LRA/69/2006

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – premium payable for the grant of new underlease of flat – legal status of correction certificate issued by LVT – right of respondents to argue for higher premium than that awarded by LVT in absence of a cross-appeal – right of respondents to argue for higher premium and/or more favourable components of valuation than contended for before LVT – value of extended underlease – value of existing underlease – relativity – uplift to freehold value – whether hope value in tenant's existing underlease to be disregarded – existence of hope value as a matter of fact – premium reduced from £1,154,000 to £1,055,000

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **CHELSEA PROPERTIES LIMITED** **Appellant**

and

EARL CADOGAN
and
CADOGAN ESTATES LIMITED **Respondents**

Re: Flat 5
70-72 Cadogan Square
London,
SW1X 0EA

Before: His Honour Judge Huskinson and Mr N J Rose FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 12/13 July and 16 August 2007

Edwin Johnson QC instructed by Forsters LLP, solicitors, for the Appellant
Mark Sefton, instructed by Pemberton Greenish, solicitors, for the Respondent

The following cases are referred to in this decision:

Cadogan v Sportelli and Others [2006] RVR 382
Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39
Pitts and Wang v Cadogan LRA/79/2006, unreported

DECISION

1. This is an appeal by Chelsea Properties Limited against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Committee, determining the premium payable by the appellant for the grant of a new extended underlease of premises known as Flat 5, 70-72 Cadogan Square, London, SW1X 0EA under the provisions of Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 at £1,154,000. The LVT's decision is contained in a document dated 13 March 2006, as corrected by a certificate dated 12 April 2006, issued under Regulation 18(7) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (or purportedly so corrected – there is a dispute as to the validity of this certificate and the correction effected thereby). The appellant's case was that the premium should be £801,317 (Appendix 1). Although there was no cross-appeal by the respondent freeholders, Earl Cadogan and Cadogan Estates Limited, they contended that the price determined by the LVT should be increased to £1,182,600 or alternatively £1,182,200 (Appendices 2 and 3).

2. Mr Edwin Johnson QC, counsel for the appellant, called one expert witness, Mr K G Buchanan BSc MRICS, a partner in Messrs Knight Frank. Mr Mark Sefton, counsel for the respondents, called two expert witnesses. The first, Mr J M Clark, BSc MRICS, a partner in Messrs Gerald Eve, gave evidence on all aspects of the valuation except the value of the proposed new underlease and the value of the existing underlease. Evidence on those two valuations was given by Ms Frances Joyce, FRICS, an associate partner in Messrs W A Ellis. In company with the two experts we inspected the subject flat internally and externally on 18 July 2007. On the same day we inspected certain other flats which had been referred to as comparables. With one exception all such inspections were external only.

3. From an agreed statement of facts prepared for the purposes of the LVT hearing and from the evidence we find the following facts. Cadogan Square is a prime residential location in central London, within easy walking distance of the restaurant and shopping facilities of Knightsbridge and Brompton Road to the north and west, Sloane Street to the east and Sloane Square and the Kings Road to the south. There are London Transport underground stations at Knightsbridge and Sloane Square and bus routes in Sloane Square, Sloane Street, Kings Road, Knightsbridge and Brompton Road. There is a taxi rank in Sloane Square. There are NCP car parks in Cadogan Place to the east and Pavilion Road to the north. The adjoining property, 68 Cadogan Square, contains Sussex House School, which is a source of noise from children and traffic congestion in the morning and afternoon when children are dropped off and collected.

4. 70-72 Cadogan Square is a converted pair of terraced town houses, built on basement, ground and five upper floors. It is situated on the west side of Cadogan Square, close to its south west corner. The accommodation comprises a caretaker's flat in the basement and twelve private flats, including the subject flat. A two person passenger lift serves all floors. The entrance to the building is off Cadogan Square.

5. The subject flat is located on the first floor and access is gained from the common hallway via stairs and the lift. At the commencement of the existing underlease the

accommodation comprised a drawing room with access to a balcony overlooking the Cadogan Square gardens, a dining room, three bedrooms, two en-suite bathrooms, kitchen and cloakroom/wc. Subsequent to the grant of the underlease, a doorway between the kitchen and the adjacent bedroom was created and the existing door opening from the hallway to the kitchen was blocked up. The effect was that use of that bedroom has been lost and the room is now used for purposes ancillary to the kitchen. The flat is in good repair, with modern kitchen and bathroom equipment. The gross internal floor area of the flat is 2,150 sq ft. The gross area of the balcony overlooking Cadogan Square is 76 sq ft.

6. The flat is held by the appellant under what is effectively a full repairing and insuring underlease for 64 years (less 10 days) from 25 March 1959 at a fixed annual ground rent of £100. The valuation date is 2 July 2004. At that date the unexpired term of the appellant's underlease was 18.7 years. Under the provisions of the 1993 Act the appellant is to be granted a new underlease with a term extended by 90 years beyond the term date of the existing underlease. Upon the grant of the new underlease the ground rent is to be reduced to a peppercorn. It is agreed that the intermediate leaseholder is to be compensated by way of a pro rata reduction in the head rent payable, with no share of marriage value. The loss in rent of £100 per annum will thus be suffered by the respondents, and the capital value of that lost rental income stream has been agreed at £1,197.

7. The valuation matters in dispute between the parties are the value of the appellant's existing underlease disregarding the value of tenant's improvements and the right to enfranchise; the value of the proposed extended underlease disregarding improvements and the relationship between the latter value and the value of the freehold interest in possession.

8. The LVT's decision was issued before the decision of this Tribunal in *Cadogan v Sportelli and Others* [2006] RVR 382. The following matters in particular arise from the subsequent decision in *Sportelli*:

(1) There was at one stage an issue as to the rate at which the freehold reversion should be deferred, but this has now been agreed at 5%, an increase of 0.25% on the rate adopted by the LVT. This deferment rate of 5% has been agreed between the parties for the purposes of the present appeal irrespective of the outcome of the presently pending appeal to the Court of Appeal in the *Sportelli* case.

(2) The Lands Tribunal in *Sportelli* decided that, in valuing the landlord's interest under Schedule 13 to the Act of 1993, no account was to be taken of any hope value or, save as is specifically provided, of marriage value (see paragraph 106). The respondents accept for the purposes of their primary valuation before us that this Tribunal's decision in *Sportelli* is correct upon this point, but they reserve their position on the point in case the Court of Appeal reverses the decision regarding the exclusion of hope value.

9. As a result of the matter raised in subparagraph 8(2) above two separate valuation approaches are relied upon by the respondents:

(1) The respondents' primary valuation involves adopting the *Sportelli* decision and excluding hope value. On this basis the respondents argue that hope value must be excluded not only from the valuation of the landlord's reversion on the existing lease (this follows directly from *Sportelli*) but also by parity of reasoning from the valuation of the tenant's existing lease. The respondents contend that there should be an exclusion of value over and above the exclusion of the rights conferred by the 1993 Act. The argument being that in a no 1993 Act world (where no statutory rights to an extension existed) there would nonetheless be a potential marriage value to be unlocked if the tenant and the landlord voluntarily (rather than under the compulsion of the 1993 Act) came to terms for an extended lease. It was argued that, although the tenant would have (as it was put) in effect to go cap in hand to the landlord, there would be an incentive for the landlord in this no 1993 Act world to do a deal on terms which gave the tenant at least some proportion of the marriage value existing at the date of the deal. Mr Sefton argued that if *Sportelli* is correct regarding the exclusion of hope value from the valuation of the landlord's reversion, then there should also be excluded from the value of the tenant's existing lease not only the value of the 1993 Act rights to an extended lease but also the value of the hope of doing a deal with the landlord in a no 1993-Act world. This approach led the respondents to advance as their primary case a valuation which (consistent with *Sportelli* in the Lands Tribunal) did not seek to add any hope value in the valuation of the landlord's reversion, but which sought to make a reduction to the value which would otherwise be adopted as the value of the tenant's existing lease in order to strip out this alleged hope value. This approach resulted in the respondents contending before us for a value for the existing lease which was lower than that for which they contended before the LVT (namely £916,000 as opposed to £1m).

(2) As a secondary valuation, in order to cover the position reserved by the respondents (namely that the Lands Tribunal decision in *Sportellli* is wrong regarding the exclusion of hope value from the value of the landlord's reversion) the respondents advanced a separate valuation which did not exclude hope value from either the value of the landlord's reversion or from the value of the existing lease. On this approach the value of the existing lease contended for by the respondents reverted to the figure contended for by them before the LVT of £1m, but the value contended for by the respondents for the landlord's reversion on the existing lease increased by a figure said to be reflect hope value. As it turned out the two valuations put forward by the respondents came to very nearly the same figure, the primary valuation being £1,182,600 and the secondary valuation being £1,182,200.

10. Bearing in mind that the correctness of the exclusion of hope value, as decided by this Tribunal in *Sportelli*, is under challenge in the Court of Appeal, we were asked to produce alternative valuations so as to cover the position supposing this Tribunal's decision in *Sportelli* was (a) right and (b) wrong so far as concerns the exclusion of hope value. This approach is consistent with the Lands Tribunal Rules 1996, rule 50(4) and we adopt it.

11. The foregoing points advanced by the respondents regarding hope value gave rise to argument between the parties as to the correct approach in law on certain matters. There was also disagreement in law on certain other matters. It is convenient to set out the points of law which were in contention between the parties and to give our decision upon them (insofar as it is necessary to do so) at this stage.

12. The points of legal disagreement may be summarised as follows:

(1) What is the legal status of the purported correction certificate so far as concerns the addition of paragraph 47A into the LVT's decision (this paragraph sets out the LVT's reasoning for adopting 2% rather than 1% as the uplift to be applied to the value of the extended lease in order to obtain the value of the freehold reversion)?

(2) The respondents have themselves not sought to obtain permission to appeal against the LVT's decision. Mr Johnson referred to this Tribunal's decision in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39. He argued that we should examine in the light of that decision the question of whether the respondents should be entitled before us to argue for a premium higher than that decided by the LVT, bearing in mind that the respondents had not sought to appeal against that decision. Mr Johnson invited us (albeit recognising the weakness of this invitation) to conclude that the respondents should not be allowed to do so and should be limited to arguing for the figure decided by the LVT.

(3) Mr Johnson pointed out that the respondents were seeking to argue before us for a higher premium than they had argued for before the LVT (there they argued for £1,181,850). Mr Johnson contended that in the light of *Pitts and Wang v Cadogan* (LRA/79/2006, unreported) the respondents were not entitled to do so (see paragraph 9 of the decision). Mr Johnson developed this argument further and went on to contend that, consistent with the reasoning in *Pitts and Wang*, the inability in law to argue for a higher ultimate premium than that argued for in the LVT extends to imposing an inability in law to argue for a more favourable figure (ie more favourable to the respondents than that contended for before the LVT) in respect of any of the ingredient values which go to make up the ultimate premium. Mr Johnson contended that, insofar as the respondents' arguments before us transgress this limitation, they should be disallowed.

(4) There is then the question of whether hope value can be included in the value of the landlord's reversion on the existing lease. It was accepted by both parties that this is a matter which was decided in the negative by *Sportelli* and is subject to an appeal to the Court of Appeal. We were therefore invited to follow this Tribunal's decision in *Sportelli* but to produce an alternative valuation in case that decision is held to be wrong.

(5) A further point of law regarding hope value arose which was this. Supposing that hope value exists as a matter of valuation in the value of the tenant's existing lease (ie when valued on a basis excluding 1993 Act rights). Should

> this hope value be stripped out when valuing the tenant's existing lease for the purposes of paragraph 4A of Schedule 13 to the 1993 Act?

13. Point (1). So far as concerns the status of the correction certificate, such an argument might be of significance if the LVT's decision had remained unappealed and a question had arisen as to its true interpretation and effect. However, bearing in mind that there is now this present appeal by way of a re-hearing to the Lands Tribunal, the point can be of no significance. The question whether the proper uplift from an extended lease to the freehold value is 1% or 2% is properly before us for a decision and we have heard evidence and argument upon it. We must reach our own conclusion upon this point. That conclusion will not be influenced by whether there was or was not some irregularity in the certificate from the LVT which added paragraph 47A to the decision (thereby setting out the LVT's reasoning for taking 2% rather than 1% for the uplift). We would in any event observe that the certificate did not purport to alter the ultimate decision by the LVT as to the premium payable. The uplift adopted originally by the LVT in the figures in its decision was 2% and the uplift adopted after the certificate remained 2% – the certificate merely added a previously omitted paragraph of reasoning. Insofar as it is necessary for us to express a conclusion on the validity of the certificate we conclude that it is valid. However, the question of whether the certificate is valid or not has no effect on our ultimate decision as to the appropriate uplift, which we take in the light of the valuation evidence and the arguments which have been advanced.

14. Point (2). This Tribunal in *Arrowdell* recognised the problems for a party (R) to an LVT decision where R does not itself wish to appeal notwithstanding that it was not entirely successful in its arguments before the LVT. It may well be that while R does not itself wish to challenge the LVT's decision, it would wish to resurrect its full arguments if it were taken to the Lands Tribunal by the other side (A). There is no provision under the rules for a cross appeal (ie an appeal by R in response to the grant to A of permission to appeal) and by the time that R gets to know of the grant of permission to appeal to A it will almost certainly be too late for R itself to seek permission to appeal. In *Arrowdell* this Tribunal drew attention to section 175(4) of the Commonhold and Leasehold Reform Act 2002 and observed in paragraph 15:

> "Thus the injustice that would result from there being no provision for cross-appeal in either the LVT Regulations or the Lands Tribunal Rules can be mitigated by virtue of the provision in section 175(4). It is open to the Tribunal to entertain contentions on the part of a respondent that a price more favourable to the respondent than that in the LVT's decision should be determined and to determine such a price. The respondent, however, has no right in this respect. It is a matter for the Tribunal's discretion, and clearly the Tribunal would only exercise the power to make a determination more adverse to the appellant than that of the LVT if it was fair to do so."

15. In the present case we have no hesitation in concluding that the respondents should be entitled to argue for a result more favourable to them than the LVT's decision. The arguments which the respondents seek to advance before us have been made clear in their statement of case since September 2006. There is no question of the appellant being taken by surprise. There is no prejudice to the appellant in allowing the respondents to argue for a figure higher than the LVT decided and no such prejudice had been contended for by Mr Johnson.

16. Point (3). Mr Johnson's primary argument, based on *Pitts and Wang*, is that the respondents are not entitled to argue before us for an ultimate figure for the premium payable which is higher than the figure contended for by the respondents before the LVT. This primary argument has no practical significance in the present case, because the price contended for by the respondents before the LVT was £1,181,850 and the valuations contended for before us by the respondents are only £350 or £750 higher than this figure. Also, and in any event as will be seen from our conclusions on the valuation evidence, the ultimate figure decided upon for the premium payable is lower than the figure of £1,181,850 contended for at the LVT. Accordingly, without re-examining the reasoning in *Pitts and Wang* at paragraphs 9 and 10, we conclude that we should follow that decision and effectively treat the respondents' valuations as each being subject to a footnote that they are limited to £1,181,850.

17. We reject Mr Johnson's more far reaching contention that, not merely are the respondents precluded from contending for an ultimate figure for the premium of more than £1,181,850, but they are also precluded from contending for a figure more favourable to them than they contended for before the LVT in respect of any constituent figure which is part of the valuation process which goes to make up the ultimate premium. We can see no justification for such a limitation either in the words of section 175(4) of the 2002 Act or in *Pitts and Wang* or at all. If such a restriction applied to an appeal to the Lands Tribunal from the LVT such as the present appeal (which happens to be an appeal regarding the premium payable for an extended lease under Schedule 13 to the 1993 Act) the restriction would equally apply to other appeals to the Lands Tribunal from the LVT. In argument we raised with Mr Johnson an example of an appeal to the Lands Tribunal from a decision by the LVT regarding service charges, where the landlord was forced to concede before the Lands Tribunal that an item of expenditure had been placed in a wrong category in that it had been treated as, say, repairs under the repairing covenant rather than as money payable by way of a contribution to a sinking fund or towards garden maintenance. It would be extraordinary if the expenditure had to be removed from the ingredient figure which represented repairs, but could not be added into the ingredient figure regarding payments to a sinking fund or towards garden maintenance on the basis that this would be allowing the landlord to contend for a higher figure for one ingredient figure than was contended for in respect of that ingredient before the LVT. There is nothing either as a matter of law or as a matter of fairness which requires the respondents to be limited in this manner – indeed we consider it would be unfair to the respondents so to limit them.

18. Point (4). No decision from us is required on this point (see paragraph 12(4) above). We proceed on the basis that this Tribunal's decision in *Sportelli* was correct in concluding that hope value was to be excluded from the valuation of the freehold reversion under paragraph 3 of Schedule 13 to the 1993 Act.

19. Point (5). This point only arises as a matter of practical significance if, contrary to Mr Johnson's arguments, the valuation evidence is such as to indicate the existence of hope value in the value of the existing underlease (ie in the value of the existing underlease when valued ignoring the rights under the 1993 Act). As is shown below when we turn to the valuation evidence, we have concluded that on the state of the evidence in the present case we are not satisfied that such hope value exists and, further, even if such hope value does exist as a matter

of theory we are unable to conclude that it can properly be represented by any particular identifiable sum of money. Accordingly point (5) is in fact of no significance to the ultimate outcome of the case. However, as the point has been argued, and in case matters should develop such that out conclusion on this point hereafter becomes relevant to the present case, we consider we should express our conclusions upon it. Mr Johnson contended that there was a distinction between the exclusionary words in paragraph 3 of Schedule 13 as compared with those in paragraph 4A of Schedule 13 such that, on the assumption that this Tribunal's decision in *Sportelli* is correct and hope value is to be excluded from the value of the landlord's reversion, there was no justification for reaching a similar conclusion to the effect that hope value (if it existed) should also be excluded from the value of the tenant's existing lease. Mr Johnson drew attention to the fact that, while the wording of paragraph 4A required the existing lease to be valued on the assumption that the landlord was not one of the persons seeking to buy, there was nothing to require the existing underlease to be valued on the assumption that the purchaser from the tenant of its existing underlease would not, immediately after such purchase, seek to do a deal with the landlord by way of buying from the landlord an extended underlease. There being no express wording requiring this disregard to be made, Mr Johnson contended that it should not be made. However, a similar argument could be advanced regarding the wording in paragraph 3 concerning the valuation of the landlord's reversion. While it is to be assumed that neither the tenant nor any owner of an intermediate leasehold interest is buying or seeking to buy, it is not stipulated that the purchaser of the landlord's reversion will not seek to buy in the tenant's lease (ie by taking a surrender), thereby enabling the purchaser to enjoy the marriage value by granting a fresh long lease to a new lessee. However, despite this gap in what has to be disregarded, the Lands Tribunal in *Sportelli* has concluded that hope value must wholly be disregarded so far as concerns the valuation of the freehold reversion. By like token, assuming that the Tribunal's decision in *Sportelli* is correct, we conclude that hope value (ie the value representing the possibility of a deal being done between landlord and tenant) must be disregarded so far as concerns valuing the tenant's existing underlease.

Extended underlease – evidence

20. Mr Buchanan considered that the value of the extended underlease in the subject flat was £1,997,500, or £929 per sq ft. This was based on a consideration of six open market sales which may be briefly summarised as follows:

Address	Floor	GIA Sq ft	Date of Sale	Adjusted price per sq ft
Flat 3, 37 Cadogan Sq	2	1,374	Feb 2004	£952
Flat 6, 70/72 Cadogan Sq	1	1,395	Jul 2005	£933
78 Cadogan Sq	1 & 2		Sep 2005	£638
66 Cadogan Sq	G & 1	1,097	Mar 2006	£775
Flat 11, 78 Cadogan Sq	1	958	Apr 2004	£927
Flat 3, 74 Cadogan Sq	1	878	Oct 2003	£854

21. Mr Buchanan pointed out that the flat at 66 Cadogan Square was situated at the rear of the building and would therefore command a lower value. He also relied on two enfranchisement settlements, incorporating the following extended lease values:

Address	Floor	GIA sq ft	Date of Sale	Unadjusted price per sq ft
Flat 3, 70/72 Cadogan Sq	G	2,012	Jul 2005	£863
Flat 6, 70/72 Cadogan Sq	1	1,395	Nov 2004	£931

22. Mr Buchanan added that, in a recent collective enfranchisement claim, he had agreed to accept the freehold valuation of £1,815,000 by W A Ellis (Ms Joyce's firm) for flat B, a first floor flat at 23 Cadogan Square, which had been improved and modernised to a high standard. This reflected a value of £1,171 per sq ft in October 2005. The flat was situated at the north eastern end of the square. If a deduction of 20 per cent were made for condition, the resulting values of the unimproved flat were approximately £937 and £927 per sq ft for the freehold and long lease respectively.

23. In Mr Buchanan's opinion, the sale of flat 6, 70/72 Cadogan Square in July 2005 provided the most reliable evidence. It related to the adjoining flat in the same building as the subject flat. The purchaser paid £1m for the existing lease, together with the benefit of a notice of claim for a lease extension, for which a premium of £650,000 was agreed. The total consideration of £1,650,000 accurately reflected the value of the extended lease if offered for sale on the open market.

24. Mr Buchanan considered that the best evidence of leasehold value must be derived from the market rather than from settlement evidence. Settlements might be used as a check where there were market transactions and only as primary evidence where there were no such transactions available.

25. In his evidence to the LVT Mr Buchanan said that his investigations had shown that there was a dearth of evidence of sales of long leases of first floor flats in Cadogan Square. He therefore considered sales of long leases of second floor flats and made adjustments to reflect their relative positions in the building. In his evidence before us, Mr Buchanan explained that he and Miss Joyce had subsequently become aware of a number of additional comparables, including flat 11 on the first floor of 78 Cadogan Square, flat 3 on the first floor of 74 Cadogan Square and the ground and first floor flat at 66 Cadogan Square. He also included details of lower ground/ground floor units to illustrate the difference in value between improved and unimproved units, but not as direct comparables.

26. Ms Joyce's extended lease valuation was £2,335,000, equating to £1,086 per sq ft. Miss Joyce restricted her choice of comparables to sales of first and second floor flats. Since she was only able to find one comparable sale in Cadogan Square, she also had regard to sales of comparable flats in Cadogan Gardens and Lennox Gardens. Her comparables may be summarised as follows:

Address	Floor	GIA sq ft	Date of Sale	Adjusted price per sq ft
Settlement				
Flat 6, 70/72 Cadogan Sq	2	1,395	Nov 2004	£1,093
Sales				
Flat 3, 27 Lennox Gdns	1	1,442	Sep 2004	£ 953
Flat 4, 3 Lennox Gdns	1	2,158	Aug 2004	£1,331
Flat 4, 35 Lennox Gdns	2	1,450	Jul 2004	£1,231
Flat D, 41 Lennox Gdns	2	1,334	Jun 2004	£1,249
Flat 3, 37 Cadogan Sq	2	1,374	Apr 2004	£1,042
31 Lennox Gdns	1	1,282	Jan 2004	£1,112
Flat 8, 75-77 Lennox Gdns	2	2,101	Dec 2003	£1,196
17 Lennox Gdns	1	1,051	Oct 2003	£ 837

27. Ms Joyce made the following adjustments to the prices paid in each case. For time, she used the Savills PCL South West Flats Index. For lease length she took account of the Gerald Eve/John D Wood & Co 1996 Graph and the WA Ellis Schedule of Relativities. She allowed 2½% for 1993 Act rights when analysing the sale of the 77 year lease of flat 4, 3 Lennox Gardens (the remaining flats all having unexpired terms of 94 years or more). She deducted 12½% to reflect the fact that flat 4, 3 Lennox Gardens, flat 4, 35 Lennox Gardens, flat 3, 37 Cadogan Gardens and the first floor flat, 17 Lennox Gardens had all been modernised and 7½% to reflect the partial modernisation of flat D, 41 Lennox Gardens, the first floor flat at 31 Lennox Gardens and flat 8, 75-77 Cadogan Gardens. She did not make an adjustment in respect of flat 3, 27 Lennox Gardens, because she offset the value attributable to improvements against the large amount outstanding on the service charge. She considered that generally a second floor flat was worth 15% less than a first floor flat. She therefore added 17.65% to the prices paid for second floor flats in order to express them in terms of first floor values. She deducted 7½% from the price paid for flat 3, 37 Cadogan Square to reflect its location on the more popular east side of the square and added 5% and 10% respectively to prices paid in Cadogan Gardens and Lennox Gardens to reflect the superior location of Cadogan Square.

Extended underlease value – conclusions

28. It is clear from our inspection, as it was to the LVT, that most properties in Cadogan Square have a "principal floor", with markedly higher ceilings and balconies at the front. The principal floor is usually at first floor level, but is on occasions at raised first or second floor level, depending on the individual design of the building. The principal floor is plainly the most desirable location, at whatever height it is above the ground.

29. In our judgment, the most useful evidence of value is provided by transactions involving premises which, like the subject flat, are located on the principal floor of the building. Four such premises have been referred to in Cadogan Gardens and four in Lennox Gardens.

30. Of these, Flat 6, 70/72 Cadogan Gardens is the closest geographically to the subject flat, being situated adjacent to it and in the same building. Although both experts relied on this flat

as a comparable, there was a significant difference in their approach to it. Mr Buchanan described it as being, like the subject flat, on the first floor. He therefore made no adjustment to reflect any difference in floor level. Ms Joyce, on the other hand, considered flat 6 to be on the second floor and she made the same adjustment to it, 17.65%, that she had made to all the second floor comparables.

31. In the light of our inspection of the front elevation of 70/72 Cadogan Square and our internal inspection of its common parts, we are satisfied that flat 6 is properly to be described as being on the second floor of the building although, since the height of the first floor of No. 72 appears to be unusually low, it could be said to be one and a half storeys above ground level. Access to flat 6 is inferior to the subject flat. It is necessary to climb more stairs to gain access to flat 6 and it is also necessary – in contrast to the subject flat – to climb a staircase to reach the lift which serves flat 6. Moreover, it appears from Ms Joyce's uncontested evidence that, internally, flat 6 suffers from certain disadvantages. The main reception room in the subject flat is the full width of No.70, whereas the front reception room in flat 6 is narrower, because the kitchen takes up part of the width of No.72. In addition, the ceiling height in the main reception room is greater in the subject flat (12 ft) than in flat 6 (10 ft 8 ins). Finally, although we were unable to inspect the interior of flat 6, it is apparent from our external inspection that the front balcony of the subject flat is larger.

32. In our opinion, some adjustment is necessary to reflect the inferiority of flat 6. We consider, however, that flat 6 is significantly more valuable than most other flats on the second floor of buildings in Cadogan Square, Lennox Gardens and Cadogan Gardens, which have been cited as comparables and which Ms Joyce has also adjusted by 17.65%. Unlike those flats, flat 6 has the significant benefit of being on the principal floor of the building and having a balcony. We bear in mind that the subject flat is on three levels. In our judgment, flat 6 is 10% less valuable per square foot than the subject flat. It is therefore necessary to add 11.11% to the value shown by transactions relating to flat 6.

33. Both experts relied upon the extended lease claim for flat 6, made on 18 December 2004, which was settled in November 2005 at a premium of £655,000. Ms Joyce suggested that the settlement was based on an extended lease value of £1,300,000 (£932 per sq ft) in repaired (as opposed to improved) condition. Mr Buchanan did not materially disagree with that analysis. Ms Joyce made two adjustments to the figure of £1,300,000; a minor deduction to reflect the fact that the valuation date was four and a half months later than in the present appeal, and 17.65% to reflect the difference in floor level. Mr Buchanan suggested that the agreed valuation supported his valuation of the subject flat at £929 per sq ft.

34. As we have said, we consider it appropriate to reflect the relative disadvantages of flat 6 by adding 11.11%. The agreement on flat 6, upon which both experts rely, therefore suggests that the value of the subject flat was £1,032 per sq ft, as follows:

Value of extended lease	£1,300,000
Adjusted for time	£1,295,939
Adjusted for floor level at 11.11%	£1,439,918 = £1,032 per sq ft

35. Mr Buchanan also supported his valuation by reference to the open market sale in July 2005 of the existing lease of flat 6 for £1,000,000, to which he added the premium of £650,000 agreed for the lease extension (in fact it was £655,000) The background to this transaction is as follows. Notice requiring the grant of an extended lease was served in November 2004. In May 2005 agreement was reached between surveyors that the premium for the extended lease should be £596,500. Terms were then agreed to sell the extended lease for £1.7m. Although that sale did not proceed, Cadogan learned about the agreed figure and refused to agree to the premium of £596,500. The premium was finally agreed at £655,000 after contracts had been exchanged for the sale of the existing lease, with the benefit of the right to an extended lease, for £1,000,000.

36. Mr Buchanan said that the total figure of £1,650,000 paid by the purchaser reflected a value of £1,141 per sq ft "for an improved and modernised first floor flat with a terrace/balcony". He added that at the time of the lease extension the unimproved value of the extended lease had been agreed at £933 per sq ft, implying that the difference of £208 per sq ft was attributable to the improvement and modernisation works. Mr Buchanan had not inspected flat 6 and we have no reliable material on which to judge the value of the improvements which should be deducted from the sale price of £1,650,000. In the circumstances, we think it safer to base our decision on the unimproved value which was actually agreed by the surveyors who negotiated the premium payable for flat 6; a value upon which Mr Buchanan himself relies, and to which we have referred above.

37. Mr Buchanan referred to two other flats on the first floor in Cadogan Square, Flat 11 at No.78 and Flat 3 at No.74. Ms Joyce discounted both on the grounds that, at 958 sq ft and 878 sq ft respectively, they would appeal to a totally different market from the subject flat. We accept Ms Joyce's evidence on this point. The larger of the two flats is only 42.5% of the size of the property with which we are concerned. We agree with Ms Joyce that someone seeking a flat of over 2,000 sq ft would not bother to look at such a totally different property.

38. Finally, Mr Buchanan referred to a valuation prepared in connection with the enfranchisement of flat B on the first floor of 23 Cadogan Square (see paragraph 22 above). Ms Joyce did not think any assistance could be obtained from the valuation which a member of her firm, WA Ellis, had prepared in connection with a collective enfranchisement claim. The lease of the flat had already been extended. Because the freehold value was deferred for such a long time, the impact of the valuation of flat B on the total price payable was insignificant. We accept Ms Joyce's view on this valuation. The price it shows, £927 per sq ft on Mr Buchanan's analysis, is well below the equivalent price which was agreed by WA Ellis on the grant of an extended lease of flat 6, 70-72 Cadogan Square, in circumstances where the valuation would have had a much more significant impact on the premium payable.

39. The other flats on the first (principal) floor referred to in evidence were all located in Lennox Gardens. Ms Joyce considered that they produced the following adjusted values for the subject flat:

Flat 3, 27 Lennox Gardens	£ 953 per sq ft
Flat 4, 3 Lennox Gardens	£1,331 per sq ft
31 Lennox Gardens	£1,112 per sq ft
17 Lennox Gardens	£ 837 per sq ft

40. These analyses incorporated an allowance of 10% for the inferior location of Lennox Gardens. Mr Buchanan relied upon the LVT's conclusion that comparables in Lennox Gardens were not of much assistance, because they had a different style and proportion to the rather more imposing buildings in Cadogan Square and Cadogan Gardens, Lennox Gardens was a busier thoroughfare and there was no evidential basis for Ms Joyce's adjustment of 10% for the difference between the subject premises and Lennox Gardens. As Ms Joyce pointed out, however, the effect of making a greater adjustment for the disadvantages of Lennox Gardens would be to increase her valuation, rather than moving it closer to Mr Buchanan's opinion of value. The four first floor comparables in Lennox Gardens average £1,058 per sq ft. The need to make subjective adjustments for location and style of property means that a valuation based on properties in Lennox Gardens is less accurate than one derived from a flat in Cadogan Square itself, adjacent to the subject flat. Nevertheless, the Lennox Gardens evidence does not suggest that the long leasehold value at which we have arrived based on flat 6, £1,032 per sq ft, is too high. We therefore determine the long leasehold value at £2,218,800, say £2,220,000

Existing underlease - evidence

41. Mr Buchanan's valuation of the existing underlease without 1993 Act rights was £1,225,000 or £570 per sq ft. Ms Joyce's valuation was £1,000,000 or £465 per sq ft.

42. Four sales were referred to by both experts. They may be summarised as follows:-

Address	**Floor**	**GIA sq ft**	**Date of Sale**	**Adjusted price per sq ft**	
				Joyce	Buchanan
Flat 3, 70-72 Cadogan Sq	G	2,012	Aug 2005	£469	£533
Flat 6, 70-72 Cadogan Sq	1 or 2	1,395	Jul 2005	£603	£534
Flat 1, 75-77 Cadogan Sq	1	2,980	Feb 2005	£630	£673
Flat 2, 50 Cadogan Sq	1	1,563	Aug 2003	£536	£579

43. In addition, Mr Joyce referred to the sale of the second floor flat at 42 Cadogan Square and to the sale of the subject flat over three years before the valuation date. Mr Buchanan relied on the sale of the first floor of 9 Cadogan Square some two years after the valuation date. The analyses put forward in respect of these transactions were as follows:

Address	Floor	GIA sq ft	Date of Sale	Adjusted price per sq ft
42 Cadogan Sq	2	1,136	Dec 2004	£617
Flat 5, 70-72 Cadogan Sq	1	2,150	Apr 2001	£428
9 Cadogan Sq	1	1,228	Jun 2006	£669

44. Ms Joyce said that, whilst she had produced details of six transactions for the Tribunal's information, she felt that the most relevant evidence was that relating to three flats in the same building as the subject property. She analysed flat 3 at £469 per sq ft (amended to £479 during cross examination) and flat 5, the subject flat, which was sold more than three years before the valuation date, at an adjusted figure of £428. Thirdly, she disregarded the adjusted value of £603 per sq ft which she had obtained from analysing the price achieved for the open market sale of flat 6 in July 2005. Instead, she relied on the value of £469 per sq ft which she had obtained by analysing the settlement of the November 2004 enfranchisement claim on that flat. The six comparables referred to by Ms Joyce had unexpired terms ranging from 17 years 7 months to 21 years 11 months. She suggested that the difference between the two figures for the same interest in flat 6 supported her view that

> "prices paid in the market for leases with circa 18 years unexpired are well above what can be supported in valuations of those leases in the 'no Act world', especially when the flat in question has been modernised."

45. The remaining differences between the respective analyses of the four common comparables were principally due to the valuers' different approaches to the floor level adjustment for flat 6, 70-72 Cadogan Square; the allowance for Act rights (Mr Buchanan deducted 10 per cent and Ms Joyce 15 per cent) and the adjustments for improvements (Mr Buchanan disagreed with Ms Joyce's view that the impact of the value of improvements was greater in short leases). Mr Buchanan disregarded the sale of the subject flat because it took place so long before the valuation date, and Ms Joyce disregarded the sale of the first floor, 9 Cadogan Square because it post-dated the valuation date by so long.

Existing underlease - conclusions

46. Our conclusions on the differences between the experts' analyses of the comparables are as follows. We do not agree with Ms Joyce's view that a greater percentage should be deducted for the value of improvements in short leases than in long leases. In the absence of any better evidence in respect of the existing lease comparables, we propose to deduct 12.5% for improvements in modernised and 7.5% in partly modernised flats, the percentages used by Ms Joyce when analysing her extended lease comparables. Although, understandably, neither valuer was able to produce market evidence to support their view of the value of Act rights, we find that Ms Joyce's 15% is more realistic. Mr Buchanan said that his estimate of 10% was based on the assumption that a purchaser of the lease would pay one quarter of the marriage value to be released on the lease extension. In cross-examination, however, he accepted that the vendor would require between one quarter and one half of the marriage value. Moreover, in deciding to adopt 10%, he did not appear to have taken account of the advantages which

accrue to the purchaser of an enfranchisable lease, apart from the right to extend the lease and to retain part of the marriage value. These include, among others, the ability to require the lease extension to be granted at a time of the tenant's choosing; at a price determined by a tribunal in default of agreement, based on values at a fixed date; the ability to offer the extended lease for sale at a later date to a much wider market than one limited to those wishing to buy a very short lease, and the ability to defer indefinitely the terminal lease obligations, including in particular a schedule of dilapidations.

47. We agree with Ms Joyce's decision to disregard the sale of 9 Cadogan Square, because it post-dated the valuation date by nearly 2 years. On the other hand, we also agree with her decision to take account of the sale of the lease in the subject premises, having 21 years 11 months unexpired, even though the transaction date, 9 April 2001, was more than three years before the valuation date. It is common ground that transactions taking place at a considerable distance from the valuation date are generally of limited reliability. The reason for our decision to have regard to the sale of the subject flat is that the experts in this case have been able to inspect only a very small proportion of the comparables. Their analyses, therefore, inevitably involve a degree of speculation as to the physical differences between the comparables and the subject property. The need for such speculation is significantly reduced when the comparable and the subject flat are one and the same. This factor in our view tends to offset the disadvantage of the April 2001 transaction date in the particular circumstances of this appeal. In addition, it appears from the available evidence that the market movement in the relevant three year period was small.

48. We agree with Ms Joyce's view that the three transactions in the same building as the subject flat are the most relevant. We consider each in turn. The difference between the experts' analyses of Flat 3 was partly accounted for by the fact that Mr Buchanan added £87,725 to reflect disrepair. This estimate was based on a set of agents particulars which stated that the flat was "in need of complete refurbishment" and a conversation with a colleague who he believed had inspected the flat about 2 years ago. The disrepair was primarily related to concerns that the electrical fittings, although understood to be functioning, did not comply with modern standards and that the hot water system was old. Mr Buchanan accepted that he had made no investigations into the likely costs of remedying these matters. Whilst Flat 3 was unmodernised, we are satisfied that Ms Joyce's allowance of £20,000, or £10 per square foot, which she adopted in cross examination following further investigation into the sale, is adequate to reflect the required basis of valuation, namely unmodernised but in repair. We also prefer Ms Joyce's addition of 17.65% to reflect the ground floor location of Flat 3 to Mr Buchanan's suggested 25%. The latter figure, representing the difference between the ground floor and the first floor, stands in marked contrast to Mr Buchanan's suggestion that the difference between first and second floors was between 5% and 10%. Finally, we have as previously stated decided that Ms Joyce's 15% deduction for Act rights is more realistic than Mr Buchanan's 10%. We therefore accept Ms Joyce's revised analysis of Flat 3 of £479 per sq ft.

49. Mr Buchanan did not produce an analysis of the April 2001 sale of Flat 5 to compare with Ms Joyce's adjusted figure of £428 per sq ft. In arriving at that figure, Ms Joyce deducted 12% to reflect the fact that it was partly modernised at the time of the sale. We consider that the improvements effected to the flat, described in paragraph 5 above, added a very limited

amount to its value. We therefore reduce Ms Joyce's deduction for improvements from 12% to 5%. The effect is that the adjusted price paid for flat 5 was equivalent to £462 per sq ft.

50. The third flat affording comparable evidence in the same building is flat 6. The difference between Ms Joyce's two analyses of the evidence relating to flat 6, £603 and £469 per square foot, is striking. Whilst we have had some difficulty in understanding the reason for this difference, we have concluded that the value of £469, based on the valuation of the existing lease without Act rights prepared by Ms Joyce's own firm at the time of the enfranchisement negotiations, is to be preferred to her analysis of the price obtained for the lease with the benefit of a notice of enfranchisement. Our main reason for this conclusion is that the adjusted valuation of £469 per sq ft derived from the settlement negotiations is consistent with the adjusted values of £479 and £462 which we have obtained from the other two transactions in the same building.

51. Our conclusion, therefore, is that the value of the existing underlease in the subject flat was £470 per sq ft, or £1,010,500, say £1,010,000.

Relativity

52. Our valuation of the existing underlease is equivalent to 45.50 per cent of our valuation of the extended underlease. Ms Joyce made reference to the Gerald Eve /John D Wood and Co. 1996 graph and the WA Ellis schedule of relativities. She said that she had not used the graph and schedule in the first instance to reach the existing leasehold value, but she had used them as a check. Mr Buchanan agreed in cross-examination that the relationship of 61.3% between his two valuations was surprising. Nevertheless, in his view relativity had no part to play in this case, since there was no shortage of market evidence, nor was there any material deficiency in that evidence. He felt that values produced from such evidence should not be trumped by settlements, or by graphs based on the opinions of valuers in the distant past.

53. At our request, graphs of relativity produced by other firms of surveyors and LVTs, and incorporated into a graph of graphs by Messrs Beckett and Kay, were produced. They produced a wide range of percentages for any given unexpired term, which ranged from 36 to 56 per cent in the case of a lease of 19 years. Information about these graphs was incomplete or non-existent and we have concluded that they are of limited assistance in the context of the present appeal. In the course of cross-examination, however, Mr Clark produced a schedule of enfranchisement settlements in Cadogan Square which had been prepared by Mr Buchanan's firm. This showed the relationship between Knight Frank's existing leasehold and freehold values, together with the relationship based on Gerald Eve's valuations, on a variety of valuation dates between February 2004 and January 2005. Contrary to Mr Buchanan's suggestion that the market evidence of existing lease values was unimpeachable, valuers have resorted to the use of graphs because of the general absence of truly open market evidence of short leases in the no-1993 Act world. Against that background, we consider the Knight Frank document to be helpful, because it illustrates the approach adopted recently by experienced valuers acting for landlord and tenant (indeed two of the firms involved with the current appeal) to enfranchisement valuations in Cadogan Square. The table below indicates the

Knight Frank relationship in every case where the unexpired term was between 18 and 19 years. Where the Gerald Eve approach was different, it is shown in brackets.

Unexpired term	**Relativity**
18.07 (18.70)	46.50% (46.2%)
18.20 (18.15)	45.60% (44.4%)
18.32	45.50% (41.46%)
18.58	46.00%
18.68	46.10% (46.08%)
18.77	46.30%
18.90	46.50%
18.92	46.30% (46.40%)

54. We consider that this schedule provides support for the valuations at which we have arrived on the basis of the transaction evidence. In particular, it suggests that our decisions to base the value of the existing underlease only on transactions within the same building, and to adopt a value of £469 per square foot for flat 6 rather than £603, were correct

55. We should add that Mr Buchanan produced a copy of a report by Mr Will Robinson MRICS, prepared in connection with LVT proceedings relating to another property. The report referred to the sale of an unenfranchiseable 20 year lease and a 75 year lease of flats in 29 Eaton Square. It suggested that these transactions demonstrated a relativity of between 68% and 72% between a 20 year lease and a freehold. This single piece of evidence is out of line with all the other expressions of opinion as to relativity to which we have been referred. It suggests a relativity which is significantly greater than the one which Mr Buchanan himself accepted was surprising. We obtain no assistance from the Eaton Square transactions, of which we have received no first hand evidence and which relate to what it appears may be a unique location.

56. In *Arrowdell Ltd v Coniston Court (Hove) Ltd* [2007] RVR 39 this Tribunal expressed the hope that a graph or graphs might be produced by the Royal Institution of Chartered Surveyors which would be used as a starting point in valuations under the 1993 Act. It appears from the evidence of Mr Clark that this work is being carried out.

Relationship between extended underlease value and freehold value

57. In order to arrive at the equivalent freehold value Mr Buchanan made an upwards adjustment of 1% to the long leasehold value. He considered that there was a nominal difference in value between a lease with approximately 108 years unexpired and no ground rent and a 999 year lease with a share of the freehold. There was no open market evidence to demonstrate the extent of the difference. He accepted that there was a difference, but he did not believe it would be more than 1%.

58. Mr Clark said that it was common in leasehold reform valuations to make an adjustment to reflect the greater control attributable to a freehold than a leasehold interest which, although long, remained subject to covenants and obligations. He produced details of a number of settlements where the relativity between the value of existing leases of similar length to the subject flat and the freehold value had been agreed at 98%. Ms Joyce adopted that opinion. She said that, although the length of an unexpired term in excess of 120 years should not make much difference to value, purchasers perceived that a longer lease of, say, only 150 years was more valuable. They felt that they were obtaining more for their money.

59. On this issue we prefer the evidence of Mr Clark and Ms Joyce to that of Mr Buchanan. We make an uplift of 2% to arrive at the virtual freehold value.

Hope value

60. We now turn to our primary basis of valuation as contemplated in paragraph 10 above, namely valuation on the basis that this Tribunal's decision in *Sportelli* is right and that no hope value is to be included in the value of the landlord's reversion on the existing underlease. On this basis of valuation the question arises of whether there is hope value in the existing underlease (when valued ignoring the value of rights under the 1993 Act, see paragraphs 9(1) and 19 above). It is necessary for us to decide this case on the evidence before us. It is possible (although this observation should not be construed as indicating encouragement for the proposition) that in another case on different and fuller evidence a tribunal might decide on the facts of that case that some such hope value had been established. In the present case however the following points may be noted:

(1) Mr Clark dealt with this point by stating that "in theory" an element of hope value should exist in the tenant's existing lease, in that if he knocked on the landlord's door a deal might be done in the no 1993 Act world. However Mr Clark accepted that he had no material to demonstrate any such hope value and he accepted that what he was saying on the point was merely theoretical.

(2) We asked Mr Clark a question on this theoretical hope value when he was making observations regarding the pair of transactions in 29 Eaton Square. He observed that the information he had obtained from those advising the Grosvenor Estate suggested that the voluntary top-up policy pursued by the Grosvenor Estate of offering extension leases in Eaton Square up to a 20 year term (ie their policy of doing so at market value without being under any compulsion to do so) had a significant benefit on the value of leases in Eaton Square and that without such a top up policy the market in short leases would be "dead in the water". We asked Mr Clark whether it was fair to conclude from this answer that, where there existed neither 1993 Act rights nor some proclaimed voluntary top up policy, there was not any or any significant hope value in the tenant's existing lease. Mr Clark accepted that it was fair to draw such a conclusion.

(3) On the question of hope value in the tenant's existing underlease, Ms Joyce accepted that this was indeed a theoretical concept which made sense as an academic point. She agreed that she had not produced any evidence to show the existence of such hope value.

61. We conclude on this evidence that the respondents have not proved the existence of any hope value in the existing underlease – still less have they proved that this hope value can be represented in some ascertainable sum. Accordingly, no adjustment downwards is need to our assessment of the value of the existing underlease in order to strip out any such hope value.

62. We now turn to our secondary basis of valuation, ie assuming that this Tribunal's decision in *Sportelli* was wrong such that hope value (if it exists) is to be added to what would otherwise be the value of the landlord's reversion on the existing lease. Once again we must decide this case on the basis of the evidence before us and nothing we say should be taken to be authoritative in any other case where different evidence may be available. So far as concerns the evidence before us we draw attention to the following:

(1) Ms Joyce stated that she had been involved in property for a long time and had much experience of advising property companies. She stated it was always part of a property company's thinking that a deal might be done with the tenant – such a company is always looking for angles to make a profit. Accordingly she concluded that in the no-1993 Act world there would still be a hope value in the landlord's reversion on the existing underlease. However, she accepted that she had no documentary evidence to support this conclusion and she laid nothing before us to assist with the quantification of such hope value. She accepted that the 10% figure that she had used was "a spot 10%" and that she had adopted that figure "to see what happens – it seemed a possibility and it seemed to make sense".

(2) As regards Mr Clark, he accepted that he did not produce any specific evidence that there would be any such hope value in the landlord's existing reversion – he accepted that either he had no such evidence or it was difficult to analyse properly.

(3) Mr Clark did, however, refer to some evidence given by Mr Cullum in another case regarding the sale of the Henry Smith's Charity Estate which he suggested indicated the existence of some such hope value. There are however various problems with this contention by Mr Clark, which are summarised in paragraphs 9.8 and following of Mr Johnson's written closing submissions, namely:

(a) Mr Cullum has not appeared as a witness in the present case so that his evidence cannot be probed or challenged.

(b) Mr Cullum's evidence in relation to the 13 South Terrace case was given where the tenant was not represented – and his evidence was not challenged in the *Sportelli* hearings nor in the separate determination of the quantum of hope value in the 13 South Terrace case.

(c) In another case in which Mr Cullum did appear and was cross-examined before a leasehold valuation tribunal, the LVT was not persuaded that Mr Cullum had proved the existence of such hope value as alleged.

63. For the foregoing reasons we conclude on the evidence before us that the respondents have not proved the existence of any hope value in the value of the landlord's reversion on the existing underlease.

64. Accordingly no adjustments regarding hope value need to be made to either our primary or secondary basis of valuation which, as a result, become one and the same. We now state our conclusions which involve a single valuation, which is equally applicable upon both of the two valuation bases contemplated in paragraph 10 above.

Conclusions

65. Our detailed valuation is attached (Appendix 4). The appeal is allowed. We determine the premium payable by the appellant for the extended underlease in flat 5, 70-72 Cadogan Square, London, SW1X OEA to be £1,055,000.

Dated: 2 October 2007

His Honour Judge Huskinson

N J Rose FRICS

FLAT 5, 70-72 CADOGAN SQUARE, LONDON, SW1X OEA
VALUATION BY K G BUCHANAN BSc, MRICS

1. Headlessee's existing interest

Term 1

Ground rent					£100	
		Rate	S.F	Tax		
Years purchase	18.70 years at	6.0%	3.0%	0.0%		£1,197

2. Diminution in value of freeholder's interest

Reversion

Unencumbered virtual freehold value			£2,017,475	
Deferred for	18.70 years at	5.0%	0.4016	
				£810,155

Reversion to:

Unencumbered virtual freehold value			£2,017,475	
Deferred for	108.70 years at	5.0%	0.0050	
				£ 10,035
				£800,120

3. Marriage value calculation

Aggregate LL's proposed interests	£10,035		
Tenant's proposed interest	£1,997,300		
Less		£2,007,336	
Aggregate LL's existing interests	£810,155		
Tenant's current interest	£1,225,000		
		£2,035,155	
		(£27,820)	
Landlord's share of marriage value		50.00%	
			(£13,910)

4. Apportionment

Freeholder

Diminution in value		£800,120	
Existing as % of total existing	100.0%		
MV	(£13,910)		
MV apportionment			
Premium payable		£800,120	

Intermediate leaseholder

Existing		£1,197	
Existing as % of total existing	0.0%		
MV	(£13,910)		
MV apportionment		£0	
Premium payable		**£1,197**	
Total premium payable		**£801,317**	

FLAT 5, 70/72 CADOGAN SQUARE, LONDON SW1
PRIMARY VALUATION BY J M CLARK, BSc MRICS

	£	£	£	£	£
A Diminution in value of Intermediate Leaseholder's Interest					
(a) Value of intermediate Leaseholder's Existing Interest					
Headlease expires 18 March 2023 **Underlease expires 15 March 2023**					
Annual rental income from Flat 5	100				
Less Head rent apportioned to Flat 5	100				
Profit rent		0			
Nominal Value of three day Reversion		0			
Value of existing interest				0	
(b) Less					
Value of Intermediate Leaseholder's Proposed Interest (assuming reduction in headrent pro-rata to reduction in underlease rent)					
Annual rental income from Flat 5 (peppercorn)	0				
Less additional Head rent apportioned to Flat 5 from above	0				
Net rent		0			
No loss in value of net rental income			0		
Value of reversion			0		
Value of proposed interest				0	
(c) Diminution in Value of Intermediate Leaseholder's Interest				0	
B Diminution in Value of Freeholder's Interest					
(a) Value of Freeholder's Existing Interest on Reversion					
Headlease expires 18 March 2023					
Headrent apportioned to Flat 5	100				
Years Purchase 18.70 years @ 5.00%	11.9686				
		1,197			
			1,197		
Reversion to value of freehold in possession Value lease with 108.70 years unexpired @ peppercorn rent in amount of £2,335,000					
Adjust to FHVP divide by 98.0%	2,382,653				
Say		2,382,650			
Defer 18.70 years @ 5.00%		0.4016			
			956,872		
			958,069		
(b) Value of Freeholder's Proposed Interest on Reversion					
Current annual rent payable for head lease term remaining unaffected					
Reversion to value of freehold in possession		2,382,650			
Defer 108.70 years @ 5.00%		0.00497			
			11,842		
(c) Diminution in value of Freeholder's Interest				946,227	

C. Diminution in Value of both Landlords' Interests 946,227

D Calculation of Marriage Value

(a) Value of Proposed interests

Freeholder's (from above)			11,842		
Intermediate Leaseholder's (from above)			nil		
Tenant's (from above)			2,335,000		
				2,346,842	

(b) Value of Existing Interests

Freeholder's			958,069		
Intermediate Leaseholder's			0		
Tenant's	% of FHVP:	38.44%	916,000		
				1,874,069	

(c) Marriage Value					472,773
(d) Attributed to Landlord @	50.00%				236,386
E. Premium Payable					1,182,614
				Say	1,182,600
F Landlord's Other Loss					0
G Premium Payable					**1,182,600**

H Apportionment of Marriage Value and Premium between Freeholder and Intermediate Leaseholder

(a) To Intermediate Leaseholder

Diminution in value of interest				0	
Share of marriage value	236,386 x	0 / 946,227 =		0	
Other losses				Nil	
				0	
			say		0

(b) To Freeholder

Diminution in value of interest				946,227	
Share of marriage value	236,386 x	946,227 / 946,227 =		236,386	
Other losses				Nil	
				1,182,614	
			say		1,182,600
					1,182,600

FLAT 5, 70/72 CADOGAN SQUARE, LONDON SW1
ALTERNATIVE VALUATION BY J M CLARK, BSc MRICS, INCORPORATING AN ADDITION FOR HOPE VALUE TO THE FREEHOLD REVERSION

	£	£	£	£	£
A Diminution in value of Intermediate Leaseholder's Interest					
(a) Value of Intermediate Leaseholder's Existing Interest					
Headlease expires 18 March 2023					
Underlease expires 15 March 2023					
Annual rental income from Flat 5	100				
Less Head rent apportioned to Flat 5	100				
Profit rent		0			
Nominal Value of three day Reversion		0			
Value of existing interest				0	
(b) Less					
Value of Intermediate Leaseholder's Proposed Interest					
(assuming reduction in headrent pro-rata to reduction in underlease rent)					
Annual rental income from Flat 5 (peppercorn)	0				
Less additional Head rent apportioned to Flat 5 from above	0				
Net rent		0			
No loss in value of net rental income			0		
Value of reversion			0		
Value of proposed interest				0	
(c) Diminution in Value of Intermediate Leaseholder's Interest				0	
B Diminution in Value of Freeholder's Interest					
(a) Value of Freeholder's Existing Interest on Reversion					
Headlease expires 18 March 2023					
Headrent apportioned to Flat 5	100				
Years Purchase 18.70 years @ 5.00%	11.9686				
		1,197			
			1,197		
Reversion to value of freehold in possession					
Value lease with 108.70 years unexpired					
@ peppercorn rent in amount of £2,335,000					
Adjust to FHVP divide by 98.0%	2,382,653				
say		2,382,650			
Defer 18.70 years @ 5.00%		0.4016			
			956,872		
Add for hope value see Appendix A			84,900		
			1,042,969		
(b) Value of Freeholder's Proposed Interest on Reversion					
Current annual rent payable for head lease term remaining unaffected					
Reversion to value of freehold in possession		2,382,650			

Defer	108.70 years @ 5.00%	0.00497			
		11,842			
	Add for hope value see Appendix A	1,800			
			13,642		
(c) Diminution in value of Freeholder's Interest				1,029,327	
C. Diminution in Value of both Landlords' Interests					1,029,327
D Calculation of Marriage Value					
(a) Value of Proposed interests					
Freeholder's (from above)		13,642			
Intermediate Leaseholder's (from above)		nil			
Tenant's (from above)		2,335,000			
			2,348,642		
(b) Value of Existing Interests					
Freeholder's		1,042,969			
Intermediate Leaseholder's		0			
Tenant's	% of FHVP: 41.97%	1,000,000			
			2,042,969		
(c) Marriage Value				305,673	
(d) Attributed to Landlord @ 50.00%					152,836
E. Premium Payable					1,182,164
				Say	1,182,200
F Landlord's Other Loss					0
G Premium Payable					**1,182,200**
H Apportionment of Marriage Value and Premium between Freeholder and Intermediate Leaseholder					
(a) To Intermediate Leaseholder					
Diminution in value of interest			0		
Share of marriage value	152,836 x 0 / 1,029,327 =		0		
Other losses			Nil		
			0		
		say		0	
(b) To Freeholder					
Diminution in value of interest			1,029,327		
Share of marriage value	152,836 x 1,029,327 / 1,029,327 =		152,836		
Other losses			Nil		
			1,182,164		
		say		1,182,200	
					1,182,200

FLAT 5, 70/72 CADOGAN SQUARE, LONDON SW1

CALCULATION OF HOPE VALUE BY J M CLARK, BSc FRICS

	£	£	£	£
Headlease expires 25/03/2023				
Capital value of rental income				
Headrent apportioned to Flat 5			100	
Years Purchase 18.70 years @	5.00%		11.9686	
				1,197
Capital value of Reversion to Freehold in possession on 25 March 2023				
Near freehold value:			2,382,650	
Deferred 18.7 years @	5.00%		0.4016	956,872
				958,069
Add for 'hope value'				
Value of Potential Interest				
Value of near freehold interest with vacant possession		2,382,650		
Less				
Value of Existing interests				
Value of lessors' interests exclusive of marriage value	958,069			
Value of lessee's interests exclusive of marriage value	1,000,000			
FHVP 2,382,650 @ 42.0%		1,958,069		
Potential value			424,581	
Hope Value at			20.00%	
			84,916	
			Say	84,900
Value of Freeholder's Existing Interest				1,042,969
Capital value of Reversion to Freehold in possession on 25 March 2113				
Near freehold value			2,382,650	
Deferred 108.7 years @	5.00%		0.0050	
				11,913
				11,913
Add for 'hope value'				
Value of Potential interest				
Value of freehold interest with vacant possession		2,382,650		
Less				
Value of Existing Interests				
Value of lessors' interests exclusive of marriage value	11.913			
Value of lessee's interest exclusive of marriage value	2,335,00			
FHVP 2,382,650 @ 98.0%		2,346,913		
Potential value			35,737	
Hope Value at			5.00%	
			1,787	
			Say	1,800
Value of Freeholder's Proposed Interest				13,713

FLAT 5, 70/72 CADOGAN SQUARE, LONDON SW1X OEA
VALUATION BY LANDS TRIBUNAL

A. Diminution in Value of Intermediate Leaseholder's Interest				
a) Value of Intermediate Leaseholder's Existing Interest – agreed				NIL
B. Diminution in Value of Freeholder's Interest				
a) Value of Freeholder's Existing Interest on Reversion				
Head rent apportioned to Flat 5		£100		
Capital value – agreed			£1,197	
Reversion to value of freehold in possession				
Extended lease value	£2,220,000			
Adjust to FHVP divide by 98%		£2,265,306		
Defer 18.70 years @ 5.00%		0.4016		
			£909,747	
			£910,944	
b) Value of Freeholder's Proposed Interest on Reversion				
Reversion to value of freehold in possession		£2,265,306		
Defer 108.70 years @ 5.00%		0.00497		
			11,259	
c) Diminution in value of Freeholder's Interest				£899,685
C. Diminution in Value of both Landlords' Interests				£899,685
D. Calculation of Marriage value				
a) Value of Proposed Interests				
Freeholder's (from above)	£11,259			
Intermediate Leaseholder's (from above)	Nil			
Tenant's (from above)	£2,220,000			
		£2,231,259		
b) Value of Existing Interests				
Freeholder's	£910,944			
Intermediate Leaseholder's	Nil			
Tenant's	£1,010,000			
		£1,920,944		
c) Marriage Value			£310,315	
d) Attributed to Landlord @ 50.00%				£ 155,158
E. Premium Payable				£1,054,843
F. Landlord's Other Loss				Nil
G. Premium Payable to Freeholder				£1,054,843
			Say	£1,055,000