amount, the value of the interest for those purposes shall be nil.

(2) Where sub-paragraph (1) applies to any intermediate leasehold interest whose value is a negative amount ("the negative interest"), then for the relevant purposes any interests in the specified premises superior to the negative interest and having a positive value shall be reduced in value -

(a) beginning with the interest which is immediately superior to the negative interest and continuing (if necessary) with any such other superior interests in order of proximity to the negative interest;

(b) until the aggregate amount of the reduction is equal to the negative amount in question; and

(c) without reducing the value of any interest to less than nil.

...