

LRA/23/2004  
LRA/62/2004  
LRA/08/2005  
LRA/87/2004  
LRA/18/2005

**LANDS TRIBUNAL ACT 1949**

*LEASEHOLD ENFRANCHISEMENT – houses and flats in central London – appeals heard together regarding deferment rate – no convention that 6% established – absence of market evidence – decisions of LVTs and Lands Tribunal – settlements – financial markets – index-linked gilts – appeals allowed – deferment rates of 4½%, 4¾% and 6.4% applied – Leasehold Reform Act 1967, s9(1C) and Leasehold Reform, Housing and Urban Development Act 1993, Schedules 6 and 13*

**IN THE MATTER of APPEALS against DECISIONS of the LEASEHOLD VALUATION TRIBUNAL of the LONDON RENT ASSESSMENT PANEL**

**BETWEEN** **JAMES ASHLEY ARBIB** **Appellant**

**and**

**EARL CADOGAN** **Respondent**

**Re: 40 Chelsea Square, London SW3  
(LRA/23/2004)**

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**BETWEEN** **EARL CADOGAN AND  
CADOGAN ESTATES LIMITED** **Appellants**

**and**

**55/57 CADOGAN SQUARE** **Respondents**  
**FREEHOLD LIMITED**

**Re: 55/57 Cadogan Square, London SW1  
(LRA/62/2004)**

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**BETWEEN**

**EARL CADOGAN**

**Appellant**

**and**

**DORRIT MOUSSAIEFF**

**Respondent**

**Re: First and Second Floor Flat,  
8 Cadogan Square, London SW1  
(LRA/8/2005)**

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**BETWEEN**

**HUGO BENJAMIN DAY AND  
LADY HILARY MAUREEN GREENSLADE DAY**

**Appellants**

**and**

**32 ROSARY GARDENS (FREEHOLD) LIMITED**

**Respondents**

**Re: 32 Rosary Gardens, London SW7  
(LRA/87/2004)**

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**BY**

**EARL CADOGAN AND  
CADOGAN HOLDINGS LIMITED**

**Appellants**

**Re: 9 Astell Street and Garage  
8 Britten Street, London SW3  
(LRA/18/2005)**

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**Before His Honour Judge Michael Rich QC  
and P H Clarke FRICS**

**Sitting at Procession House, London EC4  
on 27-9 July, 1-5 and 9 August 2005**

The following cases are referred to in this decision:

*Cadogan Holdings Limited v Pockney* (2004) (LRA/27/03)  
*Blendcrown Limited v Church Commissioners for England* [2004] 1 EGLR 143  
*Wellcome Trust Limited v Romines* [1999] 3 EGLR 229  
*Re Day* (2004) (LRA/28/03)  
*Lloyd-Jones v Church Commissioners for England* [1982] 1 EGLR 209  
*Cadogan Estates Limited v Hows* [1989] 2 EGLR 216  
*Curtis v London Rent Assessment Committee* [1999] QB 92  
*Land Securities Plc v Westminster City Council* (1992) 44 EG 153  
*Clinker & Ash Limited v Southern Gas Board* (1967) 203 EG 735  
*Gallagher Estates Limited v Walker* (1973) 28 P&CR 113  
*Maryland Estates Limited v Abbathure Flat Management Co Limited* (1999) 06 EG 177

The following further cases were referred to in argument:

*Farr v Millersons Investments Limited* (1971) 22 P & CR 1055  
*Mimmack v Solent Land Investments Limited* (1973) 26 P & CR 139  
*Carthew v Alleyn's College* (1974) 231 EG 809  
*Nash v Castell-Y-Mynach Estate* (1975) 234 EG 293  
*Briddon v Field* (1975) 234 EG 840  
*Howard de Walden Estates Limited v Disozeghy* (2000) (LRA/9/2000)  
*West Midland Baptist (Trust) Assn (Inc) v Birmingham City Corporation* [1970] AC 874  
*W Clibbett Limited v Avon County Council* [1975] RVR 131  
*Stein v Eyre Estate* (2001) (LRA/11/2000)  
*Thierry v John Lyon's Charity* (2002) (LRA/44/2002)  
*Cadogan v Cecil* (2000) (LRA/10/2000)  
*Langinger v Cadogan* (2000) (LRA/46/2000)  
*Sharp v Cadogan* (1997) (LRA/33&35/97)  
*Spath Holme Limited v Greater Manchester and Lancashire Rent Assessment Committee* (1995) 28 HLR 107

*Jonathan Brock QC* instructed by Bircham Dyson Bell for James Arbib  
*Kenneth Munro* instructed by Pemberton Greenish for Earl Cadogan, Cadogan Estates Limited, Cadogan Holdings Limited and Hugo Day and Lady Day  
*Andrew Walker* instructed by Bircham Dyson Bell for 55/57 Cadogan Square Freehold Limited and Dorrit Moussaieff  
*Stan Gallagher* instructed by Jennifer Israel & Co for 32 Rosary Gardens (Freehold) Limited.

## DECISION

### INTRODUCTION

1. These are six appeals (heard together) relating to the price payable on enfranchisement or for an extended lease for houses or flats in central London. Four appeals by the freeholders are solely concerned with the deferment rate to be applied to the reversionary value; one appeal is concerned not only with this issue but also with a claim for a discount to be given for freehold ownership; and an appeal by the leaseholder relates to the freehold vacant possession value of 40 Chelsea Square, in respect of which the freeholder has made an appeal in respect of the deferment rate. The question of the appropriate deferment rate has continued to produce a significant number of applications for permission to appeal to this Tribunal and is clearly a matter of wide concern. It was felt that comprehensive consideration of this issue should be given by the Tribunal to reduce the number of appeals in the future.

2. This is a composite decision dealing with all appeals. It is structured as follows. First, we set out the facts relating to each appeal with a brief summary of the evidence. Second, we determine the freehold vacant possession value of 40 Chelsea Square, the subject of an appeal by the tenant. Third, we deal with deferment rates, generally and specifically for each property. Fourth, we set out our decision in each appeal. (Our valuations are contained in five appendices). Finally, we refer to costs.

3. In Appendix 1 to this decision we set out a brief summary of each case in tabular form.

4. On 15 August 2005 we inspected internally 40 Chelsea Square, 55/57 Cadogan Square and 32 Rosary Gardens and made external inspections of the Chelsea Square comparables, 8 Cadogan Square and 9 Astell Street.

### PART 1

#### **40 Chelsea Square (Arbib v Cadogan) (LRA/23/04)**

5. In this appeal and cross appeal, heard on 27-29 July and 1, 2 and 9 August 2005, Jonathan Brock QC appeared for the tenant and Kenneth Munroe for Cadogan. We heard evidence from James Arbib, the tenant; Robert Orr-Ewing, a partner in Knight Frank, and Noel Flint MRICS, a proprietary partner in Knight Frank, for the appellant and from Roland Cullum FRICS FIRPM, a partner in Cluttons, for Cadogan.

6. 40 Chelsea Square comprises a detached house and garden in the south west corner of the square. It is described in detail in the second part of this decision. The freehold is held by Cadogan; the leasehold by Mr Arbib under two leases which expire on 25 December 2027. He purchased this leasehold interest in May 1997 for £4,762,531.

7. On 1 April 2003 Mr Arbib served notice to acquire the freehold under the Leasehold Reform Act 1967 (“the 1967 Act”). The price is to be assessed under section 9(1C) and the valuation date is 1 April 2003. The LVT determined the price at £4,210,000, assessing the freehold vacant possession value at £11,500,000 and the deferment rate at 6%. Mr Arbib appealed to this Tribunal against the freehold value; Cadogan cross appealed against the deferment rate. The appeals were consolidated with Mr Arbib as appellant.

8. The parties’ evidence regarding freehold vacant possession value is considered in the second part of this decision. As to the deferment rate, Mr Orr-Ewing believed that this should remain at a minimum of 6%, an opinion based on LVT decisions, settlements, the absence of market evidence, his conclusion that deferment rates should be higher than base rate and the reduced expectation of growth in the London residential market. Mr Cullum spoke to a deferment rate of 4¾%. He referred to falling yields in other forms of investment, falling interest rates, low inflation, low rack rental yields, settlements and recent Lands Tribunal decisions (notably *Cadogan Holdings Limited v Pockney* (2004) (LRA/27/03), *Blendcrown Limited v Church Commissioners for England* [2004] 1 EGLR 143 and *Re Day* (2004) (LRA/28/03)).

**55/57 Cadogan Square (Cadogan v 55/57 Cadogan Square Freehold Limited) (LRA/62/2004) and First and Second Floor Flat, 8 Cadogan Square (Cadogan v Moussaieff) (LRA/8/2005)**

9. These appeals were heard together on 2-4 and 9 August 2005. Kenneth Munroe appeared for Cadogan and Andrew Walker for the respondents. We heard evidence from Julian Clark BSc MRICS, a partner in Gerald Eve, for Cadogan, and from Justin Shingles, of Justin Shingles Limited, for both respondents.

10. Cadogan Square is located close to Knightsbridge, to the west of Sloane Street and to the north of Kings Road. **55/57 Cadogan Square** comprises two adjoining town houses built towards to the end of the nineteenth century and situated on the corner of Cadogan Square and Cadogan Gate. The property now comprises 10 flats. The freehold is held by Cadogan. A headlease is held on trust by Trevor John Developments Limited (a dissolved company) for the benefit of the respondents. The parties have agreed that the respondents are headlessees for the purposes of this claim. This lease expires on 24 June 2076. Nine flats are let on underleases expiring on 20 June 2076. One flat is a caretaker’s flat.

11. The appeal in respect of 55/57 Cadogan Square concerns a claim for collective enfranchisement by the respondents as nominee purchaser under the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”). The price is to be assessed under Schedule 6 and the valuation date is 28 April 2004. The only issue before the LVT was the deferment rate, determined at 6%. The LVT gave leave to appeal to this Tribunal.

12. **8 Cadogan Square** is a former town house built towards the end of the nineteenth century and situated on the north side of the square. It has accommodation on basement, ground and six upper floors and is divided into four flats and a caretaker’s flat. This appeal is concerned with the first and second floor flat. The freehold is held by Cadogan. A headlease of the whole building is held by The 8 Cadogan Square Management Co Ltd and expires on 25

March 2003. The underlease of the first and second floor flat is held by the respondent and expires on 8 March 2003.

13. On 17 October 2003 the respondent gave notice claiming an extended lease under the 1993 Act. The premium is to be assessed under Schedule 13 and the valuation date is 17 October 2003. The LVT fixed the premium at £978,168 (apportioned £975,500 to Cadogan and £2,668 to the intermediate leaseholder) using a deferment rate for the freehold reversion of 6%. Permission to appeal on this rate was given by this Tribunal.

14. The evidence is substantially the same in both appeals. Mr Clark spoke to a deferment rate of 4½% on the grounds that rates have fallen. In support he referred to falling yields for other forms of investment, falling interest rates, low levels of inflation, settlements, recent Lands Tribunal decisions and low yields in the rack rent market. Mr Shingles said that the deferment rate should not be lower than 6%. He reached this opinion on a theory of deferment yields (a risk free rate of return plus a risk premium) as applied to the view of an investor before comparison with the market, settlements and LVT and Lands Tribunal decisions.

### **32 Rosary Gardens (Day v 32 Rosary Gardens (Freehold) Ltd) (LRA/87/2004)**

15. In this appeal, heard on 4, 5 and 9 August 2005, Kenneth Munroe appeared for the appellants and Stan Gallagher for the respondents. We heard evidence from Patrick Waters BSc MRICS, a partner in the Southern Properties Group, for the appellants, and from Bruce Maunder Taylor FRICS MAE, a partner in Maunder Taylor, for the respondents.

16. Rosary Gardens is situated in South Kensington and runs in a northerly direction from Old Brompton Road to Wetherby Place. No 32 is on the east side and comprises a former town house built in the 1880s, now converted into five flats. The freehold is held by the appellants as Trustees of the Simon J Day Settlement. A headlease is held by D and P J Bunbury and expires on 25 December 2030. Each flat is let on an underlease expiring on 20 December 2030.

17. On 28 July 2003 the respondents as nominee purchaser made a claim for collective enfranchisement under the 1993 Act. The price is to be assessed under Schedule 6 with a valuation date of 23 June 2004. The LVT determined the price payable at £524,019, apportioned £522,998 to the freeholder and £1,021 to the headlessee. The LVT applied a deferment rate of 6¾% and added 10% of marriage value as hope value for non-participating tenants. Permission to appeal to this Tribunal was given by the President restricted to the deferment rate and whether that rate should be discounted to reflect freehold ownership. Permission to appeal against the decision on hope value was refused. Following an application by the respondents to cross appeal out of time on the issue of hope value, the LVT purported to give permission to appeal to this Tribunal. By an order dated 11 July 2005 we ruled that this purported appeal was a nullity and should be struck out (LRA/53/05). This application was renewed at the substantive hearing and was again refused.

18. Mr Waters spoke to a deferment rate of 6% on the grounds that rates have fallen from a figure of 7.15% accepted in this area until 1999 or 2000. He supported this opinion by reference to falling yields in all other forms of investment, falling interest rates and low inflation, settlements, LVT decisions and decisions of this Tribunal and low yields for rack rented properties. Mr Maunder Taylor used the deferment rate of 6¾% adopted by the LVT but spoke to a higher rate of 8½%. He said that 6¾% was correct on the basis of a traditional term and reversion valuation. But this method does not reflect freehold value where unexpired lease terms are in the region of 26 years and as between a willing seller and a willing buyer in the market. For these unexpired terms the deferment rate should be higher to reflect the realities of the market. A rate of 8½% can be justified for 32 Rosary Gardens by reference to a risk free base rate of 4½% increased by 2% and 1% for bank and borrower's margins respectively and by a further 1% for the short unexpired term. Long term growth must be balanced by obsolescence, a particularly important issue having regard to the age of this property.

### **9 Astell Street (Re Cadogan) (LRA/18/2005)**

19. In this appeal (to which there is no respondent) Kenneth Munroe appeared for the appellants. The hearing was on 5 and 9 August 2005. Evidence was given by Keith Gibbs FRICS, an associate of Gerald Eve. With permission of the Tribunal Mr Gibbs was cross-examined by Mr Walker.

20. Astell Street is in Chelsea, to the north of Kings Road, close to Sydney Street. No 9 is a two-storey brick and tile terraced house built about 1930 with a lock-up garage at the rear, 8 Britten Street. The freehold is held by Cadogan. The property is subject to a headlease which expires on 24 June 2021. The underlease expires on 25 December 2034.

21. The undertenants, Mr and Mrs Killingback, served notice to acquire the freehold under the 1967 Act, the price to be determined under section 9(1C) as at 25 September 2003. The LVT fixed the price at £919,411, apportioned £415,649 to the intermediate lessee and £503,762 to the freeholder. The LVT used a deferment rate of 6%. Permission to appeal was given by this Tribunal restricted to the deferment rate and the differential between rates for the freehold and headleasehold interests (not now in issue, having been agreed). The headlessee and the undertenants have not responded to the appeal.

22. Mr Gibbs spoke to a deferment rate of 4½% on the grounds that these rates have fallen. In support he referred to falling yields for all other forms of investment, falling interest rates and low inflation, settlements, LVT and Lands Tribunal decisions and low yields for rack rented properties.

## PART 2

### 40 CHELSEA SQUARE (freehold value)

#### Introduction

23. Chelsea Square is a residential square with central garden situated midway between Fulham Road and Kings Road and to the west of Sydney Street. The houses are generally standard two or three storey terraced houses with the exception of those in the south western corner where there is a group of larger and more distinctive houses, including the appeal property (40 Chelsea Square) and the comparables mainly relied upon by the parties. On the south side of the square, also with frontage to Manresa Road, is the former Chelsea campus of King's College, London now being redeveloped as flats.

24. The south west corner of Chelsea Square was originally the site of Katherine Lodge demolished in 1930s. In the grounds were built two houses designed by Oliver Hill FRIBA, Vernon House (now the appeal property) and no 41 Chelsea Square. There is continuity of design between the houses.

25. 40 Chelsea Square is a mainly two storey, neo-Georgian house of white painted stucco with a pantile roof. The house is relatively narrow and occupies the full width of the site. At the rear is an attractive, secluded garden of approximately one quarter of an acre. Internally, there was little (if any) change since the house was built in 1934 until alterations were carried out by Mr Arbib. The Grade II\* listing in July 1981 records that the "fine interior survives intact." That is still the position. Before alteration the principal accommodation comprised: reception hall, drawing room, dining room, study or morning room, kitchen and staff sitting room on the ground floor; five bedrooms (two with bathroom), dressing room and bathrooms on the first floor; and three bedrooms on the second floor, with a cellar and two garages. The agreed gross internal floor area is 5,798 sq ft.

26. Since 6 July 1981 40 Chelsea Square has been listed as a building of special architectural or historic interest, Grade II\*. On 5 March 1998 conditional listed building consent was granted for works described as "removal of internal wall to form larger kitchen, relocation of bathroom fixtures, formation of new bathroom and bedroom at attic floor level." By a licence dated 31 March 1998 consent was given for "minor internal alterations at ground, first and attic floor levels" and under a licence dated 26 January 1999 for "minor alterations comprising the installation of air-conditioning to serve attic, study and first floor master bedroom together with the construction of a pergola to the height of the existing trellising, a non-glazed gazebo and water feature to rear garden."

#### Evidence

27. **Mr Arbib** gave evidence regarding the works he carried out at a cost of £1,047,325.82 plus VAT of £125,224.01. Security works cost an additional £70,692.25. Mr Arbib also gave details of the fees charged by his interior decorator. The total costs was just under £1.4m.

28. Mr Arbib acknowledged that none of his proposed works were refused listed building consent. He said that he was advised not to ask for extensive alterations, with the likelihood of refusal. With a free hand he would have carried out other works, eg larger bedrooms and the removal of the central corridor on the first floor.

29. **Mr Orr-Ewing**, for the appellant, gave evidence of relativities between leasehold and freehold values (outside the 1967 Act). These were then used by Mr Flint in his freehold vacant possession values. Mr Orr-Ewing considered two assessments of relativity: by reference to market evidence and by the application of a standard relativity. Rejecting the market evidence approach, Mr Orr-Ewing reached the conclusion that LVT decisions, settlements and a graph point to a relativity of leasehold to freehold of not less than 55% for 24.75 years unexpired (outside the Act). Mr Orr-Ewing also gave Mr Flint open market relativities for leases with 25 years, 30 years, 74 years, 77 years and 112 years unexpired.

30. **Mr Flint**, for the appellant, prepared three valuations of 40 Chelsea Square: the freehold, £8,750,000; the leasehold interest in the no-Act world, £4,812,500; and the open market leasehold value, £5,747,000.

31. Mr Flint said that his normal approach to freehold value is by a review of comparable freehold sales. In this case, however, there is an absence of freehold comparables and it is necessary to rely on adjusted leasehold sales. It is important to understand the market and the prices for enfranchisable leasehold interests in this part of central London and the relationship to freehold values. Under the 1967 Act marriage value is usually split equally but in the market the vendor expects to receive the whole of marriage value. Purchasers expect to pay a leasehold price which equates to the freehold value less the premium to obtain that interest. A purchaser makes no claim on the marriage value which relates to the leasehold interest. A purchaser may overpay for this interest.

32. The relativity percentages proposed by Mr Orr-Ewing on a no-Act basis and (in brackets) on an open market basis where the vendor receives 100% of the marriage value due to the tenant are: 25 years, 55% (65.8%); 30 years 60% (69.3%); 74 years, 91% (94.35%) and 77 years, 92% (95.4%). To adjust for time Mr Flint referred to Knight Frank's prime property index and FPD Savills PCL South West Houses Index. Mr Flint said these indices are helpful when adjusting sale prices for up to three years apart but of less value when applied to a six year period, as at 40 Chelsea Square.

33. Mr Flint said that he is required to value the house as it was when the lease was granted, disregarding tenant's improvements. The impact of lack of improvements is three-fold: the cost of bringing the property up to modern standards; lack of occupation while works were in progress; and the "vision" of seeing the appearance once it has been improved. Improved houses attract greater interest and achieve higher prices. At the time of sale to Mr Arbib 40 Chelsea Square required full refurbishment and improvement.

34. Mr Flint said that it is necessary to achieve a like for like basis when considering comparables. 38 Chelsea Square was in good condition and had the amenities installed in no 40. 41 and 43 Chelsea Square required redecoration. The full cost of improvements incurred

by Mr Arbib has not been deducted when making comparisons but allowances of £650,000 in respect of no 43 and £500,000 in respect of 41 had been when making comparison with 40 Chelsea Square.

35. This house is listed Grade II\*; the other main comparables are either not listed or listed Grade II (41 Chelsea Square). The sales particulars of 40 Chelsea Square referred only to Grade II and Mr Arbib did not become aware of the higher listing until after purchase. A Grade II\* listing is of concern when a house requires improvement. Most purchasers found listing restrictive and it reduces the appeal of the property. Overseas purchasers would not readily become involved in such a property. Purchasers will make an allowance for added costs. For 40 Chelsea Square Mr Flint allowed for listing by adding 15% to the costs of improvements when making a comparison.

36. Comparables can be divided into three tiers. Tier 1, directly comparable houses in Chelsea Square, nos 38, 43, 33, 41 and 40. Tier 2, standard houses in Chelsea Square, nos 31, 51, 11, 25 and 18. Tier 3, houses from a wider area.

37. Mr Flint commented on and analysed these comparables and made adjustments for tenure and for time. In analysing 43 Chelsea Square Mr Flint concluded that the purchaser was an “overeager” buyer and that this bid should be discounted under para PS.3.2.4 of the RICS Guidance Notes (the Red Book). In answer to questions from the Tribunal, Mr Flint said that this guidance applies to valuations under the 1967 Act and is the reason for his exclusion of a higher bid when analysing comparables. If this guidance (the exclusion of the over eager buyer) did not apply, Mr Flint accepted that this would undermine his analysis and valuation. The Tier 2 comparables show that the base value for a standard freehold house in Chelsea Square in April 2003 was between £3.5m and £4.25m. A comparison was made between 40 Chelsea Square and the other Tier 1 houses. No 41 is the best comparable (£9,314,824). They are of similar value except for condition and the Grade II\* listing. A deduction should be made of £500,000 to reflect the superior condition of no 41 with the addition of 15% for listing. The resultant value for 40 Chelsea Square is £8,750,000. As a cross check Mr Flint looked at the comparables on a square footage basis and by reference to Mr Arbib’s purchase in 1997. This equates to a freehold value at the valuation date of £12,489,082 (£2,154 per sq ft), a figure which is too high by reference to the comparables, particularly 43 Chelsea Square. This value has been distorted by the use of the “bottom up” approach due to Mr Arbib’s overbid to secure the property in 1997. He paid more than the true value. The “true value” is not market value. It excludes the premium that purchasers pay for mid-term leases. Later in his evidence, however, Mr Flint accepted that Mr Arbib paid the market value that he had to pay to secure the house.

38. To arrive at the no-Act leasehold value Mr Flint applied the relativity of 55%, given by Mr Orr-Ewing, to produce a figure of £4,812,500. To find the open market value of the leasehold interest at April 2003 he deducted the premium of £3,003,000 from his freehold value of £8,750,000 to produce a figure of £5,747,000, an open market relativity of 65.6%.

39. **Mr Cullum**, for Cadogan, said that 40 Chelsea Square is a “trophy house”. These houses realise prices which cannot be analysed in a conventional way (to a price per sq ft) and do not

follow a discernible pattern. They are not price sensitive: valuation is an art. 41 Chelsea Square is also a trophy house.

40. The best comparables are nos 40, 41, 43 and 33 Chelsea Square. Although no 38 is next door to the appeal property it is in a different market. Adjustments are necessary for time and tenure. He has agreed with Mr Flint that the FPD Savills PCL Southwest House Index is the most reliable for time adjustment, although it is likely to be less accurate for uncommon properties.

41. Mr Cullum continued to use the relativities agreed with Lord Francis Russell in the LVT proceedings: 24¾ years unexpired, 50.25%; 25 years unexpired, 50.75%; 30 years unexpired, 56.65%; 74½ years unexpired, 87.5%; and 77 years unexpired, 88.75%. Adjusting for time gives the following leasehold values at the valuation date: no 40, £8,654,934; no 41, £8,886,343; no 43, £7,182,152; no 33, £7,461,635.

42. Mr Cullum made no allowance for improvements at no 40 as the purchase by Mr Arbib was the first since the house was new. Mr Cullum was unaware of any improvements at the time of sale. Mr Cullum's valuation is built up from the purchase of the property without improvements.

43. Although freehold comparables would be better, evidence of freehold sales in other locations would not be as valuable as the leasehold sales in Chelsea Square. Mr Cullum considered the four comparables in detail.

44. 40 Chelsea Square is the most relevant but potentially the most dangerous evidence. The price represents the unimproved value of the actual house being valued, but a sale six years before the valuation date is potentially dangerous when applying a general index. Mr Arbib purchased the 30 year lease in May 1997 for £4,762,531. The house was unimproved and in disrepair. The lease was enfranchisable but the residency test was still in force. Mr Arbib paid the true open market value. Applying the FPD Savills index gives an equivalent value of £8,654,934 at the valuation date. When using this price to find the freehold vacant possession value it is not necessary to adjust for improvements and listing.

45. 41 Chelsea Square was the sale of a long lease (77 years unexpired) three years before the valuation date. The house is adjacent to no 40, designed by the same architect but to a personal layout. Applying the index produces a value of £8,886,343 for a 77 year lease at the valuation date. 43 Chelsea Square, held on lease with 25 years unexpired, was sold in March 2002 for £7,011,251. This is a much less distinguished house. The purchase price was 10% above the underbid. A winning bid 5% above the underbid would not be excessive and Mr Cullum discounted the price to £6,621,300. The application of the index gives a 25 year lease value at the valuation date of £6,782,696. 33 Chelsea Square was the sale of a long lease (74½ years) close to the valuation date and applying the index gives the value of £7,461,635 on 1 April 2003.

46. It is common ground that open market leasehold prices must be discounted to reflect the no-Act world. It is not possible, however, to point to market evidence of the effect of the 1967 Act on leases. To decide the effect of the Act is a theoretical exercise. An enfranchising tenant is entitled to 50% of marriage value. This leads to the assumption that the assignor will not sell at a price which gives up the whole and an assignee will not buy at a price which include the whole of that share. This suggests that the tenant's half share of marriage value would be divided equally between assignor and assignee: the effect of the Act is equivalent to 25% of marriage value. As a proportion of vacant possession value, marriage value will vary according to the unexpired term and therefore it is not possible to say that the effect of the Act is a fixed percentage of vacant possession value. Mr Cullum devised a theoretical exercise which showed that the effect of the Act varied according to the unexpired term of the lease. It produced the following effects on the leasehold market value: 25 years unexpired, 11.3%; 74½ years unexpired, 3.1%; 30 years unexpired, 10.3%; and 77 years unexpired, 2.77%. Applying these no-Act world discounts to the leasehold equivalent values for the comparables produced no-Act world equivalent figures of: 40 Chelsea Square (minus 10.3%), £7,763,475; 41 Chelsea Square (minus 2.77%), £8,640,191; 43 Chelsea Square (minus 11.3%), £6,016,251; and 33 Chelsea Square (minus 3.1%), £7,230,324.

47. These values represented the no-Act world leasehold values at the valuation date and were then increased to the equivalent freehold values using the relativities set out above: 40 Chelsea Square (at 56.65%), £13,704,280; 41 Chelsea Square (at 88.75%), £9,735,426; 43 Chelsea Square (at 50.75%), £11,854,681; and 33 Chelsea Square (at 87.5%) £8,263,277.

48. Mr Cullum said that his equivalent freehold values are derived from a number of mathematical adjustments. It is therefore necessary to stand back and consider whether these figures feel right in relation to each other and in relation to the wider market. He referred to flat sales following the redevelopment of the former King's College site in Manresa Road, the sale of a development plot and the LonRes database and reached the conclusion that his equivalent freehold values are not flawed. A comparison must be made of one with another. He concluded that 40 Chelsea Square is more valuable than no 41; that no 43 is marginally more valuable than no 40. Further narrowing down of the range of values led him to the conclusion that 40 Chelsea Square would not have sold at the valuation date at above £13m but he is confident that £11.5m is not too low. This is a minimum figure. Chelsea Square is the most prestigious address in the Royal Borough of Kensington and Chelsea and no 40 is a trophy house.

49. As to the open market value of the leasehold interest, Mr Cullum said that the application of a 50.25% relativity to his freehold value of £11.5m produced a leasehold value with 24.5 years unexpired of £5,780,000 in the no-Act world. Allowing for 11.3% enfranchisement rights gave a higher open market leasehold value of £6,430,000. This is consistent with the sale of 43 Chelsea Square. The leasehold value for the purposes of the 1967 Act is £5,780,000.

50. In explaining his valuations Mr Cullum made no reference to the RICS Red Book definition of market value but, in answer to the Tribunal, he said that he is not sure that the 1967 Act requires valuation to a Red Book value but the definition of market value in the Red Book was assumed by him to be analogous to that required under the 1967 Act.

## Discussion

51. The price on enfranchisement in this appeal is to be calculated under section 9(1C) of the 1967 Act, which provides that it shall be determined in accordance with subsection (1A) of section 9 as amended by subsection (1C). The effect of these provisions is that the price payable for 40 Chelsea Square “shall be the amount which at the relevant time the house and premises if sold in the open market by a willing seller, might be expected to realise” on certain assumptions. Two assumptions are relevant. The first is that the vendor is selling for an estate in fee simple, subject to the tenancy, but on the assumption that the 1967 Act conferred no right to acquire the freehold. The other is that the price be diminished by the value of improvements carried out by the tenant or his predecessors in title at their own expense.

52. The relevant time is the valuation date, 1 April 2003. At that time the tenancy to which the freehold was subject had 24¾ years unexpired. Both valuers have adopted the conventional valuation approach, that is to say they have capitalised the rent for the unexpired term with reversion to the freehold value with vacant possession deferred for that term and then added 50% of marriage value. In this part of the decision we are solely concerned with the freehold vacant possession value (Mr Flint £8,750,000, Mr Cullum £11,500,000) and the resultant value of the tenant’s existing leasehold interest in the marriage value calculation (Mr Flint £4,812,500, Mr Cullum £5,780,000). The LVT found the vacant possession freehold value to be £11,500,000 and the leasehold value £5,800,000 (rounded from £5,780,000). The deferment rate to be applied to the freehold value is also in dispute (Cadogan’s appeal) and is dealt with in the next part of this decision.

53. Mr Arbib challenges the decisions of the LVT on freehold and leasehold values and the burden of proof is therefore on him to prove that they are wrong (*Wellcome Trust Limited v Romines* [1999] 3 EGLR 229 at para 39(3)). If it can be shown that the freehold value is below £11.5m then Mr Arbib’s appeal will succeed and we will determine new freehold and leasehold values. If, however, we are not persuaded that the freehold value is below £11.5m then the appeal will fail and the exact figures of value will not be required, those determined by the LVT will remain undisturbed.

54. Before considering the valuation evidence we comment on the valuers. Mr Brock QC, for the appellant, urged us to give greater weight to the evidence of Mr Flint on the grounds that he is an estate agent, active in the market, whereas Mr Cullum is a valuer lacking market experience. We do not accept this distinction. Although it is true that Mr Flint has inspected some of the comparables internally and had some agency involvement, we bear in mind that, particularly in this case where there are no freehold comparables, valuations under the 1967 Act largely take place in a hypothetical market where the ability to analyse and apply the limited valuation data in the light of the statutory provisions is as important as market experience. Furthermore, we have formed the conclusion that Mr Cullum was the more objective witness. Mr Flint appeared to be juggling with figures to reach his conclusion that the LVT were wrong. In general, where decisions rest on valuation opinion, we prefer Mr Cullum’s approach to that of Mr Flint.

55. Although the valuers differ in their end values by nearly £3m, there is much common ground and the difference lies largely in the application of the evidence of value to what is

agreed to be an unusual house. Essentially the differences between the parties are matters of judgement.

56. It is common ground, that due to an absence of comparable freehold sales, it is necessary to find the freehold value from leasehold sales, a process described as a “bottom up” approach. Both valuers recognise the inaccuracies likely to arise in this approach. It is also common ground that 40 Chelsea Square is one of Chelsea’s “more eye catching houses,” with a superior architectural appearance and in a location where prices are at the top end of the Chelsea price range.

57. Against this background we look at the evidence. In our judgement, the starting point should be the price paid by Mr Arbib for the leasehold interest in 40 Chelsea Square in May 1997. Although Mr Orr-Ewing and Mr Flint originally prepared their evidence on the assumption that Mr Arbib paid more than the “true value”, during the hearing Mr Flint accepted that Mr Arbib paid the market price to secure the house. We agree. This is, *prima facie*, the best evidence of value under the 1967 Act. It is the price paid for the house being valued; it reflects the value in an unimproved condition; and it reflects the listing. It is not therefore necessary to make any adjustments for these factors. Also, with regard to the Grade II\* listing, although we recognise that this imposes greater restrictions on alterations than in respect of the unlisted comparables and no 41 with a lower Grade II listing, we have concluded that the higher listing reflects the particularly attractive features in no 40 which would appeal to a purchaser and offset any disadvantages of higher listing. Conversely, however, the price paid for no 40 suffers from two disadvantages: a short lease and the interval of six years between purchase and valuation date, both requiring substantial adjustments to produce the freehold value in April 2003. Nevertheless, the advantages of this evidence outweigh these disadvantages. We take this purchase as our starting point, to be checked against other comparable transactions.

58. In analysing the price paid for 40 Chelsea Square and the comparables, we use a similar approach to that adopted (with minor differences) by Mr Flint and Mr Cullum to convert leasehold into freehold prices. This involves: a discount from the leasehold price for 1967 Act rights; the conversion to freehold value at purchase by relativities; and the indexed conversion of that value to value at the relevant date (1 April 2003). The adjusted prices provide the raw material for a judgement as to the freehold value of 40 Chelsea Square.

59. The leasehold interest with approximately 30 years unexpired in no 40 was sold by informal tender in May 1997. Mr Arbib was the successful bidder at £4,762,531. This is now accepted to be the market value. The first adjustment is for 1967 Act rights, the leasehold purchased by Mr Arbib giving the right to enfranchise (subject to the residency qualification which then existed). Both valuers make a downward adjustment. Mr Flint used Mr Orr-Ewing’s relativities adjusted to an open market relativity (60% to 69.3%) to find the freehold value at the date of the purchase. Mr Cullum made two specific adjustments: first for 1967 Act rights and then to convert to the freehold value. Thus, Mr Flint converted the price paid by Mr Arbib into the freehold value by applying 69.3% (effectively 9.3% for the 1967 Act rights and 60% no-Act relativity leasehold to freehold) to produce £6,872,339. Mr Cullum deducted 10.3% for the 1967 Act rights and then used a relativity of 56.65% leasehold to freehold (overall 63.1% compared to Mr Flint’s 69.3%). Mr Cullum’s freehold value at May 1997 is

£7,541,023. There is little to choose between these two approaches: the alternative figures are reasonably close, both rest largely on theoretical calculations and have little supporting evidence. We prefer Mr Cullum's approach, for the general reason given earlier in this decision. In particular, we prefer his approach to the marriage value in the leasehold price. To adjust for time, from purchase to 1 April 2003, both valuers have used Savills index referred to above. Applying the index figures for May 1997 and March 2003 (for 1 April) gives a freehold value of £13,521,556 at the valuation date, a figure well above the £11.5m value determined by the LVT. (Applying the same adjustments to M Flint's figures gives a value well above the LVT's value).

60. This is our starting point but it must be considered in the light of the other comparables. From the evidence and our inspections we do not derive assistance from the standard houses in Chelsea Square (which are materially different from the appeal property) nor from houses elsewhere (Mr Flint's Tier 2 and Tier 3 comparables). We look solely at Mr Flint's Tier 1 comparables: nos 43, 41, 33 and 38 Chelsea Square, as the closest in location and description to no 40.

61. The leasehold interest with 25 years unexpired in 43 Chelsea Square was sold in March 2002 for £7,011,251. The successful bid was some £650,000 more than the next offer and Mr Flint and Mr Cullum have both made downward adjustments on the ground that the successful purchaser was an overeager buyer who paid more than the market value. We reject this approach. Who can say how much above the second bid is still within the ambit of market value? What overbid takes it above that value? Any downward adjustment can only be arbitrary. In our judgement, the actual price should be analysed and any question of overpayment dealt with as one of weight. Adjusting for 1967 Act rights and for the freehold relativity (11.3% and 50.75% respectively on Mr Cullum's figures) gives a freehold value at March 2002 of £12,554,147. Applying the Savills' index gives freehold value on 1 April 2003 of £12,556,671.

62. The leasehold interest with 77 years unexpired in 41 Chelsea Square was sold in March 2000 for £7,800,000. Adjusting for 1967 Act rights and the freehold relativity (2.77% and 88.75% respectively on Mr Cullum's figures) gives a freehold value in March 2000 of £8,545,284. Applying the Savills' index increases this figure to £9,735,427 as at 1 April 2003.

63. The leasehold interest in 33 Chelsea Square with 74½ years unexpired was sold in January 2002 for £7m. Adjusting for 1967 Act rights and for the freehold relativity (3.1% and 87.5% respectively on Mr Cullum's figures) gives a freehold value at January 2002 of £7,752,000. Applying the Savills' index increases that figure to a value on 1 April 2003 of £8,154,638.

64. The leasehold interest in 38 Chelsea Square with 112 years unexpired was sold in December 2003 for £6,960,000. Mr Cullum did not find this house comparable and did not analyse this transaction. Mr Flint used an open market relativity of 99.35% and the Savills' index to produce a freehold value at 1 April 2003 of £7,098,436.

65. A comparison of the adjusted figures is as follows:-

	Mr Flint	Mr Cullum	Lands Tribunal
40	£12,489,082	£13,704,280	£13,521,556
43	£10,915,125	£11,854,681	£12,556,671
41	£9,314,824	£9,735,426	£9,735,427
33	£7,908,463	£8,263,277	£8,154,638
38	£7,098,436	–	–

66. In the light of this evidence it is now a matter of judgement as to the value of the freehold interest in 40 Chelsea Square as at 1 April 2003, a decision made difficult by the unique character of the house.

67. The best evidence of value, in our judgement, is represented by the leasehold price paid by Mr Arbib, which both valuers adjust to a figure well above £11.5m and which we analysed to show £13.5m. We accept that this figure is likely to be overstated due to the major adjustments needed for the short lease and the six years interval between purchase and valuation date. Nevertheless, this purchase indicates that £11.5m is not too high for the freehold value in April 2003.

68. 43 Chelsea Square is a larger house and the price paid for the 25 year lease in March 2002 may have been above the market value. We adjust the price to show £12.5m compared to Mr Flint's figure of just under £11m and Mr Cullum's £11.8m (both adjusted downwards for an overbid). In our judgement, this house has a higher value than no 40 and this transaction does not indicate that £11.5m is excessive for the appeal property.

69. 41 Chelsea Square is similar in location and appearance to no 40 and the leasehold price for 77 years unexpired in March 2000 requires less adjustment for freehold to leasehold relativity and for time. The layout and extent of the accommodation in this house is, however, unusual, particularly as to lack of bedrooms. In our judgement, no 40 is of greater value, indicating a value above our £9.7m (Mr Flint £9.3m and Mr Cullum £9.7m). It does not indicate that £11.5m is too high.

70. 33 Chelsea Square is opposite the appeal property but is a much less attractive house and is only marginally comparable to no 40. We have adjusted the leasehold price to £8.1m (compared to Mr Flint at £7.9m and Mr Cullum at £8.2m). In our judgement, this is indicative of a value for no 40 of at least around £11.5m in April 2003.

71. We have considered the evidence regarding 38 Chelsea Square, which is close to no 40, but we share the view of the LVT and Mr Cullum that it is not comparable. We find it of no assistance.

## **Decision**

72. Our conclusions are that Mr Flint's figure of £8,750,000 for the freehold interest in 40 Chelsea Square at the valuation date is too low and not supported by the evidence. We are not persuaded that the figure determined by the LVT of £11,500,000 is wrong. Mr Arbib has failed to discharge the burden of proof and his appeal is dismissed. This leaves the LVT's freehold valuation of £11,500,000 and leasehold valuation of £5,800,000 unchanged. It is these figures which we will therefore use in our determination of the price to be paid for the freehold of no 40 after applying a deferment rate in accordance with our determination in the next part of this decision.

## **Red Book**

73. Lastly, in this part of the decision, we comment on the use of the RICS Appraisal and Valuation Manual (the Red Book) in the preparation of valuations under the 1967 Act. Mr Flint analysed one of the comparables, 43 Chelsea Square, by the exclusion of the top bid on the grounds that the purchaser was an overeager buyer, excluded under the definition of "market value" in paras PS 3.2 and 3.2.4 of the interpretative commentary in the Red Book. These provisions exclude a buyer who is overeager or determined to buy at any price. Mr Cullum made no reference to the Red Book but, in answer to a question from the Tribunal, he said that he assumed that market value in the Red Book and under the 1967 Act were analogous.

74. The Red Book definition of market value which Mr Flint put before the Tribunal appears not to have been in force at the valuation date in this appeal (1 April 2003), the effective date on the extract produced to us being 1 December 2003. We do not know whether the same definition existed before that date. We will however use the definition we have to illustrate the likely error in using the Red Book definition in a statutory context. Firstly however we should draw attention to the specific disclaimer of the Red Book itself which makes it inappropriate to apply it to:-

"valuations in anticipation of evidence and pre-hearing statements in connection with legal and quasi-legal proceedings and those of tribunals, courts and committees for the settlement of property-related disputes." (PS 1.3)

75. In the case of valuations for statutory purposes, the valuation must be undertaken in accordance with the statutory requirements. Section 9(1A) as applied by subsection (1C) of the 1967 Act defines the price that is to be determined as follows:-

"the price payable ... shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions ..."

then follow the assumptions, for example as to disregarding improvements. But in the case of higher value house, in contrast to houses where the price is to be determined under section 9(1), there is no provision that the open market is to be "with the tenant and his family not buying or seeking to buy."

76. It has not been suggested to us that the inclusion of the possibility of a tenant's bid in the circumstances of this case, should increase the vacant possession valuation. Clearly however in considering any comparable evidence, so-called "overeager bids" should be disregarded or adjusted only in so far as these circumstances differ from those which the statute requires to be assessed for the purpose of the statutory valuation. It is in this context that we have not considered it right either to disregard or adjust the price paid for no 43.

77. The courts and this Tribunal have considered market value in its different statutory contexts on many occasions (eg in compensation, taxation and leasehold enfranchisement) and have, in effect, given explanations to add to, or put a gloss on, the brief definitions found in statute. These explanations are analogous to explanatory paragraphs in the Red Book. A valuer preparing a valuation under the 1967 Act, or any statutory valuation, must however value to the statutory definition as explained by relevant case law and not to the Red Book, which is not usually of assistance or relevance.

### **PART 3**

#### **DEFERMENT RATES**

##### **Statutory provisions**

78. The statutory provisions for the assessment of the price payable on the purchase of the freehold of a house (at least of high value) under the 1967 Act, or the value of the freeholder's or landlord's interest on collective enfranchisement or as part of the premium payable on an extended lease under the 1993 Act are in essentially similar terms. The determination of the relevant amount in each case requires the ascertainment, at the valuation date, of the amount at which the freeholder's or landlord's interest "if sold in the open market by a willing seller might be expected to realise" on assumptions which are likewise in essentially similar terms. The basic assumption is therefore a "willing seller/ open market assumption".

79. The second assumption common to all cases is that the relevant Act does not confer the right to acquire the freehold or extend the lease in fact granted by section 1 of the 1967 Act or by either Chapter 1 or 2 of the 1993 Act, as the case may be. We call this "the no-Act assumption."

80. In the case of collective enfranchisement or an extended lease, it is to be assumed that neither the tenant nor other parties with special interests are buying or seeking to buy (paras 3(1) and (1A) of Schedule 6 and para 2 of Schedule 13 to the 1993 Act). We will call this "the exclusion of tenant's bid assumption." A similar assumption is also made in respect of low value houses under section 9(1) of the 1967 Act.

81. As we have pointed out in para 75 above, the exclusion of tenant's bid assumption does not apply to the assessment of the price of the freehold of houses under section 9(1A). In theory this may well be relevant to the assessment of the deferment rate, as well as the vacant

possession value, but no evidence or submission in the context of these appeals has relied on this factor, and we draw no conclusions in respect of it.

82. Mr Walker submitted that the “no-Act assumption” does not preclude the assumption that if the relevant Act had not conferred the rights referred to, then the market would fear and allow for the probability of Parliament’s passing legislation to confer such rights. In our judgement this is excluded by the no-Act assumption because the assumption is not that the relevant provisions have not been passed but that they have not granted to the particular tenants the rights which they do in fact grant. In this respect the reference to a “no-Act assumption”, which we have adopted is a misnomer.

83. The purchase price or premium is then in each case the aggregate of the freehold or landlord’s interest and the marriage value ascertained, again on bases which are essentially similar in each case. (section 9(1C)(a) of the 1967 Act, paras 2(1)(b) and 4 of Schedule 6 and paras 2(b) and 4 of Schedule 13 to the 1993 Act). It is the difference between the total value of the landlord’s and the tenant’s interests before the acquisition or grant and the value of the tenant’s interest after the acquisition, or in the case of a lease extension, the aggregate of such interests after the grant. Thus the higher the valuation of the landlord’s interest before the exercise of the tenant’s rights, the greater is that element of the payment to be made; but the less will be the marriage value, the more closely the value of that interest of the landlord approaches to the value of the tenant’s interest after exercise of his rights.

#### **Ascertaining value of landlord’s interest**

84. The landlord’s interest in premises which are the subject of a lease is to receive the rent reserved under the lease during its term and, on the no-Act assumption (subject to the tenant’s limited right to retain possession in the case of the enfranchisement of a house, which in the case of the high value properties with which these appeals are concerned has not been suggested as affecting value), the right to vacant possession at the end of the term.

85. By a “convention” of valuation practice, these two elements of the landlord’s interest have been separately valued. It will be apparent when we consider what has been called “the convention” as to the amount of the deferment rate why we deliberately use the same word also in this context. The rental stream has been valued by capitalising the right to receive the rent either at a fixed or at a variable level for the appropriate number of years. In the case of a rent receivable by an intermediate landlord for a limited period, the convention usually applied is to make provision for a sinking fund. The sums involved in cases such as those under appeal are small relative to the total payment to be made, and the ascertainment of this part of the value of the landlord’s interest does not feature in these appeals.

86. The second, and more important element of the open market value of the landlord’s interest, is the value of the right to vacant possession at the end of the term. This, it is accepted, can be arrived at only by assessing the market value of the relevant premises unencumbered by the tenant’s lease as at the valuation date, and applying an appropriate deferment rate to reflect the postponement of that interest until the expiry of the term. These appeals are concerned solely with the appropriate deferment rate to be applied to capital values

which, except in one case, have either been agreed or have been determined but are not subject to appeal. In the case of 40 Chelsea Square we have, having considered the tenant's appeal, determined above the capital value with vacant possession as at the valuation date.

87. The deferment rate is the rate of compound interest that would be needed to be earned on an investment made at the valuation date, in order to produce at the end of the term the capital value which has been determined as being the value as at the valuation date of the interest, which value will however accrue only at the end of the term. It is also commonly called the deferment "yield" but it is a purely notional yield on the figure which is to be thus ascertained as the present value of the sum deferred. We therefore prefer to use the expression "deferment rate". This expression keeps in mind that what is being ascertained is a valuation tool to be applied to a figure, namely the current open market vacant possession value, which can be ascertained by market evidence. Unlike the capitalisation rate for the rental flow, as to which there is at least some market evidence, there is, as is common ground in these appeals, no market in reversionary interests on terms conformable with the assumptions required by the statutes.

88. It is necessary, in the consideration of these appeals to keep in mind that the exercise upon which we are engaged is to ascertain a purely hypothetical rate in order to convert a value ascertainable by market evidence into a figure which forms part of the sum that it is to be assumed would have been realised by a willing seller upon the necessary assumptions. It is not a statutory requirement that a deferment rate should be ascertained. It is however accepted that it is a necessary step in the ascertainment of that which the statutory provisions do require.

### **The appeals**

89. The premises which are the subject of four of the cases which we heard together are situated on the Cadogan Estate which is agreed to be one of the best residential areas within the Prime Central London Residential Area, as defined for statistical purposes by Savills Research. The appellants (Cadogan) employed three different valuers in the four cases, and there are two valuers who have given independent evidence on behalf of the tenants. The four cases have valuation dates between 1 April 2003 and 28 April 2004 and include valuations under each of the three kinds of transaction identified above. We will refer to these cases as "the Cadogan cases". Hearing these appeals together gave us the opportunity to hear a number of different valuers addressing the question of the appropriate deferment rates for the purpose of each of the statutory provisions in respect of the valuation of premises in similarly highly regarded locations. Counsel for opposing parties in each appeal were given the opportunity to cross examine witnesses for the opposing side in the appeals being heard with that in which he was involved, and we gave notice that we would take all the evidence which we heard in all the appeals into account in deciding each appeal. It is for this reason that this decision is a joint decision in all appeals.

90. We heard at the same time an appeal concerned with the deferment rate to be applied to the capital value of flats in a converted house at 32 Rosary Gardens, where the same solicitors represented the landlord as appeared for the Cadogan Estate. These premises are on the Brompton Estate, which is agreed to be somewhat less well regarded than is the Cadogan Estate. Hearing this appeal with the Cadogan cases has given us the advantage of hearing

evidence from two further valuers and gives us the opportunity to address the issues raised in the Cadogan cases in a somewhat different context. For reasons which will be apparent when we set out the history of what has been called in the Cadogan cases “the conventional figure” for deferment rate, it will nevertheless be convenient to consider the Cadogan cases together, with the benefit of this further evidence on overlapping issues, and to turn then to the different considerations which apply in the Rosary Gardens case.

91. We have tabulated in Appendix 1 the basic facts and evidence as to the rates in each appeal. Four of the properties had, at the valuation date, unexpired terms in the range of just under 20 to just over 30 years. In the case of 55/57 Cadogan Square the unexpired term was 72.156 years. Of course the longer the period of deferment the less will be the value of the freehold reversion. On the other hand, the longer the period of deferment the greater the effect of the rate upon that value. We have however noted at paragraph 81, that the effect of any increase in the valuation of the landlord’s interest upon the payment to be made to the landlord is off-set by a decrease in marriage value. In Appendix 1 we have therefore set out the resultant effect upon the price or premium which would result from the adoption of the deferment rates proposed on behalf of the landlords in these cases. The longer the unexpired term the less the off-setting effect of a reduction in marriage value. The choice of an appropriate deferment rate does therefore have a significant effect upon the payments to be made under these statutory provisions.

92. As we have already recorded, these appeals are not concerned with the capitalisation rates to be applied to the rents reserved, either for the freeholder or any intermediate landlord. It is agreed that the question of the appropriate deferment rate should be considered independently of such rates or any apportionment of payments between the freeholder and any intermediate landlord. None of the intermediate landlords with interests in the two Cadogan Square properties and 9 Astell Street have appeared nor has the headlessee at Rosary Gardens. We will not therefore consider the consistency or otherwise between the evidence as to deferment rates and any rate fixed but undisputed for capitalisation, but accept the LVT’s decisions. We think it appropriate, however, without coming to any conclusion as to the relationship between such rates, to observe that our conclusions in these appeals should not be taken as endorsement either of the capitalisation rates adopted nor of any relationship they have to the deferment rate as determined by this tribunal.

### **Basis of 6% on Cadogan Estate**

93. From the time when the 1967 Act first came into force surveyors instructed on behalf of the Grosvenor and Cadogan Estates kept records of settlements and agreements as to valuations made with valuers acting for tenants exercising their rights under the Act. As recorded in the decision of this Tribunal (W H Rees FRICS) in *Lloyd-Jones v Church Commissioners for England* [1982] 1 EGLR 209 at 217, there were already by the end of 1981, 57 settlements on the Cadogan Estate in which deferment rates of 6% had been agreed, not merely as analyses of settlements but as part of the process of agreeing settlements. In *Cadogan Estates Limited v Hows* [1989] 2 EGLR 216, the Tribunal (W H Rees FRICS and T Hoyes FRICS) heard evidence as to how the settlements (then numbering 334 on the two Estates) were arrived at. They accepted them as being good evidence of “the land market” and adopted the deferment rate of 6% derived from those settlements (at 219). At the same time it is to be noted that they adopted a capitalisation rate for the ground rent of 5%.

94. On this basis the deferment rate of 6% has been treated as an established figure on the Cadogan Estate and has continued to be applied notwithstanding the sharp rise in interest rates and inflation in the early 1990s and the subsequent decline and stabilisation since at any rate the turn of the century. Only thereafter have valuers for the Cadogan Estate begun to propose lower deferment rates, although evidence of settlements where such lower rates had been accepted proved to be unreliable when considered by this Tribunal (N J Rose FRICS in *Pockney*).

95. In contrast, in the hearing before the LVT concerning 32 Rosary Gardens, Mr Waters and Mr Maunder Taylor were able to agree that as at 28 June 2003 “the appropriate yield for lease extensions in the locality was 6.25% “ (see para 34 of the LVT’s decision). Mr Waters put that as a decline from 7.15% in 1999 and 2000. The figures were derived from settlements agreed on the Brompton Estate and there was no dispute that in that locality there had been a change of rates agreed over the period. Indeed, it was the evidence on behalf of the nominee purchaser in that case that rates had further changed between 2003 and the valuation date a year later to increase the rate to 6.75%. It is that evidence which the LVT accepted.

### **Absence of market evidence**

96. In accepting the evidence of settlements on the Cadogan and Grosvenor Estates as evidence of the “land market”, the Lands Tribunal in the two cases referred to above was acknowledging that the agreements reached were agreements between valuers who were in touch with an actual market. From this evidence they could reach conclusions as to what would be realised by a willing seller in the hypothetical situation which the statute required them to assume. Until the coming into force of the 1993 Act, the right to enfranchise was restricted to only the lower value houses on these Estates, and even in respect of those properties there was a residential qualification. There was no right for a flat owner to extend his lease, and only the limited right to collective enfranchisement which had been introduced in 1987.

97. It is not necessary for the purposes of this decision to trace the stages by which rights of enfranchisement have become so universal that there is no room for a market unaffected by the rights granted by the Acts, the benefit of which is to be assumed to be unavailable to the tenants in the hypothetical transactions which the Acts requires to be assumed. The history is well set out in Chapter 1 of Hague on Leasehold Enfranchisement (4<sup>th</sup> Edition).

98. The difficulty which applies throughout the country is accentuated in the case of the Cadogan and Grosvenor Estates because of their historical reluctance to be willing sellers, compounded by the unavailability of roll-over relief under section 247 of the Taxation of Chargeable Gains Act 1992 in the case of voluntary disposals.

99. It is in those circumstances, where there is no direct evidence of transactions in the market which can be relied upon with any degree of confidence to arrive at a deferment rate to be applied to a valuation under the Acts, that valuers who have been responsible for settlements can no longer claim a familiarity with a relevant land market to give their settlements the

evidential value accorded to them when the settled figure of 6% was accepted by the Lands Tribunal.

## **Transactions**

100. The absence of transactions which can be used to derive yields from investments in freehold reversions, whatever dispute there might be as to analysis, is, we think, demonstrated by the failure of the valuers in these appeals to identify comparables whose facts could usefully be agreed, subject to such dispute as to analysis.

101. On 15 July 2004, the Cadogan Estate sold by auction seven freehold reversions of blocks of flats in Cadogan Place, all subject to leases having more than 80 years unexpired. We understand that the sale was, at least in part, an attempt to provide relevant market evidence of the value of such reversions. The main value of what was sold however consisted in the rental stream which in these appeals has been separately capitalised, so, on any basis, the evidence that could be derived from such sales could not lead to a deferment rate for the reversion, without adjustment which would be controversial.

102. The sales could not however be made without the tenants having the opportunity to bid, contrary to the exclusion of tenant's bid assumption required under the 1993 Act. In fact they were the successful bidders in all but two cases. The prices achieved with such extra bidders in the field as compared with the market which the Acts require us to assume would, no doubt, have increased the price achieved, were it not that the availability of these tenants' statutory rights, which are also to be assumed not to exist, led third parties to withdraw competitive bids. We accept that the evidence derived from the sale of those five reversions is of no assistance to us in assessing deferment rates.

103. Only in one case was a tenant's bid unsuccessful. His bids drove the price achieved up, and again makes the resulting transaction of no assistance to us. In the other case, where the purchaser was an investor, it appears that the building provided a development opportunity on the roof. Once again the transaction cannot be of assistance in valuing a freehold reversion without such rights.

104. Mr Shingles has none the less sought to analyse these transactions to show that proper consideration of the capitalisation rate for the income stream leads to an assumed deferment rate for the reversionary interest at the end of the term in excess of 6%. We do not seek to analyse this evidence because in our judgement it is the circumstances of the transactions themselves which deprive them of any value in the hypothetical exercise upon which we are engaged.

105. Mr Shingles makes a similar attempt to analyse a purchase by the tenant prior to auction of the freehold reversion on a lease with 46 years unexpired of 11 Queen Street, Mayfair. He very properly "cast[s] caution as to the real weight and helpfulness of this evidence as ideally one needs to find evidence of what the market would pay for such an investment in a no Act world". His analysis upon which he bases a conclusion that a deferment rate of 6% is, if

anything, too low, depends entirely on his assessment of the value of the rights granted by the Acts. In our judgement, if any conclusion can be drawn from this transaction at all, and we share Mr Shingles' doubts as to this, it is that a conventional valuation of those rights almost certainly undervalues them.

106. It is in this context that Mr Gibbs' evidence of what he calls "uncorrupted sales evidence of houses", by which he means purchases of reversions by tenants without the benefit of enfranchisement rights, is of potential value. The purchase of 52 Eaton Terrace from the Grosvenor Estate has the merit of being documented as to how the price was arrived at. In our judgement the willingness of the tenant to pay 75% of a marriage value calculated on the basis of a relativity between the leasehold and the freehold value, which is assumed to be lower than would appear on the John D.Wood/Gerald Eve (1996) graph of supposed relativities, merely shows that even on such basis the relative value of the leasehold interest is being overestimated. In our judgement the transaction does not justify analysis from which any conclusion as to the market yield from an investment in a reversion can properly be drawn. The mere fact that negotiation proceeded from what would have been paid under the Act, if the tenant had had enfranchisement rights under it, shows how completely the no-Act world has disappeared.

107. In the other cases to which Mr Gibbs refers, 52 Cadogan Lane and 6 Tite Street, there is not even agreement as to the basis of the figures arrived at, and, as he accepted in cross-examination, one can by changing the assessment of relativity get any answer one may like. We do not feel able to derive any assistance from these transactions.

108. Mr Orr-Ewing referred to the sale in about September 2002, of the rack rental income amounting to £142,500 per annum of premises at 16 Ovington Square SW3. Even if his analysis of the transaction had not been disputed by Mr Cullum, we do not think that the sale of such an income stream can be of assistance to us in arriving at a deferment rate as opposed to a capitalisation rate. For the same reason Mr Cullum's own reference to transactions concerning 3 Ennismore Gardens in March 2003 and Flats 7, 8 and 9, 14/15 Ennismore Gardens in February 2004, although having the advantage that they are concerned with ground rents rather than rack rents, are of no assistance in assessing the deferment rate as opposed to the capitalisation rate.

109. We are grateful to the witnesses who have done their best to produce market evidence which might have been of assistance. Their failure to do so confirms us in the view that there is none and the circumstances which now exist make it virtually impossible that there can be any. The transactions to which we have been referred can be categorised as:-

- (i) sales in which excluded parties took part, either increasing the price or, where there would be a right of pre-emption, reducing it;
- (ii) sales where the result of analysis under the Act makes the resultant deferment rate a matter of circularity, when the probable proper conclusion is that the value of the statutory right has been underestimated;
- (iii) sales driven not by the value of the reversion, if any, but by the income stream.

## **The convention of 6%**

110. Mr Walker, on behalf of three of the respondents to the Cadogan appeals, “unashamedly” asked the Tribunal to adopt the “conventional” figure of 6% as having been established by 35 years’ usage. He urged upon us the convenience of such a course and the advantage of the certainty which it gave to the parties when enfranchisement rights came to be exercised.

111. In effect each of the LVTs in the four Cadogan cases under appeal, adopted the course which Mr Walker urges upon us. They did so either by adopting as conclusive, historic settlement evidence derived from the acceptance of such a convention, which thus becomes self-perpetuating, or, more explicitly, by refusing to depart from “the established rate” (8 Cadogan Square) or “the present rate” (9 Astell Street), in the absence of sufficient evidence.

112. It is no part of our task to review the correctness of this Tribunal’s decision in the *Cadogan v Hows* case. It is, like all Lands Tribunal decisions, based on the evidence before the Tribunal in the circumstances then current. It cannot be binding if different evidence is adduced on another occasion, nor can it establish any figure if circumstances change. The duty of the LVT in each case, in which an element in the valuation which it is required to determine is not agreed, and of this Tribunal on appeal, is to consider the evidence adduced and to arrive at a determination in accordance with the relevant statutory provisions. To treat any figure, which is not agreed, as being “established” rather than as a figure which must be justified as at the valuation date, in the circumstances then obtaining, would be a failure by the tribunal to perform its statutory function. We have no hesitation in stating clearly that any LVT whose decision is so based is to that extent wrong, even if its conclusion can be otherwise justified.

113. The danger of treating one valuation by a tribunal as a precedent for a subsequent decision, in place of evidence, was pointed out by the Court of Appeal in the context of the assessment of fair rents in *Curtis v London Rent Assessment Committee* [1999] QB 92. In this case the landlord referred the assessment committee to rents on assured shorthold tenancies and to evidence of a lack of scarcity. The committee confirmed the rent officer’s determinations. They took into account an earlier determination of fair rent on the landlord’s flats which they said had not been demonstrated to be unsound and concluded that there was no reason to disturb the rent officer’s assessment. The landlord’s appeal was allowed. Auld LJ said at 116G:-

“.. to rely .. on registered fair rents, whether generally or particularly, unless one or other party can dislodge them as suitable comparables is wrong. Such an approach would freeze the fair rents by reference to precedent rather than achieve what is intended by the legislation, an exercise of ‘valuation’, an assessment of current fair rents by knowledgeable and experienced committees responsive to the particular characteristics of the subject property and to changing market levels (cf the *North West Development Estates* case .. in which Turner J, rightly in my view, criticised the committee there for preferring a single fair rent determination to market rent comparables on the ground that they ‘had no reason to believe that it was suspect’).”

114. It appears to us that such an approach has characterised the decisions of the LVTs in these Cadogan cases, and we draw particular attention to the words used by Auld LJ indicating

his view that the like approach to the assessment of fair rents was “wrong” and “failed to achieve what was intended by the legislation.”

115. 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. In *Land Securities Plc v Westminster City Council* (1992) 44 EG 153, the issue was whether an arbitrator’s award determining the market rent of an office building on review was admissible evidence in another rent review relating to adjoining offices. Hoffman J, after referring to the admissibility of evidence of rents in the market and on review, said (at 155):-

“An arbitration award on the other hand is an arbitrator’s opinion, after hearing the evidence before him of the rent at which the premises could reasonably have been let. The letting is hypothetical, not real. It is therefore not direct evidence of what was happening in the market. It is the arbitrator’s opinion of what *would* have happened.

In principle the judgement, verdict or award of another tribunal is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties. The leading authority for that proposition is *Hollington v Hewthorn and Co Ltd ...*”

He concluded that the award was inadmissible and said (at 158):-

“This is not in my view a technical decision on outdated rules of evidence. Properly analysed I think that the arbitrator’s award has in itself insufficient weight to justify the exploration of otherwise irrelevant issues which its admissibility would require.”

116. The same principles apply to decisions on matters of fact or opinion by LVTs and this Tribunal (see eg *Cadogan Estates Limited v Hows* where earlier decisions of LVTs and this Tribunal on yield were rejected in favour of settlement evidence), although a decision of this Tribunal may be referred to where general guidance has been given on valuation principles or procedure (eg *Clinker & Ash Limited v Southern Gas Board* (1967) 203 EG 735: observations on the use of the residual method of valuation in litigation).

117. It is this basis that we distinguish between relying upon a conventional figure, which we wholly reject, and adopting a conventional method of valuation, which may be justified either by the availability of evidence with which to support different stages of the valuation or because of the advantage of transparency in understanding the basis of the valuation. The difficulty of identifying comparable evidence to support the choice of deferment rate to be applied to the current open market value may justify further thought being given to the convention of valuing the rental income separately from the reversion, but that is the basis upon which all the valuers in these appeals have proceeded and we accept that it is probably a convenient convention to adopt, and certainly not one from which we should depart in these appeals.

## Theoretical possibility of static yield

118. At para 74 of his decision in *Pockney* the member (N J Rose FRICS) said:-

“It is clear that, since the mid 1990s, yields in the Central London residential market have fallen very considerably. During that period, however, the rate at which freehold reversions are deferred for leasehold enfranchisement purposes has remained virtually unchanged at or about 6 per cent. In the course of cross-examination, Mr Shingles” [who gave evidence in that case on behalf of the tenant as he has in two of the cases before us] “suggested that this could be explained by the fact that the hypothetical purchaser of the appeal property will not secure his reversion until the termination of the lease in 32½ years time. In fact, however, he will be free to dispose of his investment - with the possibility of securing a capital profit - at any time. The rate at which he chooses to discount the freehold vacant possession value will reflect, among other matters, the rate at which he can borrow, the returns available from alternative investments, and his perception of likely future changes in vacant possession values. Inevitably, these factors will change over time. It is in my view inconceivable that they could result in an identical discount rate being applied consistently for 10 years or more. In particular, I can discern no reason in economic theory to explain why the bids of investors for the type of freehold reversion with which this appeal is concerned should have remained completely unaffected by changes in yields obtainable from alternative residential investments.”

119. Mr Walker has attempted to render what the member found inconceivable to be credible by what he calls a Net Present Value approach. He points out that the “all risks yield” (ARY) which is the deferment rate, is the resultant of adding to the risk free rate of return (RFR) a risk premium (RP) and subtracting an allowance for the prospect of growth (g). He points out that if the relationship between the RFR and g has remained constant over time (which is, of course, a bold assumption) then the deferment rate will not change. He submits that in order that there should be a change one of three things must happen:-

- (i) a rise in the risk premium which would lead to a rise in deferment rate;
- (ii) a fall in the real rate of return in the economy which would lead to a fall in the deferment rate;
- (iii) a rise in the anticipated rate of real growth which would lead to a fall in the deferment rate.

120. It is, of course obvious that a change in any of these factors in the opposite direction to that which Mr Walker has considered would likewise lead to a change in the deferment rate, although in the opposite direction. It is none the less at least theoretically possible that there should, indeed, be changes in the factors to which the member in *Pockney* refers without there being any change in the deferment rate.

121. It remains, however, in our judgement, very unlikely that there should coincidentally be equal and off-setting changes in those factors which Mr Walker identifies which are the resultant of the factors identified in *Pockney*, with the effect that, in spite of change, the deferment rate remains constant. We have received no evidence to suggest such result.

122. One of the matters to which the valuers contending for a lower deferment rate have all drawn attention is the stabilisation of the economy in recent years to a low interest rate and low inflation regime. Without expressing a view as to causation, there is agreement that these changes in interest and inflation rates go hand in hand. One of the advantages which it is accepted that investment in property has historically offered is a hedge against inflation. As the risk or, at any rate, the expectation of inflation diminishes, so the yield from conventional gilts can decline whereas the yield required from property will tend to rise. In so far as the “risk free rate of return” in Mr Walker’s analysis is represented by yields from conventional gilts, the improbability of a constant deferment rate is obvious.

123. On the other hand the reduction in inflation rates, of itself, will tend in simple theory, to increase rather than reduce deferment rates. As, however, Mr Cullum, giving evidence on behalf of Cadogan, pointed out in answer to a question from the Tribunal a reduction in the rate of inflation may also have consequential effects producing the opposite result. These considerations show how little assistance can be derived from purely theoretical analysis. *Prima facie* the member’s conclusion in *Pockney*, from a downward trend in all other actual yield rates observable in the market, that one would expect, if there were a market in leasehold reversions such as the statutes require should be imagined, there would be a similar downward trend in yield rates, is clearly persuasive. We will do our best to analyse that conclusion on such evidence as we have been provided with in the course of these appeals. We must emphasise however that, as appears from such analysis, we are disappointed as to the quality and analysis of the evidence that has been put before us in the course of these appeals, and our conclusions are therefore not to be treated as of more general relevance than flows from the circumstances in which they are reached.

### **Gallagher Estates Limited v Walker**

124. In *Gallagher Estates Limited v. Walker* (1973) 28 P&CR 113, which only coincidentally bears the names of counsel in these appeals, the Court of Appeal made some observations as to the appropriateness of reliance upon money market transactions as a guide in making valuations of land. These appear to have misled valuers into thinking that there is some principle of law which precludes such reliance. That is a complete misunderstanding of what was decided.

125. The case was an appeal to the Court of Appeal against the decision of this Tribunal (E C Strathon FRICS) whereby he determined the price to be paid for the freehold of a house to be assessed in accordance with section 9(1) of the 1967 Act. He was required to value the freehold interest on the assumption of a lease for 137½ years at an annual ground rent of £26. 5s. The reversion after the expiry of the term was not separately valued and so the rental income was valued to perpetuity. The landlord’s valuer relied as a comparable on a sale to a long leaseholder of a neighbouring property, which showed a 22½ years purchase. The Tribunal said (see head-note at 113):-

“I do not accept that the purchase of [the comparable] is a dependable transaction on which to base the enfranchisement price of [the property]. In the absence of any dependable open market transactions concerning long-term ground rents resort to the broad index of the financial market is in my view an acceptable guide to the bid which may reasonably be expected from an investor.”

On that basis he valued the freehold at the same rate of return as long-term gilt-edged stock, namely 9%, just over 11 years purchase. The landlord appealed on the ground that the Tribunal had been wrong to reject his comparable. The Court of Appeal dismissed the appeal on the ground that it was for the Tribunal to decide what weight to attach to the comparable and as Lord Denning MR said at 117:-

“Apart from it “[the comparable],” the case was presented to him on the basis of the value which an investor would give to get an income of £26.5s. in perpetuity. On that presentation, his decision cannot be faulted.”

The observations which he then made as to the extent to which the money market was a safe guide in making valuations of land were therefore directed to the agreement as to the method of valuation in that case (see also the observations of Sir Eric Sachs at 121).

126. The decision is not therefore that money market transactions cannot be relied on in valuing land, On the contrary such reliance by the Tribunal was upheld. What it does support is the proposition which the Tribunal set out, and which we would certainly accept and seek to apply, namely that it is only in the absence of dependable open market transactions concerning the subject matter to be valued that resort should be made for guidance to other markets, including non-property markets. It must then, of course, be so obvious that it hardly needs stating, that when resort is made to markets other than a market in the subject-matter of the valuation, it is an essential part of the valuer’s task to identify the differences between markets and to make appropriate adjustments.

### **Settlement evidence**

127. We now look to see what guidance can be obtained from settlements. Three main criticisms can be made of settlements as valuation evidence. First, they are usually evidence only of the price agreed and not of the component parts of that price. Second, they may be affected by the “Delaforce” effect, that is to say the anxiety on the part of the tenant or landlord to reach agreement, even at a figure above or below the proper price, without the stress and expense of tribunal proceedings. Third, they tend to become self-perpetuating and a substitute for proper consideration and valuation in the particular case.

128. In *Pockney* the member felt constrained to investigate the extent of the agreements which had led Mr Gibbs, in that case, to claim that valuers were agreeing deferment rates of 5¼%. He concluded (para 73) that “whilst Mr Gibbs’s evidence was truthful” [that is to say Mr Gibbs did honestly believe that that was what he had agreed with other valuers], “there are no relevant settlements where the reversion was deferred at less than 6 per cent”. As Mr Orr-Ewing acknowledged some valuers acting for tenants, including himself, had felt constrained to agree deferment rates on the Cadogan Estate at 5¼%. These agreements did not however reflect a reconsideration of relevant evidence. They are the result of treating the member’s conclusion in *Pockney*, on the evidence which he heard, as if it were itself evidence of the market, as the previous settlements at 6% were merely evidence that valuers were treating the decision in *Hows* as if it were determining for all time something which we have held it could not.

129. It appears to us that valuers on the Brompton Estate have been willing to consider with more open minds what adjustments should be made to previously prevailing views to reflect changing circumstances in such markets as they were aware of. We will return to the value of that settlement evidence whose effect is, at least, agreed. We do not think however that anything useful can be derived from settlements made on the Cadogan Estate either by way of analysis of agreements as to payments or by seeking to discover the motives and circumstances which led to the settlements.

### **General residential property market**

130. We have been provided with a graph [DB41] which compares the yields as recorded in various indices from Central London residential property and equities and gilts with interest rates and the Retail Price Index (RPI) from 1988 to 2004. Although they do not precisely track each other they all show a decline over the period. More specifically FPD Savills Central London Residential Index (we have the annual figures for South West flats from June 1986 to June 2003 at DB54) shows yields rising from 5.7% in 1986 to 7.6% in 1993 and then falling steadily to 2.5% in 2003. This is a ratio between rents as recorded and estimated capital values, but the table indicates how this fall has arisen from the growth rate of capital values outpacing rental growth. This supports the conclusion that investment in flats over the period has been triggered by the expectation of capital growth rather than by the immediate rental return.

131. Information as to yields in the rental market cannot, of course, be applied directly to the assessment of a deferment rate which assumes no income during the period to reversion. An ingredient of the willingness of the market to accept low yields from properties let at rack rents must be the expectation of growth not only in capital values but also of rents. The market in rack rented properties also makes it more readily possible to realise profits as in *Pockney* it was assumed to be possible also with reversions. Nevertheless we do regard the fact that within the residential property market in Central London yields have fallen as low as 2.5% and the fall has attracted press speculation as to how far they can continue to fall, as significant in seeking to assess the hypothetical market in long leasehold reversions.

132. The aspect of this fall in yields in the rental market which is of most relevance to the assessment of a deferment rate is the rate of growth in capital values. We were provided with a combined graph (DB50) showing growth in capital values in the Prime Central London South West area, separately for flats and houses from 1986 to 2004, including the same graphs adjusted for RPI. Although inflation accounted for the nominal growth in the value of both flats and houses between 1989 and 1996, over a nine year period to 1998 capital values were proving a hedge against inflation and since that date there has been significant real capital growth, although trailing since 2002. Throughout, houses have performed better than flats. Importantly, during the period immediately preceding the valuation dates in 2003-4, there has been some modest real growth in house values whilst, as compared with 2000, there has been no real growth in flat values. We conclude that the anecdotal view that such investment does, over a medium term of say ten years, provide a secure hedge against inflation is supported by the history of this period, and that some expectation of real growth such as explains the low yields in the rental market is likewise justified, although it would have been restrained for flats at the valuation dates.

133. Such analysis is supported by the analysis, which was not seriously disputed before us, that the supply of flats and houses within this area is at least broadly fixed whereas demand continues to rise as more overseas purchasers and tenants seek accommodation of the quality available in this part of London. This is supported by analysis in Knight Frank's London Residential Review for 2004 (DB 55).

134. Although consideration of the evidence of what is happening, as shown by averaged statistics, within the active property markets which include the Cadogan Estate, figures drawn from such indices cannot be relied on to arrive at deferment rates, even on a generalised basis to be adjusted for the specific circumstances of each property to be valued. There must be adjustment for the differences between a market in fairly readily tradeable assets, which can produce an income, and a hypothetical market in assets which are not income producing and even hypothetically must be far less readily tradeable. Mr Cullum particularly referred to the growth in interest in such assets as reversions which will arise from pension funds. We heard no market evidence of such investment within the period 2003 to 2004 within which the valuation dates in these appeals fall. No doubt if in the future, such a market does arise, it will be of great assistance in assessing deferment rates in the future. In the meanwhile, we see our task as being to assess hypothetically what deferment rate to apply to a capital value assessed from market evidence in order to assess the amount that the freeholder's interest in the property with such value *might be expected to realise if sold in the open market*, that is to say both the sale and the market must in these cases be hypothetical.

#### **Freehold Investment Trust and Howard de Walden accounts**

135. Before the Lands Tribunal in the *Pockney* case, Mr Gibbs introduced the prospectus of the Freehold Income Trust sponsored by Close Brothers, as convincing evidence to support his contention for a lower yield because it was an "investment based exclusively on residential ground rents" (see para 50 of that decision.) Even if it had been so based it would not have been probative of the yield from investment in reversions *excluding* the right to receive the rent. In fact, as he told us in his evidence in the 9 Astell Street appeal, "in practice income can be generated by sales in the open market, or premiums for rearranging leases, granting consents, insurance commission or disposal to a sitting tenant." The leases with which we are concerned give no opportunity for premiums, commissions and fees such as appear to be a significant part of the Trust's income and it appears to us that Mr Gibbs is wrong to say that "these opportunities are similarly available to a holder of the investment[s] we are valuing."

136. We do not therefore find it surprising that the other valuers called on behalf of the appellants in these cases either placed no reliance on the evidence from this Trust (Mr Cullum and Mr Waters) or, in Mr Clark's case, relied on it only as evidence of falling yields within the long leasehold property market.

137. We accept Mr Shingles' view that the Fund is "a financial product" and does not provide direct evidence even of falling yields, certainly not of yields from investment in reversions comparable to those with which we are concerned: its investments are in low value reversions upon leaseholds spread throughout the country. We do not dissent from the conclusion of a number of LVTs, who have been able to consider the Trust with fuller evidence than was available in *Pockney*, and to which Mr Orr-Ewing directed us, that information from the

Trust's prospectuses cannot be usefully related to the assessment of deferment rates for properties in the PCL residential area.

138. We should however add in this context that we found no greater value in information to which Mr Shingles referred us contained in the Report and Accounts of Howard de Walden Estates Limited for the year ending 31 March 2004. A note in those accounts recorded that there had been assumed, for the purpose a review of the Pension Fund's solvency, a return from the property investments of that Fund of 6.6% per annum. We are satisfied from information provided on behalf of the Howard de Walden that none of the property referred to is within the Howard de Walden Estate, and that the Pension Fund is invested in a general managed property fund. It is therefore of only the most peripheral relevance to the assessment of yields from the limited market of long leasehold residential reversions within the PCL residential area, with which we are concerned. Mr Shingles' reference to it reinforces the paucity of direct evidence as to that market, which, none the less, it is our task to assess as if there were, indeed, an open market to be reviewed.

### **Financial markets**

139. It is in these circumstances that we have concluded that resort must be made to the financial markets in order to assess the range of deferment rates to be used in these cases, subject to appropriate adjustment for each property.

140. Although the experts who gave evidence all expressed some reluctance to resort to such evidence, no doubt in part out of regard to the observations of the Court of Appeal in *Gallagher*, only Mr Cullum was unwilling to do so, and even he accepted its relevance as part of the picture of declining yields. His refusal to do so, however, left him placing reliance on *Pockney* as if it determined the rate as a matter of fact. For the reasons we have given in paras 112-116 above this cannot be right. He also relied on settlements which are also incapable of bearing the weight he puts upon them. It is, in our judgement, the reliance upon evidence which is thus insufficient that has left the LVTs unwilling to address the question which the statutes require them to address. We do not wish to indicate that we did not find Mr Cullum's specific judgements helpful. As will be apparent when we turn to the particular judgement needed to be made in the case of 40 Chelsea Square, as opposed to arriving at a more general conclusion as to the appropriate range of rates to be applied in the Prime Central London area, we have relied on his evidence, as we did in regard to the freehold value of 40 Chelsea Square.

141. On the more general question of the appropriate range of deferment rates, we have however preferred the approach of the other valuers. Mr Clark, whilst disclaiming specialist knowledge of financial rates, did, in answer to the Tribunal, accept Mr Shingles' view, that "a gilt yield plus a risk premium is the right starting point for assessment of both the term yield and the deferment rate". Moreover he procured for the Tribunal information about the gilt yields which is more detailed than that which had originally been placed in the joint bundle prepared for these hearings. Mr Waters, who was better able to rely on settlement evidence than were the valuers in the Cadogan cases, none the less regarded yields obtainable in financial markets as at least indicative if not determinative of deferment rates. Whereas Mr Maunder Taylor, adopting a different approach to the assessment of deferment rates, based himself firmly on a risk free investment rate which he equated with a borrowing rate.

Mr Gibbs said that “money market investments may not move in the same way as the property market” but expressed his belief that there was “a correlation particularly when viewed over a long period.” Amongst financial market indicators he preferred index-linked gilts.

142. Mr Orr-Ewing, like Mr Cullum, abstained from reliance on gilts, but for the reason that he said he lacked specialist knowledge of them. He referred to an attempt by a group of valuers to commission research on the subject. This failed to produce any report in time for the hearing of these appeals. The Tribunal was therefore asked, on behalf of the tenant in the 40 Chelsea Square appeal, to admit the evidence of an investment analyst. This would perhaps have been helpful, although the particular witness had an interest which might have affected his objectivity. It was however proposed so late that it could not fairly be admitted without an adjournment, and the applicant tenant would not accept the terms which would have been necessary in order to avoid unfairness. Our consideration of the evidence as to financial markets has therefore been undertaken only with the benefit of published statistics and supporting published notes, and without specialist evidence as to their analysis. It has moreover been confined to a small range of investments to which we will now turn. We have received no evidence as to whether there may be other investments which might be of greater or, at any rate, further assistance. The insurance market for example does, we believe, offer deferred benefits, variously profit-linked, without income before maturity.

143. If material from financial markets is to be used, there is common agreement that it is necessary to select a suitable risk-free investment and to apply an appropriate risk premium net of growth as was postulated by Mr Walker in his submissions (see para 117 above). A deferment rate is the yield obtained from a long-term investment providing no income until maturity, but providing for capital growth and the possibility of early profit if, for example, the tenant wishes in the “no-Act” world to negotiate the purchase of the freehold or an extension of his lease. In these respects it corresponds to a nominal zero coupon gilt. This is defined in “Notes on the Bank of England UK Yield Curves”, with which we have been supplied, to mean “a bond that pays no coupons [ie interest] and only has a final principal repayment.” Profit may be obtained, by sale before maturity, if reduced yield rates provide a capital gain. The distinction between such “split” gilts and conventional gilts, which include the regular payment of interest, was not appreciated when graphs of gilt yields over the period from 1975 to 2004 were placed in the bundle (DB 44 and 62). We have been supplied with the graph of zero coupon gilts from 1985 when they were introduced and this eliminates a sudden drop recorded in the graphs with which we were originally supplied where they changed their base from conventional to zero coupon gilts. The graph shows a decline in yields from about 9% in 1995 to just under 5% since 1999. During the period when the settlements at 6% which were reviewed in *Hows* were being made, conventional gilt yields were consistently in excess of 10%. The decline is not however constant. It includes a rise in 1993-4, but the yield has to all intents and purposes been stable since 1999.

144. These graphs have been prepared on the basis of annual figures, for 20 year maturity dates. Spot figures for particular issues vary according to market demand from day to day, and no one has suggested that such rates can be applied directly to the ascertainment of the deferment rate at any particular valuation date.

145. Zero coupon gilts are not however risk free. They are subject to the known risk of inflation, and it is the expectation of inflation which raises the yield, and which explains the higher yield of conventional gilts than of prime reversions. The graph with which we have been supplied shows also RPI and the decline in gilt yields as inflation has reduced since 1992 and stabilised can be seen. Theoretically, it would be possible to adjust the gilt yields for inflation, but what affects them is not the actuality of inflation but the market's expectation of inflation. Since 1985, there have been available index-linked gilts. We are warned that these may in fact, for technical reasons, not take full account of the changes in the RPI, but from the point of view of removing the market's assessment of the risk of inflation in order to provide a risk-free investment, they must be as good as is available without careful financial analysis which has not been available to us. The yield from such gilts fell from just under 4% in 1992 to less than 2% in 2004. Moreover it has been steadily at or below 2% since 1999. This in our judgement may be taken to represent at least broadly a genuine risk-free yield.

146. One disadvantage of relying on the index-linked gilts, is that there are no "splits" in the market. Consequently the yield includes the income return. It may be that tribunals having to consider this matter in future cases will be assisted by evidence as to the effect of this distinction. We, however, have come to the conclusion that the advantage of stripping out inflation is probably greater than the disadvantage of incorporating an income element, at least if, as we understand to be the case, that is also inflation proofed. The paucity of the evidence which we have, should not, in our judgement, prevent our doing our best, on that evidence, to arrive at the valuation which the statutes require.

147. The analysis which we made in para 130 of the reasonableness of an assumption that investment in the residential property market in this part of London will be a successful hedge against inflation makes that figure of say 2% a reasonable starting point for assessing a deferment rate generally applicable, subject to the circumstances of each property, to the Cadogan Estate. There is then needed an adjustment for risk net of growth measured in real terms. From that resultant figure it will be further necessary to make adjustments for any particular advantage or disadvantage of the particular case, which justifies a departure from such rate.

148. This approach accepts the generality of the evidence which we have heard, that deferment rates are unlikely to be volatile. They are of their nature long-term rates. They will not respond instantly to changes in other yield rates. They will rather move slowly as changes in trends become apparent. Mr Maunder Taylor's assumption of a direct link to base rate moving by ¼% gradations, to which we will return in the context of the Rosary Gardens appeal, seems to us inconsistent with how the market would in fact operate. The market would, of course, arrive not at a deferment rate at all, but at a price which shaded the capital value or the deferment rate indifferently in response to changing conditions and values. The tool of a deferment rate, which is to be used to arrive at such price from evidence of vacant possession values in the market, must not be given a spurious precision. Inaccuracies will, to a degree, be off-set in the valuation which the Acts require, as a result of the contrary effect of any selected deferment rate on the valuation of the landlord's interest and on that of the marriage value, which is to be aggregated with it. If on this basis we arrive at a generally applicable rate it can be applied with some sensitivity to the capital value having regard to factors which make the investment particularly attractive or more risky than some notional norm. The shorter the unexpired term the more carefully the precise choice of rate must be reviewed.

## General risks

149. If it is assumed that the deferment yield can be derived from an index-linked gilt, the first area of risk to consider is the extent to which the market may fear a failure of values to keep pace with inflation. Historically there have been such failures more often for flats than for houses (see DB50) but only in periods of high inflation. Low inflation will reduce the fear of such risk and the current regime of low inflation leads us to conclude that the allowance for that risk needs only to be small.

150. On the other hand the factors which reduce the expectation of inflation should reduce also the expectation of nominal capital growth. We are conscious that the very low yields obtained on rack-rented flats show some continued optimism in the property market as to real growth, but in the first instance the growth would be likely to come in income rather than capital value. There is more reason to be optimistic in respect of houses, but we accept Mr Shingles' view that the evidence from DB50 does not justify an expectation of growth derived from the experience since 1996, which included growth in the value of houses at a real rate of over 15 % from 1996 to 2001. Even any longer term rate derived from looking back to 1986 ought to be suspect on current evidence. Mr Walker introduced a chart (CAD 4) which purports to reproduce the annualised real capital returns based on Savills PCL indices for houses and flats from 1979 to 2004. The figures are respectively 5.22% and 3.53%, but for the last three years they show an actual decline. This chart is not agreed, its provenance has not been properly explained and it does not seem to us to be consistent with the graph at DB 50 which has not been challenged. On the basis of that historical and current evidence, however, we take the view that the risks inherent in an investment in a freehold reversion are only marginally off-set by the prospect of growth as compared with index-linked gilts.

151. There is therefore a need to make allowance for the comparative illiquidity of an investment in a freehold reversion. In the "no-Act world" they could, no doubt, be sold, but only at a cost and with delay. No evidence was put before the Tribunal as to the quantification of these costs, except in the form of questions put in cross-examination. We accept that the combined cost of purchase and sale may amount 7 or 8% of the purchase price in excess of any costs incurred on purchase and sale of gilts. To this one must add some cost for delay. If the investment was regarded as long-term it would still justify an allowance of say 1% in yield as against gilts.

152. Mr Walker invited us to have regard to the risk of adverse legislation in respect of an investment in property. We have already dealt with his argument that in the "no-Act world" we must assume the risk of future legislation. We accept the right of pre-emption under Part I of the Landlord and Tenant Act 1987 is not excluded from consideration by paragraph 3(1)(b) of the Schedule 6 to the Act of 1993 on the sale of a block of flats, but we do not give much weight to such risks as significantly affecting the rate of deferment. They are a small part of the difference in investment between property and gilts. What has to be judged, and, on the material which has been put before us it can be a matter of judgement only, is what reward the market would require for investing in an asset which may require management (although any significant management obligation will be part of a case-specific adjustment) and which may be destroyed, and which may be expensive to realise at the end of the term. We will deal below with specific risks and the effect of a declining term. DB 58 shows a comparison between yields from gilts and dividends from equities. An additional return of 1½% is

obtained from the less secure investment but his takes no account of capital growth or loss. DB 41 shows total yields from equities trailing conventional gilts, but PCL yields exceed those from equities. We think that the deferment rate of 4½% to which Messrs Cullum, Clark and Gibbs have all spoken makes a sufficient differential for a reversion in a high value house on the Cadogan Estate as compared with index-linked gilts. We will apply that norm by reference to the specific qualities and circumstances of the four properties the subject of the Cadogan cases in the last section of this part of our decision.

153. We are assisted in testing this conclusion by Mr Gibbs' exercise in discounted cash flow in DB61. He first tested his deferment rate of 4½% against conventional gilts. He found that he could equalise the internal rate of return with an annual nominal rate of return of only 0.28% against a long term rate of growth of capital values from 1986 of 8%. We have said why we are not prepared to adopt that figure as a reliable forecast of future growth or market expectations of such growth, and do not rely on that comparison. We prefer to compare that figure with RPI over the same period, which we have concluded that the market could reasonably expect to match. Mr Gibbs puts the annualised figure at 2½%. The difference between that figure and 0.28% still leaves room for an allowance for costs and any comparative unattractiveness of an investment in reversions, and indeed makes the actual figure of 4½% a more reasonable answer. His further comparison between investment in rack-rented property and his deferment rate gives support to such modest reliance as we have felt able to place on the significance of the very low yields achieved or accepted in that market.

154. On the basis of such general rate we will turn to consider more specific factors which should determine in respect of any property within the same broad location what, if any, deviation should be made from such norm. The concept of a norm is based on our conclusion that the risks attached to investment in a freehold reversion on the Cadogan Estate are broadly similar. It follows that any deviation will arise because of some factor which markedly increases or reduces the risk as compared with other properties of a quality and value which prevails across the Estate. In considering further the circumstances of 32 Rosary Gardens we will address such evidence as we have as to how far locational differences, more marked than are to be found within the Estate, may affect the appropriate norm.

## **Specific factors**

### **Differences between types of property**

#### **(a) Statutory assumptions**

155. In determining the price to be paid for the freehold of a house under the 1967 Act, section 9(1A) requires the assumption:-

“(c) .. that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954”

No such assumption is to be made on collective enfranchisement or lease extension under the 1993 Act. The Tribunal therefore asked the valuers who had given evidence in the Cadogan

cases whether the deferment rate to be applied to 40 Chelsea Square and 9 Astell Street should reflect this.

156. Insofar as the reversionary value of the property is assessed by reference to its condition at the valuation date, the fact that the purchaser runs the risk that it might be returned in less good repair at the term date, without even the benefit of being able to seek damages for breach of covenant, must theoretically increase the risk factor to be brought into consideration in comparing a house with individual flats or a block of flats. This may, in the generality of cases, be a matter affecting the choice of deferment rate.

157. All the valuers giving evidence, on both sides, accept that theoretical position, but all are agreed, albeit for varying reasons, that it has no application to the circumstances of these two houses. Mr Shingles qualifies his agreement to the extent that he weighs the potential disadvantage against other advantages of houses, and when we turn to physical differences we do give consideration to such advantages. So far as the effect of the statutory assumption is concerned, however, we do not give further consideration to the factors leading to that conclusion, in these cases. They include the very high value of the properties and the improbability of their being seriously neglected even if the tenant had no rights under the Act, the lack of impact of disrepair on the value of 40 Chelsea Square when the respondent bought the lease, the fact that 9 Astell Street was valued in an “unimproved” condition and the length of the unexpired term in each case. Mr Waters gave some examples of his experience on the Brompton Estate to support his opinion that, in the PCL area in regard to reversions of say greater than 15 years, there would normally be no justification for any adjustment in the deferment rate. Mr Maunder Taylor’s experience of end of term dilapidation is exclusively in less valuable areas.

158. Mr Clark likewise drew no distinction between the deferment rate appropriate to a single flat lease extension and the freehold of a block of flats. Mr Waters, who derived his deferment rate from settlements in respect of single flat lease extensions, pointed to the greater security and saleability of the freehold of a whole house as compared with a “flying freehold”.

159. Para 3(2) of the Schedule 13 to the 1993 Act, under which the diminution in the landlord’s interest due to the grant of an extended lease is to be assessed, requires the value of the landlord’s interest in reversion upon the tenant’s lease to be assessed on the assumption:-

“(a) ...that the vendor is selling for an estate in fee simple.., subject to the relevant lease ..”

An estate in fee simple of the landlord’s interest in the premises subject to the lease is not the whole block but a notional freehold of the floor or floors which comprise the flat. Mr Waters therefore values the landlord’s interest as less valuable than an apportioned part of the freehold interest in the whole building.

160. Mr Munroe submits that if the notional severance of the landlord’s interest results in under-compensation he must either seek additional compensation under para 5 of Schedule 13, or seek to recover it on a later sale of the whole reversion on collective enfranchisement. The less secure freehold should therefore, he submits, require a higher deferment rate for single flat

lease extensions, which was the basis upon which the agreed deferment rate on the Brompton Estate was arrived at, than should be applied to the collective enfranchisement of 32 Rosary Gardens. In our judgement, extra compensation under para 5 is directed to the diminution in the landlord's interest in *other* property and so would not compensate him for the diminution in the value of the reversion on the relevant lease, for which the premium is to be assessed without regard to the possibility or terms of any collective enfranchisement. Nevertheless, if Schedule 13 does provide for less than complete compensation it must be so applied, and we do not construe these provisions on the basis that such could not have been the intention of Parliament.

161. We do not, however, think that Schedule 13 does require the assumption of a flying freehold. We accept that para 3(2)(a) does have that effect. We accept however Mr Gallagher's submission that para 3(4) entitles the vendor to have it assumed that the reversion upon the relevant lease was sold only together with the freehold interest in the rest of the block. This sub-para provides that:-

“It is .. declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified ..does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which .. any such interest of the landlord .. might be expected to realise if sold” [by a willing seller in the open market].

162. Mr Waters relied on a number of practical advantages which accrue to tenants who purchase the freehold of a block of flats, identified in *Maryland Estates Limited v Abbathure Flat Management Co Limited* (1999) 06 EG 177. He however accepted in answer to the Tribunal that, even if there were such advantages, they were not to be considered in the assessment of the payment to be made on collective enfranchisement under paras 2(1) and 3 of Schedule 6 to the 1993 Act because the bid of anyone within para 3(1A) of the Schedule is excluded from the hypothetical sale.

163. For these reasons we do not think it necessary to assume a different risk factor in respect of the reversion upon a single flat as opposed to a block of flats. In the circumstances of these cases therefore there is no statutory assumption requiring a differential deferment rate as between one exercise of rights or another.

#### **(b) Physical differences**

164. Any difference in the deferment rate between houses and flats of the quality with which we are dealing on the Cadogan Estate, is, therefore, limited to such as may be judged appropriate having regard to the lesser management problems of a single house and the possibility that there may be a better prospect of growth in the house as opposed to the flat market (see para 130 above). We conclude that, for these reasons, there should be a ¼% of differential between houses and flats increasing the basic deferment rate for the latter to 4¾%.

### **(c) Length of unexpired term**

165. The assumption of the other valuers who gave evidence before us, that the same deferment rate should apply to a property, according to its location and other circumstances, whatever the length of its unexpired term was challenged by Mr Maunder Taylor. We are indebted to him for the thought-provoking approach he adopted in his evidence, after himself giving careful thought to the considerations which might affect the deferment rate.

166. Mr Maunder Taylor's thesis was that the purpose of investment in freehold reversions is either income or, where the reversion has reached the point at which the leaseholders are having to sell their interests at a discount, the potential to sell lease extensions. He referred to a number of cases in which opportunity for income arose out of the terms of the lease, for example fees for licences or commission on insurance. We were not directed to any lease in these cases which gave such opportunity and the fixing of a deferment rate for the reversion alone means that we are not concerned with income. That is why we have found evidence from the rack rent market of only indirect assistance. This part of his analysis is therefore of as little assistance to us as we found the analysis of the Freehold Investment Trust for similar reasons.

167. In respect of leases with unexpired terms of 80 years or less, Mr Maunder Taylor constructed a graph to show the relationship between capital invested at a fixed deferment rate against the potential for capital profit by sale of a leasehold extension. As the lease approaches its term date the potential for releasing marriage value declines, so the potential for capital profit declines whilst the size of the reversioner's capital investment rises. On the assumption of a fixed deferment rate of 6¾%, he calculates a steadily declining ratio of potential profit to capital invested from the time when 30 years remain unexpired. He concludes that an investor purchasing a reversion of less than 30 years would require a yield, that is to say would apply a deferment rate, which would rise as the unexpired term declined.

168. This analysis is, in our judgement, a useful insight into the arbitrary nature of the tool which a generalised deferment rate may be. It is, however, of little relevance to any of the appeals which we have to consider. We accept that as a term approaches its end an investor can, and would, make realistic assessments as to whether he is likely at the term date to be left, on the one hand, with a dilapidated building and a problem in obtaining vacant possession, or, on the other hand, in the "no-Act world", an opportunity to extract a high price for the freehold or a lease extension from a sitting tenant with no valuable rights. Until that stage is reached, which without the benefit of evidence specifically directed to the point, we would speculate might, in the case of properties on the Cadogan Estate, be as late as when there are less than ten years unexpired, we think that the market in reversions would assume not a constant and declining marriage value as the term runs out, but a growing anxiety on the part of the tenant to safeguard his position after the term date. That is why there is an accelerating decline in leasehold values as the term nears its end even in the real world. We accept that Mr Maunder Taylor's adoption of relativities between freehold and leasehold values from LVT decisions for the purpose of his analysis was necessary for lack of any other reasonably non-contraversial material. It does not detract from his theoretical argument or the illustrative value of his graph. If, however, as we suspect from consideration of the market transactions to which Mr Gibbs referred (see para 104), these assumed relativities are substantial under-estimates of the value of the rights granted by the Acts, and tenants without those rights would pay more than 50% of

marriage value, it is clear that his analysis cannot be relied upon other than for illustrative purposes.

169. Indeed, Mr Maunder Taylor does not seek to apply his analysis arithmetically to the circumstances of 32 Rosary Gardens, and none of the tenants in the Cadogan cases has asked us to make any adjustment according to the length of the unexpired term. Nor, in our judgement, could Mr Maunder Taylor's analysis be relied upon for adjustment of deferment rates from the norm either in the case of the unexpired terms of just under 20 years at 8 Cadogan Square or that of just under 80 years at 55/57 Cadogan Square. The former may well be on the border-line when an increase in the deferment rate from the norm might have been justified by analysis, but, in the absence of any evidence directed to such adjustment, or any submission inviting us to make any such adjustment, we, in the circumstances of that case, make none. Although it is of less importance in such cases, we think that there may be reason to increase the deferment rate also where there is more than 80 years unexpired, because of the reduced expectation of realising an early profit. But none of the cases with which we are concerned involves an unexpired term of such length. We shall return to the circumstances of 32 Rosary Gardens, when we explain our specific decision in that case.

170. Accordingly, we conclude that, although theoretically there is good reason to doubt that a uniform deferment rate is applicable in otherwise similar circumstances, without regard to the length of the unexpired term, we should, on the evidence which has been adduced, make no adjustment in the Cadogan cases. The effect of the exclusion of tenant's bid assumption in the case of flats and the absence of such exclusion in the case of high value houses, would become relevant in case a variation from a norm was proposed on the basis of the length of unexpired term.

#### **(d) Size**

171. Mr Cullum deviated from what he took to be the norm of 4½% in the case of 40 Chelsea Square because "the property represents an unusually large amount to invest in a single house and the 'eggs in one basket' effect might cause investors to seek a slightly higher return". He therefore proposed an adjustment of ¼%. We regard that approach as reasonable. It does not apply to any of the other cases because, where the capital value exceeds that of 40 Chelsea Square, as it does in the reversion of 55/57 Cadogan Square, firstly the length of the unexpired term reduces the investment to comparatively modest proportions, whatever deferment rate is applied, and secondly the opportunities for early realisation of profit are spread over 10 flats.

#### **(e) Valuation date**

172. The valuation dates range from 1 April 2003 for 40 Chelsea Square to 23 June 2004 for 32 Rosary Gardens. Different arguments were adduced in respect of each of these properties as to why the deferment rates applicable to those cases should be greater than established in the period between.

173. Mr Brock QC made what he described as "an additional point of importance", namely that at the valuation date "the relevant representatives of the Cadogan Estate remained of the

view that the appropriate deferment rate was 6% and continued to be of that view until December 2003.” If that was the case the point was equally open to Mr Walker. In our judgement, Mr Walker exercised proper discretion in not taking a point which in our judgement is without merit.

174. It is right that although Mr Cullum gave evidence to the LVT in support of an even lower deferment rate than that which he has supported in this Tribunal, it appears that it was the view of the Cadogan Estate as at April 2003, no doubt based on the opinions of their advisors, that the “convention” of 6% either could not or should not be disturbed. But, as the member recognised in *Pockney*, where the valuation date was 11 June 2002, the question for the Tribunal is not what valuers thought the proper deferment rate was at any particular date in the past. The question is what deferment rate ought now to be applied to the capital value assessed at the valuation date in order to arrive at the amount which, if the property had, at that date, been sold on the open market by a willing seller, it might have been expected, not by valuers but by the market, to realise. Once the true question is identified the irrelevance of Mr Brock’s submission, which is really a plea for sympathy for the respondents being caught up in the effect of the appellants’ change of view, becomes apparent.

175. In the 32 Rosary Gardens case, there was a dispute before the LVT as to the appropriate valuation date. The purchaser had contended that they had the benefit of a binding agreement and that it should be 29 September 2003, whereas the landlord contended for the later date fixed in accordance with the 1993 Act at 23 June 2004. The LVT determined that this latter date was correct, but decided that the deferment rate which was agreed to have been 6¼% at 28 July 2003 had increased to 6¾% by 23 June 2004. Reference to DB45 shows that “Repo rate”, which replaced what was commonly called Bank Rate in 1997, and upon which Mr Maunder Taylor based the evidence which the LVT accepted, stood at 3½% at 28 July and at 29 September 2003, whereas by 23 June 2004 it had been increased four times to reach 4½%.

176. This movement in Repo rate does not quite cover the period over which the valuation dates for the four Cadogan properties are spread. At 1 April 2003 (the valuation date for 40 Cadogan Square) it stood at 3¾% but had fallen to the 3½% applicable to the starting point in the 32 Rosary Gardens case, by the valuation dates for 9 Astell Street and 8 Cadogan Square (25 September and 17 October 2003 respectively) but had risen again to 4% by 28 April 2004 (the valuation date for 55/57 Cadogan Square).

177. In the 32 Rosary Gardens decision the LVT (at para 49) accepted Mr Waters’ own evidence on behalf of the landlord, “that there would be a more direct linkage between deferment yields and the rates and yields to be obtained in other markets” than had been previously assumed. The tribunal therefore adjusted the deferment rate agreed as appropriate when the Repo rate stood at 3½%, namely 6¼% by ½% to 6¾% when the Repo rate had been increased to 4½% a year later. In terms of the figures to which the LVT’s attention had been directed that might seem a modest and reasonable adjustment. We think it was wrong because we think that it is wrong to treat the borrowing rate as the relevant yield rate upon which to base the assessment of a deferment rate.

178. Mr Maunder Taylor, in his evidence before this Tribunal, has adopted what he describes as a “contractor’s method” of valuation, by which he has considered what an investor would have to pay to enable him to borrow in order to purchase a reversion and what profit he would require to persuade him to do so. This does not seem to us to be the exercise upon which we should be engaged in assessing the appropriate deferment rate for assessing a price to be paid in the market for the capital value to be realised at the end of the term, although, as we have said at paragraph – above, it may have relevance to the circumstances of a very short unexpired term. We have accepted the view that deferment rates are appropriately assessed by consideration of the return to a risk-free investment, appropriately adjusted for assessed risk, rather than being derived from borrowing rates, although, no doubt, the two rates will be linked. Borrowing rates, as represented by the Repo rate, are, however, policy determined in reaction to market factors, they are moved in fixed gradations, more or less frequently as the market reacts to changes. DB62 shows graphically the greater volatility of mortgage rates, as compared with the comparatively stable rate of return to long term index-linked gilts. In the period in question the latter continued a downward trend whilst the Repo rate was rising. This deviation in trend is, no doubt because of the long term nature of such investments, which, in our judgement, makes it a better comparator to investment in freehold reversions than short-term borrowing rates.

179. In our judgement, it is not until a change in the trend in risk-free yields has been established over a period of years, so that it is recognisable in the market for long term investments, or the continuance of the trend establishes a new level of yields, as can be seen in yields to conventional zero coupon gilts since the 1990s, that there will be changes that can properly be reflected by step gradations in deferment rates, assessed for the purpose upon which we are engaged. Changing yields in the property market, such as we have commented on above, would be helpful in identifying the time for adjustment of deferment rates once credibly established, but short term fluctuations should be discounted in making use of what we have identified as a valuation tool. For these reasons we make no adjustment for the dates of the valuations in these cases.

## **Summary**

180. We are now able to give our decisions on the deferment rate for each property but before doing so we summarise our general conclusions as follows:-

- (1) The no-Act assumption in the statutory provisions regarding price and value excludes any assumption that the market would take into account the probability that Parliament might legislate in the future to confer the rights excluded (para 82).
- (2) Although market evidence is usually the best evidence of value, the extent of the right to enfranchise or to a lease extension is now so wide that there is unlikely to be dependable market evidence in any particular case. There is none in these appeals (paras 99 and 109).
- (3) There is not, and has never been, a binding “convention” that a fixed and constant deferment rate of 6% should be universally used. The deferment rate in each case must be individually determined on the evidence (para 112).

- (4) Decisions of LVTs and this Tribunal on questions of fact and opinion should not be treated as evidence of value in later cases. Such decisions do not establish any conventions or precedents (paras 112-116). A decision of this Tribunal setting out general guidance on valuation principles or procedure, however, may be applied or referred to in subsequent cases (para 116).
- (5) It is unlikely that there could be a constant deferment rate over a period of several years despite changes in the investment market and financial indicators (paras 118-120).
- (6) In the absence of dependable market transactions to provide evidence of value it is permissible to consider the money market and this was decided by the decision in *Gallagher Estates Limited v Walker* (paras 124-126).
- (7) Settlements relating to comparable properties are admissible as evidence of value but are subject to criticism, and will usually be given weight only where a detailed analysis of the price or value has been agreed and the agreement has not been influenced by the Delaforce effect (paras 127 and 129). No settlements are helpful in the Cadogan appeals (para 129).
- (8) Evidence relating to the Freehold Investment Trust and the accounts of Howard de Walden Estates Limited is unhelpful (paras 136 and 138).
- (9) In the absence of reliable land market evidence in these appeals resort must be had to the financial or money market in order to assess deferment rates (para 139).
- (10) The starting point is a risk-free investment and this, on the evidence available to us, appears to be best represented by index-linked gilts (para 145).
- (11) For the Cadogan Estate a deferment yield of 4½% compared to index-linked gilts at 2% makes sufficient allowance for the general risks perceived by the market to attach to these properties compared to index-linked gilts. That is the norm to be applied to houses by reference to the specific qualities and circumstances of each property (para 152).
- (12) The assumption under section 9(1A) of the 1967 Act that the tenant has no liability for repairs is agreed to have no application to the houses in these appeals on the Cadogan Estate (para 157).
- (13) The assumption under para 3(2) of Schedule 13 to the 1993 Act, that the vendor is selling for an estate in fee simple subject to the lease, does preserve the assumption of a sale of the freehold reversion to the flat as if sold with the rest of the block (para 161).
- (14) Having regard to the preceding two paragraphs, It is not necessary to assume a different risk factor for the reversion upon a single flat compared to a block of flats (para 163).
- (15) Lesser management problem for houses compared to flats and the possibility of greater growth in the house market indicate a ¼% differential, increasing the general deferment rate for Cadogan flats to 4¾% (para 163).

- (16) Although a uniform deferment rate, without regard to the length of the unexpired term, may be doubted, there is no evidence in these appeals to justify an adjustment for different unexpired terms on the Cadogan Estate (para 170).
- (17) We accept that there should be an upward adjustment of  $\frac{1}{4}\%$  for 40 Chelsea Square for an unusually large investment in a single house (para 171).
- (18) There is no merit in the submission that because the Cadogan Estate remained of the view that 6% was the appropriate deferment rate until December 2003, a date after the valuation date for 40 Chelsea Square, that should be the deferment rate in these appeals (paras 173 and 174).
- (19) Changes in deferment rates will not occur until a change in the trend in risk-free yields has become established or the continuation of a trend establishes a new level of yields. In the circumstances in these appeals, no adjustments are to be made for the different dates of valuation (para 179).

### **Deferment rates – Cadogan cases**

181. Mr Cullum concedes an adjustment to the norm in respect of 40, Chelsea Square to  $4\frac{3}{4}\%$  to reflect the size of the investment. If it had not been for this concession we might have taken the view that the particular quality of the house sufficiently off-set any unattractiveness in the hypothetical investment due to its size, so as to make adjustment unnecessary. 40 Chelsea Square has, in our opinion, properly been identified as a trophy house. It has the protection and status of a Grade II\* building. These factors should influence the deferment rate as well as the capital value, because the market would, in our judgement, discount any risks of obsolescence which are inherent in the rate which we have determined for the norm, over the  $24\frac{3}{4}$  years unexpired term. In the circumstances, however, we conclude that a deferment rate of  $4\frac{3}{4}\%$  is the proper rate to apply to the capital value of 40 Chelsea Square.

182. The deferment rates to be applied in the case of the lease extension at the First and Second Floor Flat, 8, Cadogan Square and the collective enfranchisement at 55/57 Cadogan Square should, for the reasons given above, also be  $4\frac{3}{4}\%$ .

183. For the freehold of 9 Astell Street we apply the deferment rate of  $4\frac{1}{2}\%$ .

### **Deferment rate – 32 Rosary Gardens**

184. Although Mr Maunder Taylor, in answer to the Tribunal, expressed his conclusion that the agreed evidence given to the LVT that  $6\frac{1}{4}\%$  was the correct deferment rate to be derived from settlements down to 28 July 2003 for lease extensions was wrong, we have not been able to accept his assessment of a higher figure based on borrowing rates.

185. We think it likely that, on the evidence which we heard and have largely accepted in the Cadogan cases, it is too high. If one arrives at an appropriate deferment rate by the route which we have adopted, any differential would be the result of a difference in security of the

investment, that is to say a greater comparative risk of obsolescence or greater volatility in values or reduced growth rates. Other purely locational differences would reflect themselves in capital values as opposed to deferment rates. Without doubt, although Rosary Gardens is within the Prime Central London residential area as generally accepted, it is a less attractive and less valuable part of it than the Cadogan Estate. We have heard no evidence, however, as to why any norm for the applicable deferment rate should be greater than that which we have determined for the Cadogan Estate or certainly so much greater, as indicated in a disparity between 4½% and 6¼%, as results from reliance on the settlement evidence. Nevertheless on the evidence we do not consider that we would be justified in refusing to adopt the figure of 6¼% as a norm applicable to lease extensions as at 2003.

186. Mr Waters sought to reduce that figure when applied to the collective enfranchisement of the whole house. For the reasons given at paras 159-161 above we do not think any such adjustment is justified.

187. In applying the deferment rate of 6¾% which the LVT adopted, the parties agreed that it should be applied not merely to the vacant possession capital value of the house, but also to arrive at a hope value for the flats which did not belong to participating tenants and so are not brought into account in assessing the marriage value to be added to the freehold value. They then added the hope value of the tenants of the non-participating flats seeking lease extensions before the term date, to the freehold value in order to arrive at the value of the freeholder's interest to be aggregated with the marriage value. In this respect the valuation of the freeholder's interest differs from that adopted in the valuation of 55/57 Cadogan Square where no such addition for hope value was made.

188. Our assessment of the appropriate deferment rate for the assessment of the premium on a lease extension is however arrived at by including some allowance not only for real growth in the value of the reversion to the term date but also for the possibility of early profit upon a lease extension being sought before the term date. But for such prospect, a higher deferment rate would, in principle, be appropriate. In our judgement, the deferment rates arrived at on lease extensions ought to have included such hope value. Accordingly, to apply a deferment rate that allows for that value, and then add the equivalent value in respect of the non-participating flats would result in double-counting.

189. Although Mr Maunder Taylor took the point in his evidence, the nominee purchaser failed to cross-appeal in time in respect of this aspect of the LVT's decision. We think therefore that we are bound in the amended valuation which we will produce to include a hope value so determined. In order then to reflect our decision that the appropriate deferment rate to apply to the freehold vacant possession value is 6¼% rather than the 6¾% adopted by the LVT it will be necessary to allow for the fact that it is to be applied to the freehold vacant possession value to which an additional hope value will then be added. It is therefore necessary to increase the deferment rate to be applied in such valuation to get back to the same result, as if the hope value had not been so treated. This has the effect of increasing the deferment rate from 6¼% (which reflects the marriage value of £19,244 treated separately by the LVT and which is therefore double-counting) to approximately 6.4% (which does not reflect the separate item of this marriage value and therefore avoids double-counting).

## **PART 4**

### **DECISIONS**

190. We now set out our decisions in each appeal.

#### **LRA/23/04 (Arbib v Cadogan) (40 Chelsea Square)**

191. Mr Arbib's appeal is dismissed. We confirm the freehold vacant possession value determined by the LVT at £11,500,000 and the leasehold value at £5,800,000. Cadogan's cross appeal is allowed. The deferment rate is reduced to 4¾%.

192. We determine the price payable by Mr Arbib under section 9(1C) of the 1967 Act for the freehold of 40 Chelsea Square to be £4,673,000. Our valuation is set out in Appendix 2 to this decision.

#### **LRA/62/04 (Cadogan v 55/57 Cadogan Square Freehold Limited) (55/57 Cadogan Square)**

193. Cadogan's appeal is allowed. The deferment rate reduced to 4¾%. We determine the price payable by the respondent under section 32 and Schedule 6 to the 1993 Act for the freehold of 55/57 Cadogan Square to be £864,350. Our valuation is set out in Appendix 3 to this decision.

#### **LRA/8/05 (Cadogan v Moussaieff) (First and Second Floor Flat, 8 Cadogan Square)**

194. Cadogan's appeal is allowed. The deferment rate is reduced to 4¾%. We determine the premium payable by the respondent tenant under section 56 and Schedule 13 to the 1993 Act on the grant of a new lease of the First and Second Floor Flat, 8 Cadogan Square to be £1,071,240 apportioned £1,068,572 to the freehold and £2,668 to the headleasehold interest (as determined by the LVT). Our valuation is set out in Appendix 4 to this decision.

#### **LRA/87/04 (Day v 32 Rosary Gardens (Freehold) Limited) (32 Rosary Gardens)**

195. Day's appeal is allowed. The deferment rate is reduced to 6.4%. We determine the price payable by the respondents under section 32 and Schedule 6 to the 1993 Act for the freehold of 32 Rosary Gardens to be £546,600 apportioned £545,579 to the freehold and £1,021 to the headleasehold interest (as determined by the LVT). Our valuation is set out in Appendix 5 to this decision.

#### **LRA/18/05 (Re Cadogan) (9 Astell Street)**

196. Cadogan's appeal is allowed. The deferment rate is reduced to 4½%. We determine the price payable by the tenants under section 9(1C) of the 1967 Act for the freehold of 9 Astell Street and garage 8 Britten Street to be £1,011,700, apportioned £596,051 to the freehold and £415,649 to the headleasehold interest (as determined by the LVT). Our valuation is set out in Appendix 6 to this decision.

## **PART 5**

### **COSTS**

197. These decisions determine the substantive issues in these appeals. They will take effect as decisions for the purposes of appeals when the outstanding issues of costs have been determined.

198. The power of the Lands Tribunal to award costs on an appeal from an LVT is now restricted by section 175(6) of the Commonhold and Leasehold Reform Act 2002 to situations where a party has “acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal.” These new costs provisions came into force on 30 September 2003 with a saving that they shall not have effect in relation to application to an LVT made before that date (Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings)(England) Order 2003, art 2(c) and Schedule 2).

199. Having regard to these provisions, the position in these appeal is as follows. The application to the LVT in LRA/23/04 was made on 13 August 2003 and we therefore have a discretion as to the award of costs which is unfettered by section 175 of the 2002 Act. The parties to this appeal are invited to make submissions as to costs and a letter accompanying this decision sets out the procedure for representations in writing.

200. The appeals LRA/62/04, LRA/8/05 and LRA/87/04 are all within the provisions of section 175 of the 2002 Act and, having regard to the way in which these appeals have been conducted, we do not propose to make an order for costs. If, however, any party to these three appeals wishes to make an application for costs they may make such application within two weeks (copy to the other party), with a further week for any counter-representations.

201. There is no respondent in appeal LRA/18/05 and we make no order as to costs.

DATED: 15 September 2005

(Signed) His Honour Judge Michael Rich QC

(Signed) P H Clarke FRICS

**APPENDIX 1**

**SUMMARY OF CASES**

Address	Nature of transaction	Statutory provisions	Valuation date	Freehold value to be deferred	Deferment rates and resulting present freehold value			Effect of appellant's deferment rate on valuation by LVT	
					LVT	Appellant	Respondent	Capital increase in value of appellant's interest	Increase in price or premium resulting from appellant's deferment rate
40 Chelsea Square	Freehold of Grade 2 * house Lease 24¾ yrs unexpired	s.9(1A)&(1C) of 1967 Act	1 April 2003	£11.5m	6% £2,719,750	4¾% £3,645,500	6%	£925,750	£473,000
1 <sup>st</sup> and 2 <sup>nd</sup> Floor 8 Cadogan Square	Lease extension of 19.4 years unexpired	Schedule 13 of 1993 Act	17 October 2003	£2.35m	6% £759,278	4½% £1,000,865	6%	£241,587	£113,282
55/57 Cadogan Square	Freehold reversion on 10 flats 72.156 years unexpired	Schedule 6 of 1993 Act	28 April 2004	£14,947,832	6% 222,724	4½% £623,325	6%	£400,601	£309,650
32 Rosary Gardens,	Freehold reversion on 5 flats 26½ years unexpired	Schedule 6 of 1993 Act	23 June 2004	£2,042,510	6¾% £362,672	6% £436,076	Valuation at 6¾% although spoke to 8½%	£73,404	£49,876
9 Astell Street	Freehold of unimproved house 31¼ years unexpired	S.9(1A) & (1C) of 1967 Act	25 Sep 2003	£2,037,150	6% £329,876	4½% £514,804	No response	£184,928	£92,465

**APPENDIX 2  
(LRA/23/04)**

**VALUATION OF 40 CHELSEA SQUARE UNDER SECTION 9(1C)  
OF LEASEHOLD REFORM ACT 1967**

**Value of freehold**

Capital value of rental income		£636
Value of freehold with vacant possession	£11,500,000	
Defer 24 <sup>3</sup> / <sub>4</sub> years @ 4 <sup>3</sup> / <sub>4</sub> %	<u>0.317</u>	<u>£3,645,500</u>
	Value of freehold	<u>£3,646,136</u>

**Marriage value**

Value of freehold with vacant possession		£11,500,000
Less		
Value of freehold	£3,646,136	
Value of leasehold interest	<u>5,800,000</u>	<u>£9,446,136</u>
	Marriage value	£2,053,864
	Freeholders' share, 50%	<u>0.5</u>
	Freeholders' share of marriage value	<u>£1,026,932</u>

**Price**

Value of freehold		£3,646,136
Freeholders' share of marriage value		<u>1,026,932</u>
		<u>£4,673,068</u>

say £4,673,000

**APPENDIX 3**  
**(LRA/62/04)**

**VALUATION OF 55/57 CADOGAN SQUARE UNDER SECTION 32 AND  
SCHEDULE 6 TO LEASEHOLD REFORM, HOUSING AND URBAN  
DEVELOPMENT ACT 1993**

**Value of freehold**

Capital value of rental income		£84,039
Capital value of participating tenants' flats	£6,792,400	
Defer 72.156 years @ 4¾%	<u>0.0352</u>	£239,092
Capital value of non-participating tenants' flats & caretaker	£8,044,900	
Capital value of potential for further development	<u>110,532</u>	
	£8,155,432	
Defer 72.156 years @ 4¾%	<u>0.0352</u>	<u>£287,071</u>
	Value of freehold	<u>£610,202</u>

Value of headlease (agreed) Nil

**Marriage value (participating tenants' flats)**

Freehold (proposed)	£ nil	
Headlease	nil	
Nominee purchaser (proposed)	<u>6,792,400</u>	£6,792,400

Less

Freehold (existing)	£239,092	
Apportioned rental income	40,500	
Headlease	nil	
Underlessees (existing)	<u>6,004,500</u>	<u>£6,284,092</u>
	Marriage value	£ 508,308
	Freeholder's share, 50%	<u>0.5</u>
	Freeholder's share of marriage value	<u>£ 254,154</u>

**Price**

Value of freehold		£610,202
Value of headlease		Nil
Freeholder's share of marriage value		<u>254,154</u>
		<u>£864,356</u>
		say <u>£864,350</u>

VALUATION OF 1<sup>st</sup> AND 2<sup>nd</sup> FLOOR FLAT, 8 CADOGAN SQUARE UNDER  
SECTION 56 AND SCHEDULE 13 TO LEASEHOLD REFORM, HOUSING  
AND URBAN DEVELOPMENT ACT 1993

**Diminution in value of landlords' interests**

Headleasehold interest		<u>£2,065</u>
Freehold interest		
Value with vacant possession	£2,350,000	
Defer 19.39 years @ 4¾%	<u>0.4068</u>	£955,980
Less		
Value with vacant possession	£2,350,000	
Defer 109.39 years @ 4¾%	<u>0.0062</u>	£ 14,570
	Diminution in freehold	<u>£941,410</u>
	Total diminution in value	<u>£943,475</u>

**Marriage value**

Proposed interests		
Freehold	£14,570	
Headlease	nil	
Tenants	<u>2,303,000</u>	£2,317,570
Less		
Present interests		
Freehold	£955,980	
Headlease	2,065	
Tenants	<u>1,104,000</u>	<u>£2,062,045</u>
	Marriage value	£255,525
Landlords' share, 50%		<u>0.5</u>
Landlords' share of marriage value		<u>£127,762</u>

**Premium**

Total diminution in value	£943,475
Landlords' share of marriage value	<u>127,762</u>
	<u>£1,071,237</u>
	say <u>£1,071,240</u>

**Apportionment**

Freehold	£1,068,572
Headlease	<u>2,668</u>
	<u>£1,071,240</u>

**VALUATION OF 32 ROSARY GARDENS UNDER SECTION 32 AND SCHEDULE 6  
TO LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

**Value of freehold**

Capital value of rental income		£1,335
Capital value of flats	£2,042,510	
Defer 26½ years @ 6.4%	<u>0.1933</u>	£394,817
Hope value, non-participating tenants' flats		<u>£ 19,244</u>
	Value of freehold	<u>£415,396</u>
	Value of headlease	<u>£ 748</u>

**Marriage value (participating tenants' flats)**

Long lease values of participating flats		£1,211,260
Less		
Ground rents	£1,501	
Reversionary value £1,211,260 deferred for 26½ years @ 6.4%	£234,136	
Existing leasehold values	<u>714,644</u>	<u>£950,281</u>
	Marriage value	£260,978
	Landlords' share, 50%	<u>0.5</u>
	Landlords' share of marriage value	<u>£130,489</u>

**Price**

Value of freehold		£415,396
Value of headlease		748
Landlords' share of marriage value		<u>130,489</u>
		<u>£546,633</u>
		say <u>£546,600</u>

**Apportionment**

Freehold		£545,579
Headlease		<u>1,021</u>
		<u>£546,600</u>

**VALUATION OF 9 ASTELL STREET UNDER SECTION 9(1C)  
OF LEASEHOLD REFORM ACT 1967**

**Value of freehold**

Capital value of rental income		£613
Value of freehold with vacant possession	£2,037,150	
Defer 31¼ years @ 4½%	<u>0.2527</u>	<u>£514,788</u>
	Value of freehold	<u>£515,401</u>
	Value of headlease	<u>£272,683</u>

**Marriage value**

Value of freehold with vacant possession		£2,037,150
Less		
Value of freehold	£515,401	
Value of headleasehold interest	272,683	
Value of underleasehold interest	<u>801,500</u>	<u>£1,589,984</u>
	Marriage value	£ 447,166
	Superior interests' share, 50%	<u>0.5</u>
	Share of marriage value	<u>£ 223,583</u>

**Price**

Value of freehold		£515,401
Value of headleasehold interest		272,683
Share of marriage value		<u>223,583</u>
		<u>£1,011,667</u>
		<u>say £1,011,700</u>

**Appointment**

Freehold		£596,051
Headlease		<u>415,649</u>
		<u>£1,011,700</u>