LRA/72/2005

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – price – relativity of a 63 year lease to freehold – development value attributable to roof – Tribunal's power to assess a price more favourable to respondent in absence of a cross-appeal – admissibility or weight to be given to previous LVT decisions – use of LVT's own expertise as expert tribunal – price determined at £398,561.

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE EASTERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

BETWEEN **ARROWDELL LIMITED** **Appellant**

and

CONISTON COURT (NORTH) HOVE LIMITED **Respondent**

Re: Flats 36-65
Coniston Court
Holland Road
Hove BN3 1JU

Before: The President and N J Rose FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 25 July 2006

Philip Rainey instructed by Pemberton Greenish for the appellant
Stan Gallagher instructed by Farrington Webb, solicitors of Brighton, for the respondent

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The following cases are referred to in this decision:

Carl v Grosvenor Estate Belgravia [2000] 3 EGLR 77
Wellcome Trust v Romines [1999] 3 EGLR 229
Fox v Wellfair Ltd [1981] 2 LL Rep 514
Zermalt Holdings SA v Nu-Life Upholstery Repairs Ltd [1985] 2 EGLR
Land Securities plc v Westminster City Council [1992] 2 EGLR 15
Arbib v Earl Cadogan [2005] 3 EGLR 139
Hollington v F Hewthorn & Co Ltd [1943] 1 KB 587

The following further cases were referred to in argument:

Blendcrown Ltd v Church Commissioners for England [2004] 1 EGLR 143
Curtis v London Rent Assessment Committee [1999] QB 92
King v Telegraph Group Ltd [2005] 1 WLR 2282
Shade v The Compton Partnership [2000] PNLR 218
Mason v Skilling [1974] 1 WLR 1437
London Rent Assessment Committee v St George's Court Ltd [1984] 1 EGLR 99
Cadogan Estates Ltd v Hows [1989] 2 EGLR 216
Wareing v White (1985) 17 HLR 433
Methanex Motunui Ltd v Spellman [2004] 1 NZLR 95
R v Paddington and St Marylebone Rent Tribunal ex p Bell London & Provincial Properties Ltd [1949] 1 Kb 666
Checkpoint Ltd v Strathclyde Pension Fund [2003] 1 EGLR 1
Tormes Property Co Ltd v Landau [1971] 1 QB 261
Maryland Estates Ltd v 63 Perham Road Ltd [1997] 2 EGLR 198
St Ermin's Property Co v Tingay [2002] 3 EGLR 53
Swann v White [1996] 1 EGLR 199

DECISION

Introduction

1. This is an appeal by Arrowdell Limited ("the appellant"), the landlord of a block of flats known as 36 to 55 Coniston Court, Holland Road, Hove, BN3 1JU, against the decision of the Leasehold Valuation Tribunal for the Eastern Rent Assessment Panel on a collective enfranchisement under Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993. It determined that the price payable for the freehold interest in that property by the respondent nominee purchaser, Coniston Court (North) Hove Limited, should be £265,000, together with legal costs of £2,320.62 and a valuer's fee of £2,936.50. There was no appeal against the LVT's determination of legal and valuer's fees. The appellant contended that the price payable should be £467,497 (Appendix 1). The respondent's position was that the correct valuation was £189,779 (Appendix 2) and that that figure should be determined by this Tribunal, notwithstanding the absence of a cross-appeal. In the alternative, the respondent submitted that the appeal should be dismissed.

2. A copy of the LVT's valuation is attached (Appendix 3). In seeking permission from the Lands Tribunal to appeal the appellant identified two elements of the LVT's decision that it wished to challenge – the adoption of a relativity of 91.25% for relating the existing leases with some 63 years to run to the agreed freehold values and the inclusion of an amount of £35,000 in respect of the prospect of developing the roof of the building. On the first of these the appellant contended that the LVT had wrongly relied on its own knowledge to reach its figure and had failed to give adequate reasons for it; and that the correct relativity was 85%. On the second matter it said that the amount to be included in the valuation should be £150,000. In resisting the application for permission the nominee purchaser contended that, as it had argued before the LVT, the correct relativity was 92.5% and that nothing should be allowed for the prospect of developing the roof. It said that, if permission were to be granted to the landlord, it would seek (if it was able to) permission to cross-appeal on these two points. In its reply it reiterated that it wished to contend for these figures and said that the Lands Tribunal should vary the LVT's decision accordingly.

3. In granting permission to appeal, which he directed should be by way of rehearing, the President observed that the appeal raised matters that were potentially of general importance. Those matters are:

   a. Whether the Lands Tribunal can, on an appeal from the LVT and in the absence of a valid cross-appeal by the respondent, determine a price more favourable to the respondent than that which was determined by the LVT.

   b. The admissibility or weight to be attached to previous LVT decisions.

   c. The use of the LVT's own expertise as an expert tribunal.

4. The only elements of the valuation that were in issue in the appeal were thus relativity and the roof development value. The deferment rate and the inclusion of hope value in respect of the non-participating flats had previously been agreed between the parties and these were not in issue. Expert evidence for the appellant was given by Peter Beckett FRICS, a partner in

Beckett and Kay, chartered surveyors, of 16 Savile Row, London W1, and for the respondent by Andrew Pridell FRICS, principal of Andrew Pridell Associates of 32 Church Road, Hove, East Sussex BN3 2 FN. Mr Pridell had given evidence before the LVT; Mr Beckett had not.

5. The parties agreed that it was not necessary for us to inspect the appeal property or the surrounding area. Following the conclusion of the hearing, and as had been agreed, we received between 8 and 25 August 2006 further written submissions from both counsel on the three matters referred to in paragraph 3 above.

Facts

6. From the evidence we find the following facts. The appeal property lies immediately to the north of a building known as 1 to 12 and 14 to 35 Coniston Court, which was built at an earlier date. The appellant referred to the older block as "Phase 1" and to the appeal property as "Phase 2" and we shall do the same. Phase 2 is situated on the west side of Holland Road, opposite the junction with Summerhill Avenue. Holland Road runs in a roughly northerly direction from Kingsway, the main road along the seafront at Brighton and Hove. Phase 2 is about 10 minutes walk from the seafront. The area surrounding the building, which was constructed in the late 1960s, consists largely of blocks of similar flats, some pre-war and some post-war.

7. The freehold interests in both Phases 1 and 2 are in the ownership of the appellant. Phase 1 is not the subject of any enfranchisement claim at present. The flats in Phase 2 are arranged on ground to fifth floors. There are some garages at basement level, accessed via a sharply downward-sloping drive from the road. The common parts of the property are rather old-fashioned, as is the lift.

8. On a typical floor there are: two two-bedroom flats of some $75m^2$ each, with balconies; two smaller two-bedroom flats of some $66m^2$; and two one-bedroom flats of some $55m^2$. Each flat comprises an entrance hall, a living room, a kitchen, either one or two bedrooms and a combined bathroom and wc. The leases of some of the flats include garages. The agreed valuation date is 22 November 2004.

The cross-appeal point

9. The right of appeal to the Lands Tribunal from a decision of an LVT is given by section 175(1) of the Commonhold and Leasehold Reform Act 2002. But (subsection (2)) appeal can only be made with the permission of the LVT or the Lands Tribunal, and (subs(3)) it must be made within the time specified by the Lands Tribunal Rules. Regulation 20 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 imposes a time limit of 21 days for applying to the LVT for permission to appeal against a decision made by it. Under regulation 24 the LVT has power to extend this period, but only if application to do so is made before the period has expired. Under rule 5C(1) of the Lands Tribunal Rules 1996 permission to appeal to the Lands Tribunal can only be sought if it has been refused by the LVT.

10. The effect of these provisions is effectively to rule out the possibility of a cross-appeal unless the other party has made application, and has received from the LVT, leave to appeal well within the 21 day period prescribed by regulation 20. Only exceptionally would this be the case. In the present case the LVT refused permission to appeal, so that by the time that the Lands Tribunal gave permission to appeal it was too late for the respondent to seek leave to appeal from the LVT.

11. Mr Gallagher submitted that, despite the fact that there was no cross-appeal, it is open to the Tribunal on the appellant's appeal to determine a price for the freehold more favourable to the respondent than that determined by the LVT. He pointed out that the Tribunal had directed that the appeal should be by way of re-hearing (in contrast to an appeal in the ordinary civil courts, where under CPR 52.11(10) the general rule is that an appeal was by way of review). The burden was on the appellant to satisfy the Tribunal that, on the evidence before it, the LVT's determination as to the disputed elements was wrong, failing which the LVT's determination would stand: see eg *Carl v Grosvenor Estate Belgravia* [2000] 3 EGLR 77 at 80. Therefore, said Mr Gallagher, if the evidence on appeal satisfied the Tribunal that the LVT's determination was wrong, it would be the duty of the Tribunal to determine afresh, on the evidence before it, the true value of the disputed elements, regardless of whether the amounts so determined were more or less advantageous to the appellant than those determined by the LVT.

12. It is important, in our judgment, to note the power of the Lands Tribunal on appeal. It is that conferred by section 175(4):

> "On the appeal the Lands Tribunal may exercise any power which was available to the leasehold valuation tribunal."

In terms, therefore, the power of the Tribunal is limited by reference only to the power of the LVT in determining the application that was before it.

13. The powers of the Lands Tribunal on appeal have been considered in a number of cases, notably in *Wellcome Trust v Romines* [1999] 3 EGLR 229, in which the Tribunal (P H Clarke FRICS) reviewed the earlier authorities and, at 235, set out five principles which, he said, were established by the cases. They included:

> "3. The appellant must prove that the decision of the leasehold valuation tribunal is wrong ....
>
> 4. If this tribunal is satisfied on the evidence before it that the decision of the leasehold valuation tribunal is wrong, then it must allow the appeal; otherwise it must dismiss the appeal ...."

The principles set out in *Romines* were expressed in relation to the right of appeal conferred by paragraph 2 of Schedule 22 to the 1980 Act. This was the provision that dealt with appeals from LVTs until it was replaced by section 175 of the 2002 Act. The right of appeal to the Lands Tribunal was given to any person who appeared before an LVT in proceedings to which he was a party and was dissatisfied with its decision. There was, however, no provision that stated what were the powers of the Lands Tribunal on such appeal. In these circumstances to

express the Tribunal's powers in the way set out in *Romines*, with the implication that the Tribunal was only able to vary the LVT's decision to the extent that it was satisfied by the appellant that it was wrong, was no doubt correct. The new provision, however, does not limit the power of the Tribunal to giving effect to the contentions of the appellant so far as it finds them to be made out. It could have done so, but, expressed as it is, it does in our judgement remove any possible implication that the power of the Tribunal is so confined.

14. The power of the LVT of relevance to the present case is that contained in section 24 of the 1993 Act, which provides that, where the reversioner has given a counter-notice and any of the terms of acquisition remain in dispute two months later the LVT may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute. In the present case the price payable for the freehold and the reversioner's costs were in dispute and the LVT determined both these matters. Appeal has been made in relation to the LVT's determination of the purchase price, and it is this that the Lands Tribunal on appeal has power to determine. It has power, in our judgment, to determine a price higher or lower than that in the LVT's decision, because the LVT had the power to do this. The reversioner's appeal seeks a higher purchase price than that determined by the LVT, but this does not in our judgment limit the Lands Tribunal's powers.

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 rights 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. Here the respondent both in its objections to the application for permission and in its reply made clear that it was asking the Tribunal to apply a relativity of 92.5% (rather than 91.25% as the LVT determined), to include nothing in the valuation for the prospect of developing the roof, and to reduce the purchase price accordingly. The contentions it was seeking to make related to the specific matters that the appellant's appeal put in issue, and the appellant has had proper notice of them. Were the Tribunal to be satisfied on the evidence that the respondent's contentions were correct, therefore, there would be no unfairness in giving effect to them.

16. It is, however, we think, plainly unsatisfactory that a respondent should have no right of cross-appeal and that, in the absence of any specific provisions, the matter should have to be addressed by the Tribunal, as we are doing here, as a matter of discretion only. This procedural defect, which is one that has been evident for some years, could be cured by amendment of the Lands Tribunal Rules, and we express the hope that the necessary amendment will now be made.

Valuation issues

17. The parties have agreed the following modifications to the decision of the LVT, in addition to some very minor mathematical changes. The value of the appellant's current

interest is £74,178. Garage V is to be leased back to the appellant. The freehold value of flat 44 is £173,500. Only flat 56 should be included in the calculation of hope value in respect of non-participating flats.

18. As we have said, the appeal raises two valuation issues. The first is the relationship between the value of the existing leases, with unexpired terms of 63 years and 7 months at the valuation date, and their freehold values – "relativity". The second is the development value, if any, attributable to the roof space. The parties' positions in respect of these issues may be summarised as follows:-

Position	**Relativity**	**Roof development value**
Landlord at LVT	89%	£115,650
Tenant at LVT	92.5%	Nil
LVT determination	*91.25%*	*£35,000*
Landlord on appeal	85%	£150,000
Tenant on appeal	92.5%	Nil

Relativity: the LVT's decision

19. The LVT, in the course of its decision, expressed its conclusions on relativity as follows:

> "75. The Tribunal is not persuaded by Mrs Branscombe's argument for a 1% uplift to reflect the benefit of freehold ownership. Mrs Branscombe produced no market evidence to support her contention. Moreover, the Tribunal has considerable knowledge of settlements and of agreements between valuers as to relativity rates in and around Brighton and Hove and knows that such an uplift is not usually applied in this locality.
>
> 76. The Tribunal accepts that decisions of other tribunals are not evidence of relativity in any particular case, but they can be put forward as persuasive argument. However, in this case, the Tribunal finds the evidence of Mr Pridell unhelpful. His averaging of a range of relativities from other cases is irrelevant and he did not clearly explain how he came to his figure of 92.5%.
>
> 77. Both parties referred to the sale of Flat 60 in November 2003 for £112,000. Mr Pridell's evidence is this would produce an extrapolated value of £123,200 at the valuation date, 91.25% of the agreed value of long leases. However, he had not relied on that sale.
>
> 78 Mrs Branscombe extrapolated a 2004 value of £125,440 from the Nationwide index, giving a short lease percentage of 92% and then deducted 1% for the lease being a year shorter and 5% for a "no Act" world. She produced no evidence to support either of those percentages and the Tribunal considers that they are too high in respect of a lease with over 60 years unexpired.

79. Mrs Branscombe referred to a number of other transactions but they are not direct comparables and are subject to various adjustments and assumptions, which makes them less reliable to assess the value in a particular case.

80. This is an imperfect calculation because none of the sales figures reflects a 'no Act' world and there is no direct comparable evidence. The assessments presented are subject to numerous assumptions and adjustments and attempting to extrapolate 2004 values from 2003 sales in fraught with uncertainty, the Nationwide and other indices not being accurate or reliable enough to apply to individual properties. The Tribunal is entitled to have regard to its own knowledge and experience, particularly in relation to relativities which have been agreed between parties or their valuers in other similar cases. The Tribunal finds that relativity is 91.25%."

Thus the LVT felt, as many LVTs may similarly have felt over the years, that the evidence before it could not be relied on to establish the relativity that it required to apply in its valuation. It rejected Mrs Branscombe's 1% uplift to reflect the benefit of freehold ownership; it rejected Mr Pridell's reliance on LVT decisions; and it rejected Mrs Branscombe's reliance on the sale of flat 60 and on other transactions. Having rejected all this evidence, its conclusion was contained in the last two sentences of this part of the decision:

> "....The Tribunal is entitled to have regard to its own knowledge and experience, particularly in relation to relativities which have been agreed between parties or their valuers in other similar cases. The Tribunal finds that relativity is 91.25%."

The LVT's use of its knowledge and experience

20. In refusing permission to appeal the LVT addressed itself to the appellant's contention that it had been wrong to base its decision on its knowledge of settlements that were unknown to the parties. It said this:

> "4. This is an expert Tribunal which is entitled to have regard to its own knowledge and experience. In doing so, its members do not necessarily rely on any specific case or cases, and did not do so, but have the benefit of a wide breadth of knowledge and experience, gained in a large number of cases, upon which they can draw when deciding matters such as relativity. For example, from time to time, members hear cases where valuers for both sides have agreed the relativity or where a valuer gives evidence as to relativities that have been agreed in other cases. There were no 'unknown matters' relied upon nor any decisions of other tribunals."

21. For the appellant Mr Philip Rainey said that, in so basing its decision on its personal knowledge of transactions that were not disclosed to the parties, the LVT was acting in a way that was not permissible. Among other authorities he relied in particular on the arbitration cases *Fox v Wellfair Ltd* [1981] 2 LL Rep 514 in the Court of Appeal and *Zermalt Holdings SA v Nu-Life Upholstery Repairs Ltd* [1985] 2 EGLR, a decision of Bingham LJ, which, he said, established the following propositions:

(a) the LVT may use its general expertise or "knowledge and experience" to evaluate the evidence of the parties;

(b) the LVT may use its general expertise or "knowledge and experience" to reach a decision based on the same methodology as the parties, and this may include its own adjustments; but

(c) the LVT may not, without giving the parties on opportunity to comment on it –

(i) make use of any specific knowledge, or

(ii) adopt a method of valuation not canvassed in evidence before it.

22. For the respondent Mr Stan Gallagher submitted that an LVT, as an expert tribunal, was able critically to evaluate expert evidence, whether or not it was challenged by the other party, in the light of its own knowledge or experience. In relation to such matters as the deferment rate and relativities such a process would involve the tribunal comparing the evidence against the members' own opinions of the going or bench-mark rates. The question was how that process could be undertaken in a matter that was procedurally fair. Mr Gallagher suggested that there were two fundamental points. Firstly, the tribunal should ensure that the parties were given the opportunity to make submissions on any specific matter or any going or bench-mark rate that the tribunal proposed to use as a comparator. Secondly, the tribunal's decision should contain sufficient reasoning to enable the parties and other readers of the decision to understand how the decision was reached. This was particularly the case where the determination had been informed by the tribunal's own knowledge and experience, and the tribunal should give clear reasons for having rejected or modified the conclusions in the evidence before it.

23. We accept the submissions of both counsel, which seem to us to be consistent with each other. It is entirely appropriate that, as an expert tribunal, an LVT should use its knowledge and experience to test, and if necessary to reject, evidence that is before it. But there are three inescapable requirements. 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. In the present case the tribunal rejected the evidence of both the experts on relativity, and it was entitled to do this provided its reasons for doing so were explained. But in basing its decision on "its own knowledge and experience, particularly in relation to relativities which have been agreed between parties or their valuers in other similar cases" it was in error because those agreements on relativity had not been identified nor had the parties had the opportunity to comment on them. As expressed, the decision contravened the second requirement. In refusing permission to appeal, the tribunal said that it did not rely on any specific case or cases, but on this basis the first requirement was contravened. As for the third requirement, reasons that state that the decision was based on no evidence or on evidence that was not disclosed to the parties are adequate in one sense: that they enable the invalidity of the decision to be established. But to support a valid decision the reasons must enable the parties to understand why it was that the tribunal reached the conclusion that it did rather than some other conclusion, so as to show that the conclusion was one to which the tribunal was entitled to come on the basis of the evidence before it.

Relativity: the evidence

24. Mr Beckett said that the definition of relativity was the mathematical relationship between the value of a leasehold interest in a property with any given term unexpired and the value of the same property it were held freehold created some conceptual difficulties in the case of a flat. A freehold flat, which would be a flying freehold, was unmortgageable, and so had a much smaller value than a 999 year lease of the same flat at a peppercorn. The term freehold was therefore used only as a notional reference point for calculations of relativity. With flats, one would generally be making a comparison between a short and a long leasehold value. Long leasehold implied a discount relative to freehold value. An apt relativity, applied to the agreed freehold values, would give appropriate short leasehold values.

25. In an ideal world, Mr Beckett said, if one looked at flats of the type and in the location in which one was interested, and compared the prices paid on the open market for such flats on short and long leases, one could establish the relativity figure. In practice, it was not possible for valuers to rely on a clear analysis of market transactions unaffected by the existence of the 1993 Act. Mr Beckett said that he therefore sought to resolve what was a difficult problem by approaching it in a number of different ways. The first of these was the attitude of mortgagees to lending on leasehold properties. Members of his firm had carried out telephone interviews with lenders. These showed that a difficulty arose in relation to mortgageability when the unexpired lease term dropped to around 60 years. Below that, mortgageability became a serious problem. The interviews showed that, even with the benefit of the 1993 Act, lease values dropped when the expired term reached around 60 years. It was to be expected that this would have a knock-on effect on unexpired terms of slightly more than 60 years. Well-informed purchasers were likely to be aware that, within about seven years, which was the average period of ownership of a home in the UK, the lease would enter a zone of difficulty with mortgageability. This would tend to lower the price payable, even at terms unexpired above 60 years, and even with the benefit of the Act.

26. Mr Beckett's second approach was to interview three estate agents at their offices in Hove. He produced a copy of his notes of these meetings. Although the quality of the interviewees varied, he said, the consensus was that 63 year leases were difficult to sell in the 1993 Act world. He also sought the agents' views on conditions in the no-Act world. One of the agents interviewed, who, Mr Beckett said, was particularly impressive, was strongly of the view that the price required for a lease extension would be fundamental to a purchaser's thinking about a flat with a lease of 63 years. Mr Beckett said that this implied that, without the ability to force a lease extension under the Act, 63 year leases would be even less valuable. The agent expressed the view that, in Hove, only a minority of lenders were prepared to accept a 63 year lease as security for a mortgage. If anything, the views of the other two agents were even stronger. They found it difficult to imagine a situation in which it was not possible to obtain a lease extension. One of them found it virtually impossible to understand what the question meant. As far as he was concerned, selling a 63 year lease involved ascertaining from the freeholder how much he wanted for a lease extension and deducting that figure from the price that would be expected for a longer lease. Mr Beckett said that these views were to some extent the result of the agents being too young to recall a time when lease extensions could not be obtained compulsorily. Nevertheless, they were indicative of the fact that the Act was crucial in determining the value of a flat with this length of lease.

27. Next Mr Beckett attempted to establish relativity by analysing the individual transactions in the building. Although he produced a summary of all sales between March 2002 and October 2005, he said that he only obtained any meaningful assistance from two sets of transactions – numbers 46 and 60, where the unexpired terms were 124 and 65 years respectively and – to a much lesser extent – numbers 20 (65 years) and 25 (125 years unexpired). Mr Beckett thought that this exercise suggested that in the real world relativity "may be in the 80-90% range." He added that this was "certainly a feeble conclusion, and not enough to derive a definite answer to the problem in hand."

28. Mr Beckett also used the prices paid for flats 60 and 20 in another way. He calculated that the price paid for the lease of flat 60 in December 2003 (£112,000) was equivalent to 83% of its agreed freehold value in the no Act world of £135,000. It was common to deduct 5% for the benefit of the Act, but it was also necessary to add something for the movement of the market over the eleven months until the valuation date. Mr Beckett considered that these two adjustments would produce a relativity of approximately 85%. He did not know the condition of the property when it was sold. Nevertheless, this evidence again suggested, however tentatively, that the likely level of relativity was significantly below 90%, perhaps around 85%. In a similar way, the price of £122,500 paid for flat 20 in phase 1 eleven months after the valuation date was equivalent to £2,042 per m^2, or 82% of the average of the agreed freehold values of all flats in Phase 2. Mr Beckett recognised that it would be necessary to adjust the price paid for flat 20 for the passage of time and perhaps slightly for the relative inferiority of Phase 1. He did not think it was worth doing that because the evidence suggested that, even before adjusting for the benefit of the Act, the value of the short lease was considerably less than 90%, probably 80% or below.

29. Mr Beckett then produced a graph showing his firm's opinions of relativity for leases of different lengths in the London suburbs. It was prepared for the purpose of an LVT hearing concerned with a lease of approximately 32 years and was superimposed upon his firm's "graph of graphs". This comprised a collection of graphs prepared by a number of firms of surveyors, showing leasehold values in Central London as a percentage of freehold value for unexpired terms between nil and 100 years. We were told that in some cases they were based on an analysis of settlements, in others they reflected the opinions of the compilers and one graph, prepared by the LEASE organisation, summarised all LVT determinations. All graphs showed relativity increasing in line with unexpired lease length, but at different rates. At 63 years the percentages ranged from 77 to 89. At 65 years and above Mr Beckett's own graph for suburban London approximated to the top line on the graph of graphs. It fell at a faster rate than the top line between 65 and 60 years, showing approximately 88 per cent at 63 years unexpired. Thereafter it declined more steeply than any of the Central London graphs, meeting the lowest line at 50 years and then falling even more sharply. Thus at 35 years, for example, the suburban graph showed 46 per cent, whereas the Central London graphs ranged from 55 to 73 per cent. The principal reason for the latter difference, we understand, was Mr Beckett's view that purchasers were more dependent upon mortgages in the suburbs than in Central London, coupled with the extreme difficulty of raising such finance for a lease with only 35 years unexpired.

30. Mr Beckett said that his conclusion that the LVT's relativity of 91.25% was too high was derived from the impression he had gained from the various indicators to which he had

referred. These were only impressions and he could not claim that they amounted to a scientific analysis. Nevertheless, he obtained the strong impression that a figure in the region of 85% was probably the most appropriate relativity to apply to this case. There was nothing about the figures he had discussed to suggest that 90% or higher was possible. There was a slight hint of something below 80%, but he found that implausible, and it would be inconsistent with the graph that his own firm had prepared in an attempt to focus thought on the problem. He could not go so far as to say that 85% was a reliable figure, but he thought it was likely to be more reliable than something in excess of 90%, and it was probably as accurate an estimate as was possible on the present state of the evidence.

31. Mr Pridell's approach to relativity was much more straightforward. He produced a schedule of LVT decisions showing the percentage uplift adopted in each case. (The percentage uplift is the reciprocal of the relativity. It is the percentage of the leasehold value that requires to be added to that value to reach the freehold value.) Mr Pridell's schedule (with relativities inserted) was as follows:-

Panel	**Date**	**Address**	**Unexp'd term**	**%ge uplift**	**Relativity %**
Southern	15.10.02	60 Lansdowne Street, Hove	73 & 74	2½ & 3	97.6, 97.1
Southern	05.09.03	White Hart Court, Horsham	59	11	90.1
Eastern	24.05.04	Lancaster Court, Hove	68	8	92.6
Southern	09.07.04	150 Ditchling Road, Brighton	76	2	98.0
Southern	25.11.04	21 Enys Road, Eastbourne	71	4.5	95.7
Southern	08.12.04	134D Feltham Road, Ashford	67	5	95.2
Southern	12.12.04	Tenby Court, 13 Adelaide Crescent, Hove	74	4	96.2

These cases, Mr Pridell said, indicated an average uplift of 5% for leases with unexpired terms averaging 70.25 years. Having regard to this evidence he considered that the appropriate uplift in the present appeal was 8%, or a relativity of 92.5%.

32. Mr Pridell said that in the real world it was difficult to determine relativity, so that it was inevitable that recourse was had to LVT decisions. LVT determinations were, however, disparate. One panel would say one thing, one another. There was no pattern, and this made the valuers' task very difficult. In the absence of decisions, however, there would be no evidence.

33. Before the LVT Mr Pridell had relied solely on the seven LVT decisions identified above. Before us he referred additionally to the case of Astra House, Kings Road, Brighton, which was not available at the LVT hearing. Mr Pridell had agreed a statement of facts with the valuer acting for the tenants of Astra House in October 2005. This included an uplift of 9.5% (equivalent to 91.33% relativity) for leases with unexpired terms of 61 years. Mr Pridell considered that this agreement added further support to the approach he had argued before the LVT.

Relativity: LVT decisions as evidence

34. The LVT rejected the evidence of past LVT decisions that Mr Pridell relied on. It said, however: "The Tribunal accepts that decisions of other tribunals are not evidence of relativity in any particular case, but they can be put forward as persuasive argument." Mr Rainey submitted that, although LVT decisions might be admissible for certain purposes, they were not admissible if what was sought to be relied on was some particular figure, percentage or ratio determined in the course of reaching the decision. He referred to *Land Securities plc v Westminster City Council* [1992] 2 EGLR 15, in which Hoffman J held that an arbitration award determining the market rent of an office building on review was inadmissible in another rent review relating to adjoining offices, since it was not direct factual evidence of market value but was only the opinion of the arbitrator based on the evidence before him.

35. Mr Gallagher referred to the decision of the Tribunal (Judge Rich QC and P H Clarke FRICS) in *Arbib v Earl Cadogan* [2005] 3 EGLR 139 in which at paragraph 115 the Tribunal, echoing words that had been used by Mr Clarke in *Wellcome Trust Ltd v Romines* [1999] 3 EGLR 229 at 234L, said:

> "LVT decisions on questions of fact or opinion are indirect or secondary evidence and should be given little or no weight in other LVT proceedings and in proceedings in this Tribunal, even if they are admissible."

Mr Gallagher said that this was based on the *Land Securities* case, in which in this respect Hoffman J had followed *Hollington v F Hewthorn & Co Ltd* [1943] 1 KB 587. But *Hollington v Hewthorn* was a negligence claim, in which a conviction for careless driving in earlier criminal proceedings was held to be inadmissible in the civil action, and *Land Securities* was concerned with whether an arbitrator's award was admissible in another rent review on a comparable property. In neither case was the tribunal an expert tribunal like an LVT or the Lands Tribunal, each of which, unlike an arbitrator, was entitled to rely on its expertise and experience and was not bound to act solely upon the evidence adduced by the parties. In addition, since an LVT was required to give reasons for its decision, the basis upon which it had arrived at its determination would be readily apparent.

36. Moreover, said Mr Gallagher, since there were inherent limitations in all forms of valuation evidence in enfranchisement cases, in particular because of the difficulties in giving effect to the no-Act world assumption, there were good policy reasons for not excluding any potentially probative evidence. If, as was the case here, there was no direct market evidence, whether transactional or settlement, that was untainted by the 1993 Act, that pointed towards the admissibility of previous tribunal decisions. Even if previous decisions were not admissible, however, it was nevertheless appropriate for an expert like Mr Pridell to have regard to previous LVT decisions because the reality was that the market took such decisions into account and an expert ought to have regard to factors that affected the market.

37. The Tribunal did not, in what it said in the *Romines* and *Arbib* cases, determine that LVT decisions on questions of fact and opinion were inadmissible, although it did not reject the possibility that they might be. It is not, we think, the case that *Hollington v Hewthorn* and *Land Securities* compel the conclusion that evidence of such decisions is inadmissible. In our

judgment LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value. The reason for this is that each tribunal decision is dependent on the evidence before it, and thus, in order to determine how much weight should be attached to the figure adopted in a decision, it would be necessary to investigate what evidence the LVT had before it and how it had treated it. Such a process of investigation is potentially lengthy, and it is inherently undesirable that LVT hearings should resolve themselves into rehearings of earlier determinations.

38. It is certainly understandable that valuers negotiating the settlement of an enfranchisement claim should have regard to LVT decisions on relativity, since these might seem to them to be the best guide of the likely outcome if they were unable to reach agreement, even though, as Mr Pridell said, the decisions are disparate and fail to show any established pattern. But the decisions themselves can constitute no useful evidence in subsequent proceedings.

Relativity: other sources of evidence

39. The difficulty that confronts every LVT, as it now confronts us, in seeking to determine the appropriate relativity to apply in a particular case is the inadequacy of the available evidence. If no assistance is to be derived from earlier LVT decisions for the reasons we have just given, the same will go for settlements that have themselves been based on such decisions. In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity, as we say below, and later on we suggest that greater guidance could be derived from this particular type of evidence.

Relativity: conclusions

40. Since, for the reasons that we have given we are unable to place reliance on LVT decisions, we cannot accept the conclusions of Mr Pridell, based as they were on these. He was, in any event, unable to provide a convincing explanation of the criteria he had adopted in deciding to choose the particular decisions that he relied on among the many hundreds of LVT decisions relating to properties in the area. The settlement on which he also sought to rely can, as we have said, be of no weight, being based on the valuers' perceptions of LVT decisions. Moreover he told us that he had undertaken a large number of valuations under the 1993 Act, and had appeared as advocate and expert at numerous LVT hearings, and we have no means of assessing whether the one agreement which he has chosen to produce is truly representative.

41. Mr Beckett accepted that the assessment of the appropriate relativity was a difficult valuation exercise because of the absence of truly comparable market evidence. Our conclusions on the relevance of the various indicators which he has used in an attempt to overcome that difficulty are as follows. We find that the attitude of the majority of mortgagees means that values tend to fall when the unexpired lease term is around 60 years and that this has a small knock-on effect on leases which are slightly longer. Mr Pridell suggested that the

market in Hove for flats such as those at Coniston Court was dominated by retired people who had no need of mortgages. Thus Mr Beckett's opinion, which was based on the assumption that the relativity would be significantly affected by considerations of mortgage finance, was in this respect in error. Mr Pridell had taken no steps to ascertain the ages of the occupiers of flats in Coniston Court. He pointed out that, at his initial meeting with the lessees, approximately two-thirds of those present appeared to be over 60. He accepted, however, the possibility that retired people would be more likely to attend such meetings than those of working age. He also accepted that many elderly people would be concerned to maximise the eventual value of their flat in the hands of their executors and that such people often applied for lease extensions in order to secure a more valuable asset to leave to their children or to pay for home care. The limited evidence available on this aspect of the valuation does not persuade us that the relativity of flats in Hove is materially different from that in other areas, where the availability of mortgages has a major impact on lease values.

42. We do not obtain any assistance from the reports of Mr Beckett's interviews with local agents. No written reports were produced and the only details provided as to the extent of the individuals' experience were that one of them lived in Holland Road and was experienced in selling flats in the locality and that all three were too young to recall market conditions prior to the 1993 Act. We consider that some weight can be attached to the relationship between transactions in numbers 60 and 20 and the agreed freehold values, on the basis of Mr Beckett's analysis referred to in paragraph 28 above. While it is not possible to draw any precise conclusions, not least because there is no evidence on the condition of any of the flats, the analysis does, in our view suggest that a relativity of 90% is too high. We do not obtain assistance from the comparisons in paragraph 27, which lack the firmer basis of agreed freehold values.

43. The final piece of evidence to which Mr Beckett referred was his firm's graph of relativities in the London suburbs, suggesting that a 63 year lease was worth approximately 88 per cent of a freehold. This graph did not support his adoption of a relativity of 85% in the present case. In drawing it to our attention Mr Beckett was acting in pursuance of his duty as an expert. We attach weight to his opinion. We are satisfied that he is both very experienced and has given significant thought to the problem of identifying relativities in a no-Act world. He fairly volunteered in his expert report that he was unable to say that his 85% was a reliable figure, because the various indicators upon which he had relied were less than entirely satisfactory as evidence. Having concluded that the transaction evidence suggests that 90% is too high and that no useful conclusion can be drawn from any of the other evidence, we think it appropriate to adopt the relativity of 88% shown on Mr Beckett's graph.

Development value

44. After the date of the LVT's decision, but before the current appeal was heard, residential development was undertaken on the roof of Phase 1. The history of the development of the roofs of both Phases is as follows:

13 January 2003	Appellant applied for planning permission for three

	penthouse flats on the roof of Phase 1.
23 May 2003	Planning permission for Phase 1 refused, contrary to the planning officer's recommendation.
31 October 2003	Planning consent for Phase 1 granted on appeal. In paragraph 9 of his decision, the Inspector said: "Concerns have been expressed that granting planning permission for the proposed development would create a precedent that would result in many similar cases being approved. In my view, each case must be considered on its merits and a decision in this case would not act as a precedent for other situations."
19 March 2004	Appellant applied for planning permission for three penthouse flats on the roof of Phase 2.
11 June 2004	Appellant sold development leases of Phase 1 roof for £128,500. Planning officer recommended that the Phase 2 application be approved. In his conclusion he said: "It is considered that there is little difference between this application and that allowed on appeal on the neighbouring block. Notwithstanding the objections received, this proposal is considered acceptable for the reasons stated and given the history of the southern block, refusal could not be upheld on appeal."
9 July 2004	Planning permission for Phase 2 refused.
[22 November 2004	*Valuation date]*
1 December 2004	Developer purchased release of restrictive covenant on Phase 1 roof for £6,450.
[12 May 2005	*LVT decision on Phase 2 published, including hope value for the roof of £35,000 "on the basis of (LVT's) own knowledge and experience".]*
1 July 2005	Developer sold on development leases on Phase 1 roof for £350,000.
31 August 2005	Planning consent for Phase 2 roof granted on appeal. The Inspector ordered that the local planning authority should pay the appellant's costs based on a notional written representations procedure. In his conclusions the Inspector said (paragraph 11) "I acknowledge that the Council were correct

> to consider the application when all the facts were before them and that they were right to consider the effect of the proposal on the character and appearance of the street scene and on the living conditions of existing residents. Nevertheless, I consider that in view of the similarities between the approved proposal for the southern block and the appeal scheme, the similarity of officers' advice on both cases, the similarity of the Council's reasons for refusal, and the Inspector's allowing of the earlier appeal, the planning committee might reasonably have considered, subject to there being no changes of policy or circumstance, that this application should be granted planning permission."

13 March 2004 — Messrs R H and R W Clutton, agents for Goldsmid Settled Estate, who were entitled to the benefit of the restrictive covenant wrote to the appellant as follows:

> "I note that Arrowdell Limited is the freeholder of Coniston Court and that you are currently involved in a valuation dispute with the leaseholders. As you rightly say, the trustees, by a deed dated 1 December 2004, allowed the development of three flats in the roof space of the south block. The consideration at that time was the sum of £6,450, exclusive of the trustees' costs. Should you be successful in retaining the freehold interest, I would recommend similar terms to my clients, that is to say, a premium of £6,450 plus costs, subject to contract."

45. Mr Pridell considered that the roof of Phase 2, as a potential development site, was an extremely risky proposition at the valuation date. If it had been offered for sale by auction on a 125 year lease, he did not think any bids would have been received. The problems facing a developer were as follows. Planning permission for the proposed development had been refused. Phase 2 incorporated high alumina cement concrete (HAC) and this was widely known. The appellant had not commissioned a structural survey of the block and there was no evidence to show the block was capable of taking the additional load. No residual valuation had been produced by the appellant to justify a particular site value. There was no guarantee that the trustees of the Goldsmid Estate would release the restrictive covenant for the same consideration as they had accepted on Phase 1. It was in any event extraordinary that the covenantees had been prepared to release the Phase 1 covenant for such a paltry sum. It was much more common for a significant proportion of the development value to be sought.

Mr Pridell concluded that, even if planning permission were obtained, it was likely that the costs incurred in undertaking the development would exceed the anticipated value of the completed flats, resulting in a development value of nil.

46. Mr Beckett said that it was virtually inconceivable that a better comparable for the roof of Phase 2 could be found than the sale of the development leases of Phase 1. Both roofs were on the sixth floor with a lift to the floor below and both had permission for three units, containing three rooms, kitchen and bathroom/wc. The gross external areas and the usable areas of both roofs were virtually identical. Although there were differences in the respective ground floor entrances, roof coverings, parapet wall heights and views, these were all slight.

47. Mr Beckett produced a letter from Mr F R Zakiewicz BSc (Hons) CEng MIStructE, the structural engineer for the construction of the three penthouses on Phase 1. Mr Zakiewicz said that it was sensible to assume that penthouses could also be constructed on the roof of Phase 2

> "which is of a similar age and construction".

Mr Zakiewicz added that, whilst the floors of Phase 2 might contain HAC,

> "it is now regarded that HAC in internal floors does not pose the problems first envisaged in the 1970s."

48. Although the letter from Mr Zakiewicz and that from R H and R W Clutton both post-dated the valuation date, Mr Beckett considered that they contained information which might have been expected to be obtained by a potential purchaser at that date. He was of the view that the price of £128,500 at which the appellant sold the phase 1 roof was well below the true value of the development rights, even having regard to the uncertainty that must have existed at the relevant date as to the views of the beneficiary of the restrictive covenant. It was possible that the subsequent sale at £350,000 was at an overvalue, but it was hard to justify the view that it was a substantial overvalue. It was reasonable to think in terms of the value of the right to develop flats on the roof of Phase 2 being of the order of £300,000 with planning permission. Phase 1 was too direct a comparable to draw any other conclusion.

49. Mr Beckett also valued the roof of Phase 2 indirectly by reference to the likely sale prices of the completed flats, which he estimated at something under £200,000 for the small flat and something under £300,000 for each of the two large flats. He would normally have expected to find that the site value would be about 30-40% of the final gross receipts, suggesting a possible level of value around £300,000 or perhaps a little less. He said that, although he could have prepared a detailed residual valuation to show how these figures might have been derived by a developer, that would have been an idle exercise for two reasons. Firstly, it was usually possible to sell development rights for more than one could justify on paper. This was probably due to the fact that an experienced builder/developer could bear down on costs much harder than someone who had to proceed by way of, for example, a specification and works carried out by independent contractors, properly supervised by building surveyors. Secondly, the Lands Tribunal had a habit of rejecting residual valuations in favour of comparable evidence. Here the comparable evidence was so immediate and so direct that calculations on paper by him, however careful, would add little to the debate.

50. Mr Beckett recognised that, despite the similarities between the sale of the roof of Phase 1 and the transaction envisaged in the current valuation exercise, that sale constituted only one comparable. This meant that he had to be cautious, but he felt that he had demonstrated the necessary caution by valuing the roof of Phase 2 on 1 July 2005, the Phase 1 sale date, at only £300,000 and not the £350,000 that was in fact paid for Phase 1. From this figure it was necessary to make a deduction to reflect the risk that planning permission would not be granted, the impossibility of obtaining planning permission without an appeal and the restrictive covenant. On the valuation date an identical planning process was under way on Phase 2 to that on Phase 1, merely shifted forward some 14 months. This eventually produced the desired result. Moreover, there was one positive feature which had not applied in the case of Phase 1. The planning officer had not merely recommended approval, but also advised that costs were likely to be awarded against the planning authority if it did not grant planning consent. Thus, a purchaser of the development rights in the roof would have been confident of securing the permission which was indeed eventually granted. Nevertheless, he would still have been concerned at the risk that the situation might change whilst the planning application was in progress. He thought that such a purchaser would have required a substantial profit to compensate him for the outside risk he was taking by proceeding without having obtained planning permission first. No doubt he would have consulted the planning officers, but this would have given him no additional comfort; the record already showed what the planning officers thought.

51. It was clear that the percentage of development value which would be paid by a purchaser would not be zero, nor would it be 100% of development value. It would be somewhere between the two. He thought that the LVT's valuation of £35,000, amounting to little more than ten per cent of development value, was unsupportable in this context, although it was true that he had the benefit of some hindsight which had not been available to the LVT. In his opinion, if a purchaser had invested £150,000 in a fairly sure, but not absolutely certain venture, he would seek to balance that risk with a further £150,000 profit that he would make if, as predicted, his gamble succeeded. With these considerations in mind he assessed the development value at £150,000.

52. In our judgment the evidence of Mr Beckett as to the value of the roof was more persuasive than that of Mr Pridell. It is true that on the valuation date there was a formal planning refusal on the record. However, in the light of the planning officer's written recommendation that the local planning authority's refusal "could not be upheld on appeal", a recommendation which subsequently proved to be well-founded, we consider Mr Beckett was right to characterise the possibility that consent would not be granted on appeal as "an outside risk". In his written report prepared for the purposes of this appeal, Mr Pridell sought to distinguish the sale of the roof of Phase 1 on the grounds that, whilst it was widely known that Phase 2 included HAC, he was "not aware that this position exists within Coniston Court South". In fact, it is apparent from the Inspector's decision letter on the Phase 1 planning appeal that concerns were raised about the presence of HAC in that building as well. Moreover, Mr Zakiewicz, who was the structural engineer responsible for the roof development on Phase 1, and whose firm had previously advised the appellant on the structure of Phase 2, was of the opinion that the two buildings were of similar construction. We accept Mr Pridell's evidence that there is a theoretical risk of problems arising as a result of the transfer of dampness from structural walls to floor beams containing HAC. On the other hand, penthouses have in fact been erected on the roof of Phase 1 and the engineer who designed that

scheme has expressed the view that a similar development could be carried out on Phase 2. In those circumstances, Mr Beckett felt that it was not necessary for a valuer to make any further investigations before concluding that the appeal property should be valued on the assumption that development was feasible. In the absence of any further evidence on the subject we agree with that view.

53. We do not think that there is any force in Mr Pridell's criticism of Mr Beckett's failure to produce a residual valuation. We are sure that Mr Beckett was right to prefer the evidence of the actual transaction at Phase 1 to a hypothetical valuation exercise dependent on the accuracy of a number of variables. Nor are we persuaded by Mr Pridell's suggestion that the price required by the trustees for the release of the restrictive covenant on Phase 1, and subsequently suggested by their agents for Phase 2, was far too low. Mr Pridell was not in a position to reach a considered conclusion on the matter, since he had made no enquiries to ascertain the extent of the land capable of benefiting from the covenant. Bearing in mind the duty of the trustees to maximise the value of their assets, we are satisfied that they would not have agreed to accept a figure on the advice of their surveyors which represented much less than their true entitlement.

54. Mr Beckett accepted that there were risks attaching to the development of the roof of Phase 2. He sought to reflect those risks by making a deduction of 50% from the value with planning permission and free of the restrictive covenant. We note that having assumed that, on 1 July 2005, the unrestricted value with planning permission was £300,000, Mr Beckett has not made a specific deduction to reflect the increase in values over the seven months following the valuation date. On the other hand, in arriving at his starting figure of £300,000, Mr Beckett decided to deduct 14.25 per cent from the price which was actually paid for Phase 1, based only on a short-hand residual valuation. That seems to us to be a cautious approach. Taking everything into account we consider that both Mr Beckett's starting figure of £300,000 and his 50 per cent deduction for lack of planning permission are reasonable and we accept them. In our opinion, however, having ascertained that the trustees would require £6,450 plus costs to agree to modify the restrictive covenant, a hypothetical purchaser would have made a further deduction of £10,000 to reflect the covenant's existence.

55. Our detailed valuation is attached (Appendix 4). The appeal is allowed. We determine the price payable by the respondent for the freehold interest in 36 to 55 Coniston Court, Holland Road, Hove, BN3 1JU to be £398,561.

56. Neither side has made an application for costs and the Tribunal's power to award costs in appeals of this nature is strictly limited. We make no order on costs.

Relativity evidence: the future

57. As we have said above, we have been acutely aware of the difficulty of reaching a satisfactory conclusion on relativity in the light of the inadequacy of the available evidence, and it is clear that this is a problem that is liable to confront LVTs in all such cases. The likelihood is that decisions will be varied and inconsistent, while if local perceptions of

relativities are built up as the result of decisions and settlements it is improbable that these will properly reflect no-Act values. Against this background we consider that graphs of relativity are capable of providing the most useful guidance. While it may be that relativities will vary between one type of property and another and from area to area, we think that there is little doubt that the predominant factor is the length of the term. It ought, we believe, to be possible to produce standard graphs, distinguishing between mortgage-dependent markets and those that are not so dependent, on the basis of a survey of assessments made by experienced valuers addressing themselves properly to the hypothetical no-Act world. We express the hope that the Royal Institution of Chartered Surveyors may find itself able to carry out such an exercise and to produce guidance in the form of standard graphs that can readily be applied by valuers in carrying out enfranchisement valuations. Such graphs could be used as evidence by LVTs, with the relativities shown being applied by them in the absence of evidence compelling the adoption of other figures.

Dated 31 October 2006

George Bartlett QC, President

N J Rose FRICS

Flats 36-65, Coniston Court, Holland Road, Hove, BN3 1JU
Valuation by Peter Beckett, FRICS

A Value of Freeholder's interest

i)	Ground rents		21,038
ii)	Early reversions	4,050,500	
	PV of £1 after 63.59 years @ 7.00%	0.0131	53,062
iii)	Late reversions	783,500	
	PV of £1 after 120 years @ 7.00%	0.0001	78
iv)	Reversion to garages O,P,Q and X	48,000	
	PV of £1 after 63.59 years @ 7.00%	0.0131	629
Value of Freeholder's interest			**74,178**

B Value of Freeholder's interest in participants' flats under 80 years unexpired

i)	Grounds rents		11,231
ii)	Early reversions	3,877,000	
	PV of £1 after 63.59 years @ 7.00%	0.0131	50,789
Value of the Freeholder's interest in participants' flats			62,020

C Value of Freeholder's interest in Flat 56 (non-participant)

i)	Grounds rent		2,424
ii)	Early reversions	173,500	
	PV of £1 after 63.59 years @ 7.00%	0.0131	2,273
	Value of Freeholder's interest in Flat 56		**4,697**

D Marriage value

Interests in participants' flats under 80 years unexpired only

i)	*Values after marriage*		
	Value of the Freeholder's interest	0	
	Participating lessees' interests (@ 99%)	3,838,230	3,838,230
ii)	*Values before Marriage*		
	Value of the Freeholder's interest (B above)	62,020	
	Participating lessees' interests	3,295,450	3,357,470
	Marriage value		480,760
	Landlord's share of marriage value @ 50%		**240,380**

E Hope of marriage value

Interests in Flat 56

i)	*Values after marriage*		
	Value of the Freeholder's interest	0	
	Long leasehold value (@ 99%)	171,765	171,765
ii)	*Values before marriage*		
	Value of the Freeholder's interest (C above)	4,697	
	Non-participating lessee's interest	147,475	152,172
	Marriage value		19,593
	Landlord's share of marriage value @ 15%		2,939

F Enfranchisement price payable

i) Value of the Freeholder's interest (A above)	74,178
ii) Freeholder's share of marriage value (D above)	240,380
iii) Hope of marriage value (E above)	2,939
iv) Vacant garage (Leaseback)	0
v) Loss of development value	150,000
Enfranchisement price payable	467,497

Appendix 2

Flats 36-65, Coniston Court, Holland Road, Hove, BN31 1JU
Valuation by Andrew Pridell, FRICS

a) Value of Freeholder's Interest

(i) Capitalisation of Ground Rental Income

All flats and garages except Flat nos. 40, 46, 50 and 55

Ground rents 2004-2035		£832.50		
YP 31 yrs @ 7%		12.5318		£10,432
Ground rents 2035-2068		£1,120		
YP 33 yrs @ 7%	12.7538			
PV of £1 in 31 yrs @ 7%	0.1227	1.5648		£ 1,752
				£12,184

Flat 40

Ground rent 2004-2022		£100		
YP 18 yrs @ 7%		10.0591	£1,005	
Ground rent 2022-2047		£200		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 18 yrs @ 7%	0.2958	3.4471	£689	
Ground rent 2047-2072		£300		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 43 yrs @ 7%	0.0545	0.6351	£190	
Ground rent 2072-2097		£400		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 68 yrs @ 7%	0.01	0.1165	£46	
Ground rent 2097-2122		£500		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 93 yrs @ 7%	0.0018	0.0209	£10	£1,940

Flat 46

Ground rent 2004-2028		£100		
YP 24 yrs @ 7%		11.4693	£1,147	
Ground rent 2028-2053		£200		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 24 yrs @ 7%	0.1971	2.2969	£459	
Ground rent 2053-2078				
YP 25 yrs @ 7%	11.6536			
PV of £1 in 49 yrs @ 7%	0.0363	0.423	£127	
Ground rent 2078-2103			£400	
YP 25 yrs @ 7%	11.6536			
PV of £1 in 74 yrs @ 7%	0.0066	0.07691	£30	
Ground rent 2103-2128		£500		
YP 25 yrs @ 7%	11.6536			

PV of £1 in 99 yrs @ 7%	0.0012	0.0139	£7	£1,770
Flat 50				
Ground rent 2004-2026		£100		
YP 22 yrs @ 7%		11.0612	£1,106	
Ground rent 2026-2051		£200		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 22 yrs @ 7%	0.2257	2.6302	£526	
Ground rent 2051-2076		£300		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 47 yrs @ 7%	0.041258	0.4845	£145	
Ground rent 2076-2100		£400		
YP 25 yrs @ 7%	11.65369			
PV of £1 in 72 yrs @ 7%	0.0076	0.0885	£35	
Ground rent 2100-2125		£500		
YP 24 yrs @ 7%	11.4693			
PV of £1 in 97 yrs @ 7%	0.0014	0.016	£8	£1,820
Flat 55				
Ground rent 2004-2024		£100		
YP 20 yrs @ 7%		10.5945	£1,059	
Ground rent 2024-2049		£200		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 20 yrs @ 7%	0.2584	3.0112	£602	
Ground rent 2049-2074		£300		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 45 yrs @ 7%	0.0476	0.55	£166	
Ground rent 2074-2099		£400		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 70 yrs @ 7%	0.0087	0.1013	£408	
Ground rent 2099-2124		£500		
YP 25 yrs @ 7%	11.6536			
PV of £1 in 95 yrs @ 7%	0.0016	0.0186	£ 9	£1,876

(ii)Value of reversion

Smaller two-bedroom flats		
8 x £170,000	£1,360,000	
Larger two-bedroom flats		
9 x £173,500	£1,561,500	
One-bedroom flats		
10 x £135,000	£1,350,000	
11 garages		
11 x £12,000	£132,000	
Reversion to capital value of		£4,403,500

PV of £1 in 64 yrs @ 7%		0.0131		£57,685
Flats 40, 46, 50 and 55				
Reversion to capital value of		£648,500		
PV of £1 ranging from 118-124 yrs @ 7% – say		0.0001		£65

Hope value in respect of non-participating flats i.e. Nos. 36, 55 and 56

Flat 36

a) Value of Freeholder's Interest

(i) Capitalisation of Ground Rental Income

Ground rent 2004-2035		£27	
YP 31 yrs @ 7%		12.5318	£338
Ground rent 2035-2068		£36	
YP 33 yrs @ 7%	12.7538		
PV of £1 in 31 yrs @ 7%	0.1227	1.5648	£56
			£394

(ii) Value of reversion

Reversion to capital value of	£135,000		
PV of £1 in 64 yrs @ 7%	0.0131		£1,768
Therefore: Value of freeholder's interest			£2,162

b) Marriage value

Value of existing unimproved leasehold interest			£135,000
Less			
1. Value of existing unimproved leasehold interest (92.5% relativity)		£124,875	
2. Value of freeholder's interest		£2,162	£127,937
Total Marriage Value			£7,693
Freeholder's share at 15%			£1,194

Flat 55

Unexpired term on lease exceeds 80 years
Therefore – Marriage Value N I L

Flat 56

(a) Value of Freeholder's Interest

(i) Capitalisation of Ground Rental Income

Ground rent 2004-2035		£33	
YP 31 yrs @ 7%		12.5318	£ 413
Ground rent 2035-2068		£44	
YP 33 yrs @ 7%	12.7538		
PV of £1 in 31 yrs @ 7%	0.1227	1.5648	£ 68

			£ 481	
(ii) Value of reversion				
Reversion to capital value of	£173,500			
PV of £1 in 64 yrs @ 7%	0.0131		£2,273	
			£2,754	

(b) Marriage Value

Value of long unimproved leasehold interest		£173,500	
Less			
1. Value of existing unimproved leasehold interest (92.5% relativity)	£160,487		
2. Value of freeholder's interest	£ 2,754	£163,241	
Total Marriage Value		£10,259	
Freeholder's share at 15%			£1,539

(b) Marriage Value

Flat nos. 40, 46 , 50 and 55 have unexpired lease terms in excess of 80 years –			
Therefore – Marriage Value			N I L
Flat nos. 36 and 56 are non-participating – 15% hope value included above			
All flats and garages except above i.e. excluding Flat Nos.36, 40, 46, 50, 55 and 56			
Value of long unimproved leasehold interests		£3,793,000	
Less			
1. Value of existing unimproved leasehold interests (92.5% relativity)	£3,508,525		
2. Value of freeholder's interest	£ 65,063	£3,573,588	
Total Marriage Value		£ 219,412	
Freeholder's share at 50%			£109,706

(c) Compensation

I am unable to see that the freeholder will sustain loss to other property owned			
Therefore – compensation –			N I L
			£189,779

Appendix 3

Flats 3-65 Coniston Court, Holland Road, Hove, BN3 1JU
Valuation by Leasehold Valuation Tribunal

A. Value of the Freeholder's interest

Capitalisation of Ground Rent Income, including Garages O, P, Q and X and Value of reversion		Agreed		£73,917
Hope Value in respect of non-participating flats (36, 55 and 56)				
Flat 55				
Unexpired term exceeds 80 years. Marriage Value			NIL	
Flats 36 and 56				
(a) Value of freeholder's interest				
Ground rent 2004-2035		£60		
YP 31 years @ 7%		x12.53318		
			£752	
Ground rent 2035-2068		£80		
YP 33 years @ 7%	12.7538			
PV £1 in 31 years @ 7%	0.1227	x1.5649		
			£125	
			£877	
Reversion to capital value of	£308,500			
PV £1 in 64 years @ 7%	x0.0131			
			£4,072	
Value of freeholder's interest			£4,949	
(b) Marriage Value				
Value of long unimproved leases			£308,500	
Less				
Value of existing unimproved leases	£281,506			
Value of freeholder's interest	£ 4,949			
			£286,455	
Marriage Value			£ 22,045	
Freeholder's share, agreed 15%				£ 3,307
Carried forward				£77,224

Brought forward			£77,224

B. Marriage Value

Flats 36 and 56
Non-participating,

Flats 38,40,46,50 and 55
Unexpired lease terms in excess of 80 years,
Therefore marriage value NIL

Remaining Flats

Value of long unimproved leases		£4,060,000	
Less			
Value of existing unimproved leases	£3,704,750		
Value of freeholder's interest	£ 73,917	£3,778,667	
Total marriage value		£ 281,333	
Freeholder's share 50%			£140,667
C. Vacant garage			£ 12,000
E. Value of Parking spaces			£ NIL
F. Loss of Development Value			£ 35,000
TOTAL			**£264,891**

Say £265,000

Appendix 4

Flats 35-65, Coniston Court, Holland Road, Hove, BN3 1JU
Determination of Lands Tribunal

A. Value of Freeholder's interest – agreed		74,178
B.Value of Freeholder's interest in participants' flats under 80 years unexpired		
i) Grounds rents		11,231
ii) Early reversions	3,877,000	
PV of £1 after 63.59 years @ 7.00%	0.1131	50,789
Value of the Freeholder's interest in participants' flats		62,020
C. Value of Freeholder's interest in Flat 56 (non-participant)		
i) Grounds rent		2,424
ii) Early reversions	173,500	
PV of £1 after 63.59 years @ 7.00%	0.0131	2,273
Value of Freeholder's interest in flat 56		4,697
D Marriage value		
Interests in participants' flats under 80 years unexpired only		
i) Values after marriage		
Value of the Freeholder's interest	0	
Participating lessees' interests (@ 99%)	3,838,230	3,838,230
ii) Values before Marriage		
Value of the Freeholder's interest (B above)	62,020	
Participating lessees' interests (@88%)	3,411,760	3,473,780
Marriage value		364,450
Landlord's share of marriage value @ 50%		182,225
E Hope of marriage value		
Interests in Flat 56		
i) Values after marriage		
Value of the Freeholder's interest	0	
Long leasehold value (@ 99%)	171,765	171,765
ii) Values before marriage		
Value of the Freeholder's interest (C above)	4,697	
Non-participating lessee's interest (@ 88%)	152,680	157,377
Marriage value		14,388
Landlord's share of marriage value @ 15%		**2,158**

F. Enfranchisement price payable

i) Value of the Freeholder's interest (A above)	74,178
ii) Freeholder's share of marriage value (D above)	182,225
iii) Hope of marriage value (E above)	2,158
iv) Vacant garage (Leaseback)	0
v) Loss of development value	140,000
Enfranchisement price payable	398,561